

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO. 1083 OF 2022 (Delay)
IN
APPEAL NO. AT006000000083862**

Rahul Kalyan Raghuwanshi ...Applicant

-VS-

M/s Accord Builders & Others. .Non-Applicants

**WITH
MISC. APPLICATION NO. 1084 OF 2022 (Delay)
IN
APPEAL NO. AT006000000083863**

Rahul Kalyan Raghuwanshi ...Applicant

-VS-

M/s Accord Builders & Others. .Non-Applicants

Adv. Mr. Aman Kacharia for Applicant.

Adv. Mr. Mohanish Chaudhary for Non-Applicants.

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

DATE : 25th July, 2023.

(THROUGH VIDEO CONFERENCING)

COMMON ORDER

[PER : SHRIRAM R. JAGTAP, MEMBER (J.)]

These applications are subject matter of this common order
being passed considering the similarity of facts, circumstances and

question of law involved in these applications.

2] The applicant, who is an allottee, has moved these applications for condonation of delay of 36 days caused in preferring the instant appeals on the grounds set out in the applications, mainly on the ground that he had sufficient cause for not preferring appeals within the period of limitation.

3] The applicant claims that the impugned orders came to be passed on 23.2.2022 by the learned Chairperson, MahaRERA in the complaints filed by him. The applicant was supposed to file appeals within 60 days from the date of order. The appeals came to be filed on 31.5.2022, thus, there is delay of 36 days in filing appeals.

4] The applicant has further contended that the delay was on account of lockdown imposed by the Government to battle the Covid 19 pandemic and its resultant difficulties. The Hon'ble Apex Court had sou motu taken cognizance of these difficulties in filing appeals/suits/applications etc. and vide orders dated 23.3.2020, 9.3.2021, 27.4.2021 and 23.9.2021 in Sou Motu Writ Petition (Civil) No.3 of 2020 excluded the period of limitation across the nation in all Courts and Tribunals with effect from 15.3.2020 to 28.2.2022. Vide order dated 10.1.2022, the Hon'ble Supreme Court extended period of limitation by 90 days from 1.3.2022 which is until 30.5.2022. The

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applicant has further submitted that due to unavoidable circumstances which were beyond the control of applicant, the applicant could not prefer appeals within time limit prescribed.

With these contentions the applicant has prayed to condone the delay in preferring instant appeals.

5] The non-applicants remonstrated the applications by filing their reply contending that the applicant has failed to provide any sufficient cause for delay in filing appeals. The applicant has failed to show cause much less sufficient cause for condonation of delay. The applications do not even purport to explain the delay and/or justify the same in any manner by citing any reason/ground. The delay cannot be condoned simply because applicant is asking for it. It is a settled law that in order to condone the delay "sufficient cause" ought to be shown. The applicant cannot be permitted to treat the judicial forum as a "walk in" place which can be approached at one's own leisure at the prejudice of other parties.

6] The non-applicants have further contended that the blanket extension given by the Hon'ble Supreme Court for limitation in all matters does not apply to the present case. The impugned order in the instant appeals was passed on 23.2.2022. The time period directed to be excluded by the Hon'ble Supreme Court is specifically restricted

to the limitation period expiring on or before 28.2.2022. In the present case, as the orders sought to be impugned are passed on 23.2.2022 and limitation to challenge the same was beyond 28.2.2022. Therefore, the blanket extension given by the Hon'ble Supreme Court is not applicable to the present case.

7] The non-applicants have further contended that the appeals have been notorised on 4.4.2022. However, the appeals, without seeking condonation of delay have been sought to be filed on 31.5.2022. The present applications came to be filed on 8.12.2022 as per convenience of the applicant. The considerable gap in notorisation of the appeals to filing of the same and then filing delay condonation application after more than 191 days testifies beyond doubt that the applicant is indolent in his approach. The applicant has failed to demonstrate any justified cause for delay and/or vigilance in pursuing his alleged grievance. The non-applicants have further claimed that it is usual practice that in case of delay, the application for condonation of delay is to be filed simultaneously along with appeal. However, in the present case there is gap of 191 days between filing of appeals and applications for condonation of delay. Thus appeals having filed without any application for condonation of delay is itself defective and not maintainable. The delay condonation applications cannot be said to



have retrospective effect to cure patent defect lying during the filing of appeal. The delay condonation applications are itself delayed for 191 days. No prayer/application seeking condonation of delay for filing such applications belatedly has been made. The delay is not properly explained by the applicant.

With these contentions the non-applicants have prayed for rejection of applications with exemplary costs.

8] The applicant has filed rejoinder wherein he has contended that it is trite law that the law on limitation is to ensure that litigants approach judicial and quasi-judicial forums in exercise of their rights in a timely manner and do not resort to dilatory tactics. Immediately upon filing appeals, the Advocate for applicant had filed applications (on praecipe) dated 16.6.2022, inter alia, explaining the delay and sought condonation of the same. Despite having filed the said applications, the captioned appeals were not listed for hearing. On inquiry it was informed that since Misc. Applications for condonation of delay had not been filed, captioned appeals had not been listed before the Tribunal for hearing. In view of these circumstances, the captioned Misc. Applications came to be filed only in December 2022. A mere procedural irregularity ought not disentitle the applicant from taking recourse to a legal/statutory right to appeal before this Tribunal.

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Besides there was no intention to delay in filing Misc. Applications. The applicant is a resident of Dubai and coordination and obtaining instructions for filing appeals become arduous due to subsequent and repeated onsets of Covid 19.

With these contentions, the applicant reiterated to allow his applications.

9] We have heard the learned Advocates Mr. Aman Kacharia for Applicant and learned Advocate Mr. Mohanish Chaudhary for non-applicants.

10] After taking into consideration the rival contentions of the parties only point that arises for our consideration is whether the applicant has established that he had sufficient cause for not preferring the captioned appeals within the period of limitation? To which we answer the point in the affirmative for the reasons to follow –

REASONS

11] It is not in dispute that the impugned orders came to be passed on 23.2.2022. As per Section 44(2) of RERA, the applicant was supposed to file appeals within a period of 60 days from the date on which a copy of direction/order or decision made by the Authority or Adjudicating Officer is received by the aggrieved person. Admittedly, captioned appeals came to be filed on 31.5.2022. It is worthy to note

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that it is not in dispute that the Hon'ble Apex Court took suo motu cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications/ suits/ appeals/ all other quasi-judicial proceedings within a period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to outbreak of Covid 19 pandemic. By order dated 23.3.2020 the Hon'ble Apex Court directed extension of period of limitation in all proceedings before Courts/Tribunals with effect from 15.3.2020 till further orders. A perusal of order dated 10.1.2022 passed in Sua Motu Writ Petition (Civil) No.3 of 2020, it is seen that the Hon'ble Apex Court in continuation of subsequent orders dated 8.3.2021, 27.4.2021 and 23.9.2021 directed that period from 15.3.2020 till 28.3.2022 shall stand excluded for the purposes of limitation as may be prescribed under general law or special laws in respect of judicial or quasi-judicial proceedings. The Hon'ble Apex Court has further held that –

*"In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. **In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.**"*

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12] It is worthy to note that the impugned orders were passed on 23.2.2022. It means in the light of order dated 10.1.2022 passed by the Hon'ble Apex Court as above, the applicant had a balance period of limitation of 55 days and the applicant was entitled to have a limitation period of 90 days from 1.3.2022. It means the applicant was supposed to file captioned appeals on or before 30.5.2022. Admittedly, captioned appeals came to be filed on 31.5.2022. It means there is delay of one day only in filing the captioned appeals.

13] It is well settled principle of law that "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 negligence on the part of applicant/appellant. It has been held by the Hon'ble Apex Court in the case of **Collector, Land 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

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Court has been making a justifiable liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principles 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 injustice 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*

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condoning the delay in the institution of the appeal."

14] The Hon'ble Supreme Court in **N. Balkrishnan Vs. M. Krishnamurthy** (1998 Law Suit Supreme Court 872) has held that –

"Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics but seeks their remedy promptly. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. The word sufficient cause as used should receive a liberal construction so as to advance substantial justice. When there is a reasonable ground to condone the delay and that delay was not occasioned deliberately and intentionally, then delay should be condoned."

15] There is no presumption that delay in approaching the court is always deliberate. It must be remembered that in every case of delay, there can be some lapse on the part of litigant concerned. That alone is not enough to turn down the plea of applicant and shut door against the applicant. If explanation does not smack of malafide or is not put forth as a part of a dilatory strategy, it is guided that Court must show utmost consideration to the suitor. After considering the submissions advanced by the learned Advocates for parties and perusal of material produced on record, we are of the view that the grounds put forth by the applicant for condonation of delay are sufficient. There

is no material on record to show that applicants have malafidely preferred captioned appeals after expiry of period of limitation. Besides, there is nothing on record to show that there were dilatory tactics on the part of applicant. It is to be noted that it is well settled that lis is to be decided on merits. Therefore, we are of the view that the applicant has satisfactorily established that he had sufficient cause for not preferring appeals within the period of limitation. We, therefore, proceed to pass following order –

O R D E R

- 1] Misc. Application Nos. 1083 and 1084 of 2022 are allowed.
- 2] Delay is condoned.
- 3] Costs will abide in main cause.


(Dr. K. SHIVAJI)


(SHRIRAM R. JAGTAP)

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