

Nalawade

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO. 1049 OF 2022 (Delay)
IN
APPEAL NO. U-19 OF 2022**

The Jayanti Nagari III,
Flats & Row Houses Owners CHS Ltd.

... Applicant

-VS-

Abhijit Realtors & Infraventures Pvt. Ltd.

... Non-applicant

Mr. Ishwar S. Charlewar, Advocate for Applicant.

Mr. Tejal Thombre, Advocate for Non-applicant.

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

DR. K. SHIVAJI, MEMBER (A)

DATE : 04th SEPTEMBER, 2023

(THROUGH VIDEO CONFERENCE)

Learned counsel for parties joined the conference.

ORAL ORDER

IN MISC. APPLICATION NO. 1049 OF 2022

By this Misc. Application, Applicant/Co-operative Housing Society is seeking condonation of delay of 45 days in filing the captioned appeal, challenging the order dated 05th July 2022.

2] Heard learned counsel for parties.

3] Learned counsel for Applicant submits that details and the

reasons for delay in filing of the appeal has been set-out in the application and further submits that the delay of 45 days happened primarily on account of the reason that their advocate took some time to advise the Applicant. Applicant being the Co-operative Housing Society, due to its inherent structure of the co-operative society, it took some extra time in consulting their members and calling meetings of members. The delay of 45 days in filing the appeal is neither deliberate nor intentional and has very good case on merits. Accordingly, applicant has very high chance of success in appeal on merits. Accordingly, learned counsel for applicant urged that the said delay of 45 days be condoned in the interest of justice.

4] Learned counsel for Non-applicant, vehemently opposed Misc. Application for condonation delay by submitting that Misc. Application No.1049/2022 is devoid of merits and is liable to be rejected at the threshold, and applicant has miserably failed to demonstrate that the delay is not deliberate and has deliberately not mentioned the date on which, they approached its counsel.

5] Learned counsel for Non-applicant further submits that applicant could have called a special meeting of the executive committee and the executive members are empowered to take decisions instead of waiting for the general body meeting to take place. Accordingly, submits that the captioned Misc. Application deserves to be rejected.



6] Perused.

7] Perusal of documents reveal that captioned delay of 45 days in filing appeal has happened, primarily, on account of getting the consent and authorization from the applicant and its members and it has taken time on account of its inherent structure of the co-operative housing society. Accordingly, 45 days of extra time has taken in filing the appeal.

8] Moreover, we are of the opinion that the applicant has not gained any undue benefits by delay in filing of the appeal and the delay is not intentional nor deliberate. Therefore, in the interest of justice, Misc. Application No.1049/2022 deserves to be allowed.

9] In view of above, Misc. Application No.1049/2022 is allowed. The delay of 45 days in filing of appeal is condoned.

10] No costs.

IN APPEAL NO. U-19 OF 2022

Learned counsel for parties joined the conference.

2] Respondent seeks four weeks' time to file reply.

3] Liberty to Appellant to file rejoinder, if any.

4] Stand over to 03rd October, 2023 for completion of pleadings, written submissions and final hearing.


(DR. K. SHIVAJI)


(SHRIRAM. R. JAGTAP, J.)