

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

(12) M.A. No. 236/20 (Stay)

WITH

M.A. No. 609/23 (Setting aside Ex-parte Order)

IN

APPEAL NO. AT006000000052361/20

Mohit Vaswani & Anr.

... Appellants

-VS-

Real Gem Buildtech Pvt. Ltd. & Ors.

... Respondents

(13) M.A. No. 237/20 (Stay)

WITH

M.A. No. 612/23 (Setting aside Ex-parte Order)

IN

APPEAL NO. AT006000000052364/20

Varun Vaswani & Anr.

... Appellants

-VS-

Real Gem Buildtech Pvt. Ltd. & Ors.

... Respondents

(14) M.A. No. 235/20 (Stay)

WITH

M.A. No. 610/23 (Setting aside Ex-parte Order)

IN

APPEAL NO. AT006000000052365/20

Krish Vaswani & Anr.

... Appellants

-VS-

Real Gem Buildtech Pvt. Ltd. & Ors.

... Respondents



(15) M.A. No. 256/20 (Stay)
WITH
M.A. No. 611/23 (Setting aside Ex-parte Order)
IN
APPEAL NO. AT006000000052388/20

Nitya Buxani & Ors.

... Appellants

-VS-

Real Gem Buildtech Pvt. Ltd. & Ors.

... Respondents

Dr. Sanjay Chaturvedi, Advocate for Appellants.

Mr. Abir Patel, Advocate for Respondent no. 1 in all matters.

Mr. Shrey Fatterpekar h/f Vikram Jakhadi, Advocate for Respondent no. 6 & Applicant.

Ms. Vinal Jain, Advocate for Respondent no. 7.

None for Respondent nos. 2, 3, 4 and 5.

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

DR. K. SHIVAJI, MEMBER (A)

DATE : 3rd OCTOBER, 2023

(THROUGH VIDEO CONFERENCE)

Misc. Application nos. 609/23, 610/23, 611/23 and 612/23 have been filed for setting aside the ex-parte order dated 22nd March 2021 against the Respondent No. 6, present Applicant.

2) Heard learned counsel for parties.

3) Adv. Shrey Fatterpekar submits that erstwhile advocate was informed by sending email to appear on 7th Feb. 2021 in the present matter and Applicant also placed on record the email dated 7th Feb. 2021 in support of these contentions.

4) Learned counsel for Applicants further submits that even though



advocate for the Applicant appeared earlier, applicants came to know about this ex-parte order only on 27th July 2023. The delay in filing of the captioned applications also happened on account of difficulties due to then prevailing Covid-19 pandemic. In support of these contentions, he further submits that Hon'ble Supreme Court in suo-moto Writ Petition (Civil) no. 3/23 has extended the limitation period up to 28th Feb. 2022. He further submits that the moment he came to know about impugned ex-parte order, he applied for the certified copy on 31st July 2023 and filed the captioned application on 29th Sept. 2023 after receipt of the certified copy on 25th Aug. 2023. He further submits that the delay happened on account of default and deficiency of the erstwhile advocate. Hence, Applicant/client ought not suffer on account of the default of erstwhile advocate.

5) Adv. Dr. Sanjay Chaturvedi vehemently opposed these applications by submitting that these matters are now in the final stage of hearing. Applications cannot be allowed to delay the proceedings further. He further submits that Applicant is primarily seeking to set aside this ex-parte order on account of ignorance of law which is not an excuse. Accordingly, applications need to be dismissed with costs.

6) Perused.



- 7) Perusal of record reveals that email dated 7th Feb. 2021 placed on record clearly shows that request was made by Applicant to erstwhile advocate to appear before the instant proceedings.
- 8) In view of order of the Hon'ble Supreme Court (supra), extending the limitation period on account of then prevailing Covid-19 pandemic and upon perusal of the record, further shows that the grounds on which the Applicant is seeking to set aside this ex-parte order was having no knowledge of the passing of the ex-parte order and not on account of the ignorance of law.
- 9) Learned counsel for Applicant has further referred the order of the Hon'ble Supreme Court in the case of Rafiq & Anr. vs Munshilal & Anr. [(1981) 2 SSC 788 / Civil Appeal No. 1415 of 1981], wherein, the Hon'ble Supreme Court has held that the innocent litigants cannot be made to suffer on account of the default/deficiency of the advocate.
- 10) In the interest of justice, it is appropriate that these applications are allowed by giving one more chance to the Applicant and decide this matter on merit.
- 11) Considering above, the judicial pronouncement referred and relied by Applicant, we are of the view that there is no impediment in setting aside the ex-parte order subject to the payment of costs of Rs.10,000/- for each matter to be paid directly to Appellant/Non-



applicant within 15 days from the date of uploading this order.

- 12) Accordingly, Misc. Application 609/23, 610/23, 611/23 and 612/2023 are allowed.
- 13) Payment of costs will be conditioned precedent.
- 14) Copy of the order sent to the parties and also to MahaRERA u/s 44(4) of the Act.

IN APPEALS

- 15) Adv. Abir Patel and Adv. Vinal Jain seek time to file sur-rejoinder within three weeks.
- 16) Adv. Dr. Sanjay Chaturvedi seeks time to file additional written submissions within three weeks.
- 17) Parties to complete pleadings and written submissions within five weeks.
- 18) Stand over to 12th Dec. 2023 for completion of pleadings and written submissions.


(DR. K. SHIVAJI)


(SHRIRAM. R. JAGTAP)

MS/-