

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

**M.A. No. 207/2023 (Set aside)
WITH
M.A. No. 208/2023 (Del. of R-4)
IN
APPEAL NO. AT006000000031828/19**

Ms. Shambhavi S. Jangam & Anr.

... Appellants

-VS-

Elinor Infra LLP & 3 Ors.

... Respondents

Ms. Padma Chinta h/f Harshad Bhadbade, Advocate for Appellants.

Mr. Bharat Jain, Advocate for Respondent no. 1 to 3.

Mr. Mehul Rathod, Advocate for Respondent no. 4.

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

DATE : 9th OCTOBER, 2023

(THROUGH VIDEO CONFERENCE)

Learned counsel for parties joined the conference.

M.A. No. 207/2023 & M.A. No. 208/2023

- 2) By these two applications, Respondent no. 4 is seeking to set aside the ex-parte order dated 1st Feb. 2023, wherein, appeal has proceeded ex-parte against the Respondent no. 4.
- 3) Heard learned counsel for parties.
- 4) Adv. Mehul Rathod submits that Respondent no. 4 could not appear before the Tribunal under the impression that Respondent no. 4 is not a necessary party because of the fact that Respondent no. 1 is an LLP and Respondent no. 4 has already retired from the

Respondent no. 1 LLP firm on 8th April, 2019. Whereas, the complaint in the instant case has been filed much later on 20th Dec. 2019 and the impugned order has been passed by MahaRERA on 19th Aug. 2019. Accordingly, Adv. Mehul Rathod urges that the ex-parte order be recalled and Respondent no. 4 being a misjoinder in the matter be deleted from the array of Respondent in this appeal.

- 5) Adv. Bharat Jain has no objection to set aside ex-parte order.
- 6) However, Adv. Padma Chinta vehemently opposed to set aside and deletion of the name of Respondent no. 4 by submitting that Respondent no. 4 has appeared before MahaRERA for entire complaint proceedings all through and has never raised this issue of deletion of his name from the proceedings. Accordingly, Adv. Padma Chinta submits that continuation of Respondent no. 4 in the matter is pre-requisite and Respondent no. 4 is a necessary party.
- 7) It is pertinent to note that the submissions made by Respondent no. 4 that he retired from the LLP on 8th April, 2019. However, acceptance of the retirement request by the concerned Regulatory Authority is not made clear. The acceptance of this request of his retirement is the relevant date for the purpose of deleting his name, if at all is found legible and this is important. Additionally, Respondent no. 4 has been the party in the complaint proceedings all through and has never raised this issue of deletion.



- 8) Besides, Advocate Padma Chinta has solely submitted that as per the provisions of Section 32 of Partnership Act, 1932 a retiring partner cannot be discharged from any liability to any third party for acts of the firm done before his retirement until public notice is given of the retirement.
- 9) We do find substance in the said contention. There is nothing on record to show that a public notice has been given by the retiring partner before his retirement from the firm. Therefore, as per the provisions of Section 32(3) of the Partnership Act, 1932 notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third party for an act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement.
- 10) In view of above, we are of the considered view that Respondent no. 4 be continued to be a party and be continued to be in the array of Respondent in this appeal proceeding.
- 11) However, considering the submissions made by Respondent no. 4 with respect to his request to set aside the ex-parte order dated 1st Feb. 2023. We are of the considered view that the ex-parte order dated 1st Feb. 2023 be set aside and recalled.
- 12) Accordingly, Misc. Application no. 207/23 is allowed and Misc.



Application no. 208/23 stands rejected and ex-parte order against Respondent no. 4 dated 1st Feb. 2023 is recalled.

- 13) Respondent no. 4 will continue to be the party in the array of Respondent in the appeal.
- 14) No costs.

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- 15) Learned counsel for Respondent seeks time to file replies within four weeks.
- 16) Liberty to Appellant to file rejoinder, if any.
- 17) Adv. Bharat Jain seeks leave to inspect the record.
- 18) Liberty is granted to Respondent nos. 1, 2 and 3 as prayed for by following standard procedure.
- 19) Stand over to 9th Jan. 2024 for completion of pleadings.


(DR. K. SHIVAJI)

MS/-


(SHRIRAM. R. JAGTAP)