

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

3) M.A. No. 523/19 (Stay)

In

AT006000000041889/19

Brian Miranda & Anr.

... Appellants

V/s.

Tukaram Mestry & Ors.

... Respondents

Alongwith

4) M.A. No. 76/20 (Delay)

In

AT006000000041846/19

Mr. Tukaram R. Mestry & Anr

... Appellants

V/s.

M/s. Cosmos Enterprises

... Respondent

Adv. Prakash R. Hegde for Appellants in sr. no. 3 & for Respondent in sr. no. 4.

Adv. Mayur Joshi for Respondents in sr. no. 3 & for Appellants in sr. no. 4.

**CORAM : SHRI SHRIRAM. R. JAGTAP, MEMBER (J), &
DR. K. SHIVAJI, MEMBER (A)**

DATE : 9th May, 2024

(THROUGH VIDEO CONFERENCE)

In AT006000000041889/19

1. Adv. Mayur Joshi submits that the respondent has filed written submissions and served the copies of the same to other side. Adv. Prakash R. Hegde confirms the same.

In appeal no. AT006000000041846/19

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2. We have heard learned counsel appearing for respective parties.
3. Matter is kept back for order.

Later at, 1 P.M.

4. Same appearance.

In M.A. No. 76 of 2020

1. The applicants, who are allottees, have moved this application for condonation of delay of 50 days on the grounds enumerated in the application primarily on the grounds that they had sufficient cause for not preferring appeal within a period of limitation.
2. The applicants claimed that after passing of impugned order they sent copy of order along with letter of advocate to respondent/non-applicant and sought possession of subject flat. However, till date the applicants have not received any response from the respondent. Apart from this, the applicants are financially poor therefore, they were unable to engage an advocate. Because of aforesaid reasons they could not file appeal within the time limit prescribed.
3. The respondent has filed reply to this application contending therein that the grounds put forth by applicants for condonation of delay are frivolous. Besides the applicants

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have wrongly calculated delay of 50 days whereas there is delay of 55 days in filing the appeal. The respondent has denied that the applicants sent copy of order along with copy of letter demanding possession to respondent. The respondent has further contended that the explanation offered by applicants for condonation of delay is not satisfactory. With these contentions, the respondent has prayed for dismissal of the application.

4. We have heard learned advocates appearing for the respective parties.
5. After considering the submissions advanced by respective parties only point that arises for our consideration is whether applicants had sufficient cause for not preferring an appeal within the time limit prescribed? to which our answer is in the affirmative for the reasons to follow: -
6. The impugned order was passed on 05.07.2019. The applicants were supposed to file appeal within 60 days from the date of order. Admittedly, appeal came to be filed on 24.10.2019. Thus, there is delay of 50 days in filing appeal.
7. It is specific contention of applicants that after passing of the order they had sent copy of order to non-applicant and asked



the non-applicant to deliver the possession of the subject flat.

However, the non-applicant did not respond as a result thereof there is delay in filing the appeal.

- 1) The next contention of the applicants is that they are financially poor and therefore, they could not engage advocate in time. It is well settled principle of law that words "sufficient cause" should receive a liberal consideration so as to advance substantial justice, when delay is not on account of any dilatory tactics, want of bonafides, deliberate or negligent on the part of applicant/appellant. It has been held by the Hon'ble Apex Court in the case of **Collector, Lan Acquisition, Anantnag and another Vs. Mst. Katiji and others** [(1987) 2 Supreme Court Cases 107] that-

"3 The legislature has conferred the power to condone delay by enacting Section 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiable approach in matters instituted in this Court. But the message does not appear to have percolated down to all

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the other Courts the hierarchy. And such a liberal approach is adopted on principle as it is realized that-

- 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
- 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
- 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in justice being done because of a non-deliberate delay.*
- 5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
- 6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the

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institution of the appeal."

8. There is no material on record to show that applicants have malafidely preferred the captioned appeal after expiry of period of limitation. Moreover, there is nothing on record to show that there were dilatory tactics on the part of the applicants. It is well settled position of law that lis is to be decided on merits. Considering the grounds put forth by the applicants we are of the view that the applicants have satisfactory established that they had sufficient cause for not preferring the appeal within the period of limitation. We, therefore, proceed to pass following order: -

ORDER

- a. Misc. Application no. 76 of 2020 is allowed.
- b. Delay is condoned.
- c. Cost will abide in main cause.

In appeal

Respondent is directed to file reply to appeal and serve the copy of the same to other side well in advance.

2. Stand over to 20th June 2024 for reply.


(DR. K. SHIVAJI)
Pathrikar_


(SHRIRAM. R. JAGTAP)