

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

**MISC. APPLICATION NO. 313 OF 2022 (Delay)
IN
APPEAL NO. AT006000000053560 OF 2022**

Mr. Ashok Sheshagiri Purohit

.. Applicant

In the matter between-

Mr. Ashok Sheshagiri Purohit

...Appellant

Vs.

Hubtown Limited

**...Respondent/
Non-Applicant**

Adv. Mr. Kunal Maskar for Applicant.

Adv. Mr. Rubin Vakil for Non-Applicant.

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

DATE : 8th August, 2023.

(THROUGH VIDEO CONFERENCING)

ORDER

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

The applicant, who is an allottee, has filed the present application for condonation of delay of 1361 days in filing appeal on the

grounds set out in the application.

2] Necessary relevant facts are stated hereunder to appreciate the case of the applicant and also to find out whether the applicant is entitled for relief as prayed in this application.

3] It is the case of the applicant that impugned order was passed on 5.3.2018 and he was supposed to file appeal on or before 4.5.2018. However, the circumstances enumerated herein below prevented applicant from filing appeal within the period of limitation. The applicant claims that he was dissatisfied with the impugned order for the reasons more particularly set out in the appeal memo and being unaware of the further steps, he was wrongly advised to file application for execution of impugned order. The applicant being layman and having no knowledge about any other alternate remedy, chose to file non-compliance application on the portal of MahaRERA Authority, since the non-applicant has failed to comply with impugned order.

4] The applicant has further claimed that at the relevant time, the applicant had secured job in Liberia and had to travel immediately out of India for his job, as a result whereof the applicant was not in a position to oversee the proceedings of non-compliance of the order. Apart from this, there were barely any communication services prevailing in Liberia



on account of which the applicant was unable to communicate via any mode and proceed further in non-compliance proceedings.

5] The applicant has further submitted that after a period of two years, the non-applicant came forward and agreed to comply with the impugned order and addressed email dated 4.2.2020 to applicant agreeing to pay interest for delayed possession and requested the applicant to withdraw application filed for execution of order. Later on the applicant returned to Mumbai and approached his present Advocate to seek legal advice. The applicant was surprised to learn about the remedy to challenge the order in the Appellate Tribunal. After receipt of correct legal advice, the applicant decided to prefer an appeal against the impugned order. However, due to surge of Covid 19 pandemic the Government of Maharashtra imposed lockdown on 23.3.2020. Apart from this the Government of India also announced lockdown on 24.3.2020, as a result thereof filing of appeal faced logistical difficulties, and could not be filed immediately.

6] The applicant has further contended that the applicant somehow managed to file an appeal on 10.9.2020 against the impugned order. However, the applicant was intending to make certain amendments in the appeal memo and therefore, he had made application for



withdrawal of appeal with liberty to file fresh appeal. The application for withdrawal of appeal was allowed with liberty to file fresh proceedings subject to law of limitation.

7] It is further contention of the applicant that the Hon'ble Supreme Court took cognizance of the outbreak of Covid 19 pandemic and passed orders in Sou Motu Writ Petition (Civil) No. 3 of 2020 and extended statutory period of limitation from time to time. By the order dated 10.1.2022, the Hon'ble Supreme Court excluded period from 15.3.2020 to 28.2.2022 in computing period of limitation. The delay in filing appeal is without malafide intention or ulterior motive. Due to genuine reasons as stated above, the applicant was prevented from filing instant appeal within the period of limitation. It is further contention of the applicant that if delay is condoned no harm or prejudice will be caused to non-applicant, and if delay is not condoned, the applicant will suffer grave loss which cannot be compensated in terms of money.

With these contentions, the applicant has submitted that he had sufficient cause for not filing an appeal within the period of limitation and prayed to condone 1361 days delay in filing appeal.

8] The non-applicant remonstrated the application by filing his reply. It is submitted by the non-applicant that the condonation of delay

can only be allowed if a party demonstrates, with supporting documents and material, sufficient cause for the purpose of such condonation. A bare perusal of the present application reveals that no cause, much less sufficient cause has been demonstrated by the applicant. No material whatsoever has been produced to support bald and baseless allegations made in the application. On bare perusal of application, it is apparent that the applicant had duly accepted the order dated 5.3.2018 which is sought to be impugned in the present appeal. Once an order has been duly accepted, inter alia by filing an application for execution/ non-compliance, the applicant is estopped from challenging the same. Apart from this the applicant had filed Misc. Application No.156 of 2021 for condonation of delay along with appeal bearing No.AT006000000052617 of 2020 which was withdrawn by the applicant vide order dated 14.12.2021 passed by this Tribunal. It transpired from the reasons mentioned in the previous application and the reasons mentioned in the present application that the delay on the part of the applicant is not bonafide and unintentional. On examination of Misc. Application No.156 of 2021 and the present application would show that the applicant has now sought to advance an entirely different set of reasons for delay in filing instant appeal which reasons do not even find a whisper in the previous Misc. Application.

9] The non-applicant has further contended that the reasons mentioned in earlier Misc. Application No.156 of 2021 for condonation of 860 days delay was due to deliberations with other home-buyers to find out a way. However, in the present application, the applicant is seeking condonation of delay of 1361 days on the grounds of (1) wrong advise to file application for non-compliance, (2) he had secured job in Liberia and had to travel for this job, as a result of which he was unable to oversee non-compliance proceedings and (3) no communication from Liberia.

10] It is further contention of the non-applicant that the conduct of the applicant in again approaching this Tribunal with completely different purportedly reasons which were never mentioned in Misc. Application No.156 of 2021 is desperate and afterthought on the part of the applicant. The conduct of the applicant is malafide. The applicant has failed to make out any case to show sufficient cause for condonation of delay of 1361 days. Apart from this, the applicant at the time of earlier Misc. Application No.156 of 2021 was in Canada which is recorded in Roznama dated 29.6.2021.

11] It is further contention of the non-applicant that it is unbelievable that a party who is dissatisfied with order would apply for non-compliance of such order. The impugned order was passed on

5.3.2018 and limitation to file appeal had expired on 4.5.2018. Even at the time of imposition of lockdown on 23.3.2020, the appeal was already beyond period of limitation by 689 days. Therefore, the applicant is not entitled to seek protection of Covid 19 pandemic as well as orders passed by the Hon'ble Supreme Court.

12] The non-applicant has further contended that by an order dated 14.12.2021 this Tribunal had allowed the application filed for withdrawal of earlier appeal subject to law of limitation. The present appeal has been filed almost after 43 days from the date of order dated 14.12.2021. This shows casual conduct of the applicant with respect to adherence to time line. It is settled law that the Courts do not come to the aid of a litigant, who sleeps over his rights and inordinate and deliberate delay ought not to be condoned, to ensure finality of litigation, which is a cardinal principle of public policy.

With these contentions the non-applicant has prayed for outright dismissal of application with exemplary costs.

13] We have heard learned Advocate Mr. Kunal Maskar appearing for the applicant and learned Advocate Mr. Rubin Vakil appearing for the non-applicant.

14] The submissions advanced by the learned counsel for



respective parties are nothing but reiteration of contents of the application and reply. However, learned Advocate Mr. Kunal Maskar has placed his reliance on the following citation and submits that it is settled principle of law that liberal approach is to be adopted to do substantial justice to the parties while disposing of matter and Rules of limitations are not meant to destroy the rights of the parties.

(1) **Manoharan VS. Sivarankan & Ors.**

[Civil Appeal No.10581 of 2013]

(2) **Collector of Land Acquisition, Anantnag & Anr.**

[(1987) 2 SCC 107].

(3) **Improvement Trust, Ludhiana Vs. Ujagar**

Singh & Ors. [Civil Appeal Nos.2395 of 2008].

(4) **N. Balkrishnan V. M. Krishnamurthy.**

(5) **Nadakerappa since deceased by LRS & Ors.**

Pillamma since deceased by LRS & Ors.

[Civil Appeal Nos.7657-7658 of 2017.

15] Per contra learned Advocate Mr. Rubin Vakil has placed reliance on the following citation and submitted that the applicant has failed to establish that he had sufficient cause for condonation of delay and therefore, the application without explanation for delay is liable to be

dismissed with costs.

(1) **Lingeswaran Etc. Vs. Thirungalingam**

[Special Leave to Appeal © Nos.2054 to 3055/2022].

16] From the divergent pleadings of the parties and submissions advanced by the learned counsel appearing for respective parties, a pivotal question arises for our consideration is whether the applicant has satisfactorily established that he had sufficient cause for not preferring an appeal within prescribed period of limitation? To this our answer is in the negative for the reasons to follow

REASONS

17] Proviso to sub-section (2) of Section 44 of RERA, 2016 prescribes discretionary powers which empower the Tribunal to allow a party to prefer an appeal after expiry of 60 days, if it is satisfied that there was cause for not filing it within that period. It is not in dispute that the impugned order was passed on 5.3.2018. The applicant was supposed to file an appeal within the period of 60 days from the date of receipt of copy of direction/order or decision made by the learned Authority or Adjudicating Officer. According to the applicant there is delay of 1361 days in filing instant appeal. Generally the Court exercises discretion in favour of litigating parties by taking liberal approach to do substantial justice

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unless there are manifest grounds of malafide. The condonation of delay in the period of limitation is contemplated only in a case where an aggrieved party intended to file appeal, but intervening compelling reasons made it impossible for adhering to the statutory timeline.

18] On careful examination of the averments made in the application would show that firstly the applicant had no grievance against the order and there was no cause of action for filing appeal and accordingly no appeal was also filed. It is specific contention of the applicant that he was wrongly advised to file an application for non-compliance of impugned order. The applicant being layman and having no knowledge of any other alternate remedy, had filed an application for non-compliance of impugned order. A perusal of impugned order would show that the applicant had sought interest on account of delayed possession of the subject flat. The impugned order awards interest to applicant from 1st August 2019 till actual date of possession on the entire amount paid by allottee to respondent. Therefore, it is difficult to digest that because of wrong advice the applicant had filed an application for non-compliance of impugned order. Moreover, there is no material on record to show that wrong advice was given to applicant to file application for execution of impugned order.

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19] The next contention of the applicant is that at the relevant time he had secured job in Liberia and had to travel immediately out of India for Liberia. Because of this the applicant was unable to oversee execution proceedings. The applicant has not produced single document to substantiate that he had secured job in Liberia and had to travel immediately out of India for Liberia. In absence of cogent material on record, it is difficult to accept the said contention of the applicant. Therefore, we are of the view that the grounds put forth as above by applicant are not cogent and satisfactory.

20] The applicant has further claimed that after returning to Mumbai he approached his present Advocate and sought legal advice and filed present appeal. However, due to lockdown imposed by the Government on account of outbreak of Covid 19 pandemic the applicant could not file appeal immediately. The Hon'ble Supreme Court took cognizance of surge of Covid 19 and passed various orders in Sou Motu Writ Petition (Civil) No.3 of 2020 and thereby extended period of limitation for filing writ petitions/applications/suits/appeals and other proceedings, within the period of limitation prescribed under general law of limitation. However, applicant somehow had managed to file appeal on 10.9.2020 against the impugned order.

21] According to applicant, he was intending to make certain amendments in the appeal memo and therefore he had filed application for withdrawal of appeal. The same was allowed with liberty to file fresh appeal subject to law of limitation. It is specific contention of the applicant that large period of delay is covered by Covid 19 pandemic and in the light of aforesaid pronouncements of the Hon'ble Supreme Court, the delay is liable to be condoned. We find no substance in the above contention of the applicant. The Hon'ble Supreme Court in **Sagufa Ahmad Vs. Upper Assam Plywood Products (P) Ltd [(2021) 2 SCC 317]** has held that Judgement dated 23rd March, 2020 in cognizance for extension of limitation (in Suo Motu writ petition (Civil) No.3 of 2020) is extending only period of limitation and it did not extend period upto which delay can be condoned in the exercise of discretion conferred by the statute.

22] It is significant to note that lockdown was only imposed on 24.3.2020. There was no impediment for applicant to file appeal before 24.3.2020. We have already observed that the explanation offered by the applicant for not filing appeal before 24.3.2020 is not sufficient and satisfactory and that too without any cogent evidence. It means that

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the period of limitation for filing appeal against the impugned order had already expired on 4.5.2018 before imposition of lockdown by the Government on account of Covid 19 pandemic. Therefore, in view of the observation of the Hon'ble Supreme Court in **Sagufa Ahmed Vs. Uppar Assam Plywood Products Pvt.** (supra), we are of the view that the applicant cannot take refuge under the orders of the Hon'ble Supreme Court passed in Sou Motu Writ Petition (Civil) No.3 of 2020.


23] It is seen from the record that the applicant had filed application for execution of impugned order and he was pursuing the same for longer period. Therefore, we are of the view that having deliberately and intentionally decided not to file appeal by accepting the verdict in the order and as a consequence once the appeal has become time-barred, any cause that arises subsequent to expiry of limitation period cannot be considered as sufficient for considering condonation of delay.

24] In the above circumstances, we are conscious of the fact that in catena of cases the view taken by the Hon'ble Apex Court prescribes a liberal approach to be adopted in the matters relating to delay condonation. However, as per one of the principles laid down by

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the Hon'ble Supreme Court in para 16 of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Academy and Ors.**

[(2013) 12 SCC 649], the conduct, behaviour, and attitude of a party relating to its inaction or negligence also are relevant factors to be taken into consideration. It is provided therein that the fundamental principle is that the Courts are required to weigh scale of balance of justice in respect of both the parties and the said principle cannot be given a total go by in the name of liberal approach. We are of the view that in the instant case there is deliberate fault and inaction on the part of the applicant in filing appeal within prescribed time. The applicant was in utter negligence in filing the appeal. The conduct of the applicant clearly reveals that at any point of time, he has not relished his responsibility as a litigant. The conduct of the applicant does on the whole warrant to castigate him as a irresponsible litigant. The explanation offered by the applicant is found to be unsatisfactory.

 **25]** For the foregoing reasons, we are unable to accept the contentions of the applicant and find that sufficient cause is not made out for inordinate delay in filing instant appeal. The applicant has failed to establish his diligence and alacrity in filing appeal within the period of

limitation. In such circumstances, it is unfair to expose the other side to face such litigation unnecessarily. The application is devoid of merits and is liable to be rejected. Hence, we proceed to pass the following order-

ORDER

- 1] Misc. Application No.313 of 2022 for condonation of delay is dismissed.
- 2] In view of dismissal of Misc. Application for condonation of delay, the appeal does not survive and the same is dismissed.
- 3] Parties to bear their own costs.
- 4] Copy of this order be communicated to the learned Authority and parties as per Section 44(4) of RERA, 2016.


(DR. K. SHIVAJI)

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(SHRIRAM R. JAGTAP)