

**BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI**

Misc. Application No. 208/2024

(Setting aside Exparte order dtd. 14/12/22)

In

Appeal No. AT006000000031791 of 2019

Ms. Chandrakala Harakchand ... Appellant

Versus

M/s. A H Construction & Ors. ... Respondents

Adv. Avinash Pawar for applicant/respondent no. 1.

Adv. Shrey Fatterpekar for appellant/non-applicant.

CORAM : SHRIRAM R. JAGTAP, MEMBER (J) &

DR. K. SHIVAJI, MEMBER (A)

DATE : 24rd April, 2024

(THROUGH VIDEO CONFERENCING)

ORDER

[PER : SHRIRAM R. JAGTAP (J)]

- 1) The applicant/respondent no. 1 has moved this application for setting aside order dated 14th December 2020, whereby this Tribunal had ordered to proceed the instant appeal ex-parte against the respondent no. 1.
- 2) The applicant/respondent no. 1 claims that it is a partnership firm. The partners of the firm were unaware of the instant appeal. Though the order dated 14th December 2020 records

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that **"tracking report shows that respondent no. 1 is duly served"** partners of the firm were completely unaware about who accepted notice of appeal on their behalf. Therefore, the firm did not appear in the proceedings before this Tribunal.

- 3) In the month of October 2023, the firm was served with notice of hearing of appeal and for the first time, the partners of firm are aware of pendency of instant appeal against them. Soon after receipt of notice, the firm immediately entered its appearance in the proceedings on 1st November 2023. There was no intention of the partners of the firm to protract the trial of appeal or not to appear in the proceedings. If the order dated 14.12.2020 is not set aside, the respondent no. 1 will suffer irreparable loss which cannot be compensated in terms of money. With these contentions, applicant/respondent no. 1 has prayed to set aside the order dated 14.12.2020.
- 4) The appellant/non-applicant has filed affidavit in reply to this application and remonstrated the application contending therein that the appellant has served the instant appeal twice on applicant/respondent no. 1 and filed affidavit of service dated 17.10.2019 and 10.02.2020 in this regard, which clearly

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indicate that the applicant/respondent no. 1 was duly served by multiple occasions and despite this, applicant/respondent no. 1 chose not to appear in the proceedings. The ground put forth by applicant/respondent no. 1 that the respondent no. 1 was not aware who accepted service on its behalf is not a valid ground. The record depicts the clear picture that appeal was served at the correct address which constitutes valid service. The applicant/respondent no. 1 has failed to demonstrate reasonable ground whatsoever which precluded the applicant/respondent no. 1 from participating in the instant appeal earlier or filing the present application earlier. Besides there is a delay of 4 years in filing the present application for which no cogent reasons have been offered by applicant/respondent no. 1.

- 5) The appellant/non-applicant has further contended that applicant/respondent no. 1 has miserably failed to furnish reasons as to what prevented it from filing a proper application from 01.11.2023 till 20.03.2024. In the absence of reasons, the application is liable to be rejected with cost. Apart from this, the present application has been filed in the middle of final hearing when the appellant/non-applicant has

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substantially argued the matter. The same evinces laxity with which applicant/respondent no. 1 has acted. With these contentions, the appellant/non-applicant has prayed for rejection of the application.

6) We have heard learned Adv. Avinash Pawar for applicant/respondent no. 1 and learned Adv. Shrey Fatterpekar for appellant/non-applicant.

7) After considering the pleadings of the parties, submissions advanced by learned counsel for respective parties and material on record, only point that arises for our consideration is whether applicant/respondent no. 1 has assigned good cause for its previous non-appearance and to which our answer is in the negative for the reasons to follow:

REASONS

8) Order IX Rule 7 of Code of Civil Procedure pertains to the consequences of non-appearance of defendant/respondent. Rule 7 speaks that where the court has adjourned the hearing of the suit ex-parte, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the court directs as to costs or otherwise, be heard in answer to the suit as if he

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had appeared on the day fixed for his appearance. The underlying objective of Order IX Rule 7 of the Code of Civil Procedure is to prevent unnecessary delays in the judicial process. By allowing the court to proceed in the absence of defendant/respondent, the rule aims to maintain expeditiousness of the proceedings while protecting the right of the plaintiff to a fair trial.

- 9) It is the specific contention of applicant/respondent no. 1 that the firm was completely unaware about who accepted service on its behalf. It means the applicant/respondent no. 1 is not disputing the fact that summons was duly served on respondent no. 1 at correct address. It is pertinent to note that the material on record clearly indicates that the summons was also served on respondent no. 1 by registered post. The tracking report clearly indicates that respondent no. 1 was duly served with notice. The summons was served by hand delivery as well as by post on respondent no. 1. Despite this, respondent no. 1 did not put its appearance in the proceedings and chose to remain absent in the proceedings.

- 10) The next contention of applicant/respondent no. 1 is that for the first time the applicant/respondent no. 1 came to know

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about the instant appeal, when respondent no. 1 was served notice of hearing in the month of October 2023. It is pertinent to note that despite this, the respondent no. 1 did not put its appearance immediately. Record reveals that Adv. Avinash Pawar has filed Vakalatnama in the month of January 2024. It is worthy to note that the Roznama dated 1st November 2023 shows that Adv. Namrata Solanki had undertook to file Vakalatnama on behalf of the respondent no. 1 and sought time to file appropriate application for setting aside order dated 14.12.2020. Despite this, respondent no. 1 did not file appropriate application till 20.03.2024. The only cause assigned by applicant/respondent no. 1 for its non-appearance on 14.12.2020 is that the applicant/respondent no. 1 was unaware of the fact that who had accepted notice of appeal on its behalf. However, the material on record clearly indicates that on multiple occasions respondent no. 1 was served with notices of hearings of the present proceedings and despite this the respondent no. 1 did not participate in the matter. Therefore, for the foregoing reasons, we have come to the conclusion that the applicant/respondent no. 1 has miserably failed to assign good cause for its non-appearance. Application

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is devoid of merits and therefore order passed by this Tribunal deciding to proceed ex-parte against the applicant/respondent no. 1 cannot be set aside. Consequently, we proceed to pass the following order:

ORDER

- a) Miscellaneous Application No. 208 of 2024 stands rejected.
- b) Parties to bear their own costs.


(DR. K SHIVAJI)


(SHRIRAM R. JAGTAP)

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