

Nalawade

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

MISC. APPLICATION NO. 592 OF 2023 (Delay)
WITH
MISC. APPLICATION NO. 527 OF 2023 (Restoration)
ALONG WITH
Ex. No. 78 OF 2019
IN
APPEAL NO. AT006000000000218

Mr. Haripal Singh Nakai

... Applicant

-VS-

M/s. Vidhi Realtors

... Non-applicant

*Ms. Karishma Munekar h/f. Mr. Sahil Mahajan, Advocate for Applicant.
None for Non-applicant.*

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

DATE : 20th OCTOBER, 2023

(THROUGH VIDEO CONFERENCE)

MISC. APPLICATION NO. 527/2023 AND 592/2023

Ms. Karishma Munekar, learned counsel for Applicant joined the conference and submits that Misc. Application No. 527/2023 has been filed for restoration of the order of this Tribunal dated 14th February 2023, wherein the captioned Execution Application No.78/2019 was dismissed for want of appearance of the parties.

2] Misc. Application No. 592/2023 has been filed to condone the delay of 154 days in filing of this Restoration Application No. 527/2023.

3] Learned counsel for Applicant submits that Non-applicant has been duly served and today's hearing date was also informed and served the copy to Non-applicant.

4] She further submits that Applicant was not able to appear earlier because of the fault of the erstwhile advocate despite follow-ups. Therefore, Applicant continued to be in the belief that the erstwhile advocate has been pursuing the matter for execution of the order of the consent terms executed between the parties on 06.09.2018 and the consent order was passed by this Tribunal on 06.09.2018.

5] In support of her contention, learned counsel for Applicant has also placed on record copy of WhatsApp chat with the Applicant and erstwhile advocate, wherein, it has been clearly indicated that the erstwhile advocate was engaged for the purpose of execution.

6] Delay in filing of execution application happened squarely on the ground of bonafide belief that erstwhile advocate has been taking necessary steps and pursuing the matter.

7] In view of these facts and circumstances of the case, Advocate Ms. Marishma Mungekar urged that the Execution Application No. 78/2019 be restored by condoning the delay and by allowing the Misc. Application No. 592/2023 and also Restoration Application No. 527/2023.

8] Perused.

9] Perusal of record reveal that the erstwhile advocate was



engaged, and Applicant appears to be in the bonafide belief that the matter is being pursued by the erstwhile advocate.

10] In the interest of justice and to avoid denial of opportunity to Applicant on the ground of the stated fault of erstwhile advocate and to avoid further delay of time, we are of the view that these ¹⁸captioned Misc. Application be allowed.

11] Accordingly, we proceed to pass the order as follows:-

ORDER

- (i) Captioned Misc. Application Nos. 527/2023 and 592/2023 are allowed.
- (ii) Delay is condoned.
- (iii) Misc. Application for Execution Application No. 78/2019 is restored to the file.
- (iv) No costs.

IN EX. NO. 78 OF 2019

Applicant to serve Non-applicant copy of complete set of Execution Application No. 78/2019 and file affidavit of service along with tangible supporting document ¹⁸within three weeks.

2] Stand over to 18th January, 2024 for further consideration and appearance of Non-applicant.


(DR. K. SHIVAJI)


(SHRIRAM. R. JAGTAP, J.)