

BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL,
MUMBAI

MISC. APPLICATION NO. 338 OF 2023 (Delay)
WITH
MISC. APPLICATION NO. 428 OF 2020 (Delay)
WITH
MISC. APPLICATION NO. 997 OF 2022 (Restoration)
IN
APPEAL NO. AT0060000000052649

Rajesh Tukaram Bhatkar]
 17/97, R.C.F Colony, Type IV,]
 Chembur, Mumbai – 400 074.] ... *Applicant*

versus

M./s. Gadkari Builders & Associates]
 Gadkari Complex, Mahalaxmi Road,]
 Opp. Metal Box Factory, Deonar Gaon,]
 Mumbai – 400 088.] ... *Non-applicant*

ALONG WITH

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Mr. Bhavin Gada a/w. Ms. Anju Anchalkar i/b. Ms. Pratibha Mehta, Advocate for Applicant.
Ms. Pooja Harit i/b. Mr. Manoj Harit & Co., Advocate for Non-applicant.



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

DATE : 29th SEPTEMBER 2023

(THROUGH VIDEO CONFERENCE)

ORDER [PER: DR. K. SHIVAJI, MEMBER (A)]

Captioned applications have been preferred for restoration of the Appeal No. AT006000000052649 by condoning the delay in filing of the captioned restoration applications for setting aside the order dated 9th March 2022 of this Tribunal, wherein captioned Appeal filed under The Maharashtra Real Estate (Regulation and Development) Act, 2016 (in short, "the Act") was dismissed due to *inter alia* non-appearance of applicant and based on the reasons set out therein.

2. Heard learned counsel for parties *in extenso*. Perused record.
3. For the purpose of disposal of present applications, it is not necessary to narrate the facts of the case in detail. Suffice it to say that applicant is a flat purchaser and complainant before Maharashtra Real Estate Regulatory Authority ('MahaRERA' in short) in a duly registered project, called "SRUSHTI ENCLAVE", located at Subhash Nagar, Chembur, Mumbai - 400071 ('said project' in short), which is being developed by non-applicant.
4. Above complaint came to be filed before MahaRERA by applicant and the complaint came to be disposed of on 4th March 2020 by MahaRERA, with direction *inter alia* to non-applicant to handover list of the allottees to applicant and other allottees along with their contact details within 30 days from the date of the order to enable them to form an association of allottees, who may, thereafter take an informed decision pertaining to the



way forward in the said project by invoking the provisions of Section 7 of the Act.

5. Aggrieved by the order of MahaRERA, applicant has filed the captioned appeal online on 21st September 2020 before the tribunal, beyond the permissible limitation period of 60 days. Therefore, applicant has sought condonation of delay of 142/ 144 days in filing of the captioned appeal on multifarious grounds more particularly set out in the above referred miscellaneous application no. 428 of 2020 and learned counsel for applicant made further submissions as follows: -

- a. After filing the appeal online, applicant was directed to submit physical copy of documents, mentioned in the appeal within 7 days for further processing.
- b. Based on request, registry of MahaRERA prepared the certified copy on 23rd October 2020 and the same was collected on 2nd November 2020 from the security guard and the certified copy was filed in the tribunal.
- c. Applicant could not appear in the appeal proceeding before the tribunal on account of the miscommunications and misunderstanding between the two email Id's of the applicant namely the email Id's as "rajesh.bhatkar@gmail.com" and "rajesh.bhatkar00@gmail.com".
- d. Accordingly, Captioned appeal came to be dismissed on 9th March 2022 by this Tribunal with the observations as here under; -

"None for the applicant.

It is noted that the applicant has been continuously absent since the last several dates. On the last date on 24th February 2022, it was recorded that applicant did not appear to be interested in pursuing the application for condonation of delay as well as appeal. Applicant has remained absent event today.



In view of continuous absence of applicant, the application for condonation of delay stands dismissed.

In view of dismissal of the application for condonation of delay, the appeal also does not survive and therefore appeal also stands dismissed.

No costs"

6. Applicant filed application nos.1039 of 2022 & 1040 of 2022 on 24th November 2022, seeking condonation of delay of 11 days and/ or 221 days as the case may be, in filing of the restoration applications MA 997 and 998/ 2022 and to restore the original miscellaneous application no. 428 of 2020 (which was filed for condonation for delay in filing of the captioned appeal), by setting aside the dismissal order dated 9th March 2022 on various grounds as set out in the above referred applications. However, learned counsel of the applicant during the hearing held on 17th April 2023 sought to withdraw the miscellaneous application nos. 1039 and 1040 of 2022 with liberty to resubmit fresh applications to support the case for condonation of delay. Accordingly, on 17th April 2023, the tribunal allowed withdrawal of these two miscellaneous application nos. 1039 and 1040 of 2022 with liberty to file a fresh application.
7. After the withdrawal of the earlier applications, applicant has filed the present applications nos. 338 and 339 of 2023 on 1st June 2023, seeking condonation of delay of 4 days in filing of the restoration application nos. 997 and 998 of 2022 and restore the miscellaneous application no. 428 of 2020, by setting aside the dismissal order dated 9th March 2022 on various grounds as set out in the above referred applications and learned counsel for applicant made further submissions as under: -
 - a. Captioned appeal was dismissed on 9th March 2022 due to non-appearance of the applicant and on the ground of non-prosecution of the matter by applicant. The dismissal order dated 9th March 2022 of



the tribunal was not communicated to him by the registry. Therefore, applicant came to know about dismissal order of the tribunal only on 4th October 2022, when he visited the tribunal to ascertain about the status of the appeal filed by him. Therefore, he applied for the certified copy on 10th October 2022, which was issued to him on 13th October 2022. On 17th October 2022, applicant reached his advocate's office and came to know that advocate's mother was unwell and suffering from heart related issue and was told that advocate will resume work from 10th November 2022. Accordingly, the captioned miscellaneous applications filed on 17th November 2022 with delay of 4 days.

- b. However, pursuant to the objections raised by the registry of the tribunal, applicant filed miscellaneous application nos. 1039 of 2022 to condone the delay in filing of the restoration application.
- c. Applicant and his advocate appeared on 11th November 2020, 15th February, 22nd March, 28th April, 10th August, 21st September 2021 and also on 7th January as well as 25th January 2022 before the tribunal in the appeal proceeding.
- d. However, applicant could not appear in the appeal proceeding, because applicant had lost his job during the COVID-19 pandemic and was in a tremendous mental and financial stress, which led to loss of focus on his day-to-day life and was unable to frequently check another email ID at "rajesh.bhatkar00@gmail.com". In the process, there was miscommunications and confusions between the two emails of the applicant namely the email IDs of "rajesh.bhatkar@gmail.com" and "rajesh.bhatkar00@gmail.com". Hence, applicant could not appear on 30th November 2021, 24th February and on 9th March 2022 in the appeal proceeding, which led to dismissal of the appeal on 9th March 2022 (supra).



- e. Non-appearance of the applicant and his advocate in the appeal proceeding on the above-mentioned dates were unintentional.
- f. Due to outbreak of Covid-19 on 23rd March 2020, national lockdowns were declared, and the Hon'ble Supreme Court has suspended the limitation period from time to time. By an order dated 10th January 2022, the Hon'ble Supreme Court has extended the limitation period in cases where, limitation period has expired from 15th March 2020 till 28th February 2022 notwithstanding actual balance period of limitation, if remaining, then, all litigants will have limitation period of 90 days from 01st March 2022. The present appeal has been filed on 21st September 2020. Hence, the purported delay of filing of the appeal is squarely covered under the said order of the Hon'ble Supreme Court and thereby, the appeal is filed within the limitation period.
- g. Applicant has availed home loan from the State Bank of India and in order to avoid any default in repayment of the loan even during their COVID-19 pandemic, applicant has liquidated his lifetime savings and continue to pay equated monthly instalments to bank, but applicant has not yet received the possession of the subject flat due to non-completion of the project by non-applicant.
- h. Learned counsel for applicant further submits that applicant has good case on merits, balance of convenience lies in favour of the applicant, and further urged that sufficient cause for non-appearance of the applicant has been set out in the applications. Therefore, for the principle of natural justice, applicant prayed to condone the delay in filing of the same in the interest of justice, equity and further submits that the dismissal order dated 9th March 2022 has caused severe prejudice, grave harm and irreparable loss to applicant. Whereas on the other hand, dismissal order has aided the non-applicant to further



delay in handing over the possession of the subject flat. Accordingly, urged to condone the delay of 4 days in filing of the miscellaneous applications and restore the Miscellaneous application for condonation of delay in filing of the captioned appeal and restore the captioned appeal on the file.

- i. Applicant has a very good case on merit and the balance of convenience is in favour of the applicant and urged that the miscellaneous application be allowed otherwise, will cause grave harm, loss and irreparable prejudice to the applicant, which cannot be compensated in terms of the monetary value.

8. Per Contra, learned counsel for non-applicant Ms. Pooja Harit, vehemently opposed the contentions of the applicant by submitting as follows: -

- a. Bare perusal of the applications reveals that applicant has not given any calculation for the said delay of 4 days and as such, the delay is for more than 4 days. Moreover, applicant has failed to give cogent and reasonable explanations, much less the required sufficient cause for the condonation of the delay.
- b. Restoration applications came to be filed after the dismissal of the delay condonation application no. 428 of 2020 on 9th March 2022 and only after the delay of more than approximately 200 days. Applicant, in his earlier application had tried to incorrectly submit that the VC links from the tribunal for the dates of hearing were not sent on the proper email address and thereby, applicant withdrew his application with liberty to file fresh application on 17th April 2023.
- c. Applicant has failed to appear even after receiving the notice and VC link. Therefore, it is entirely the fault of the applicant.



- d. Contention of the applicant that he did not check the email or is not using the said email ID, is false and baseless, which manifests the false and concocted story made up by the applicant.
 - e. Applicant claims that he got to know the dismissal of the appeal filed by him on 4th October 2022, when he went to and enquire in the tribunal. But the appeal was filed on 21st September 2020 itself and he did not even enquire and contacted his advocate. Therefore, applicant should have been vigilant, and he should have enquired about the appeal long back as any prudent applicant would do. Therefore, applicant is not vigilant, and it is the settled principle of law that "*law is for those who are vigilant and not for those who sleep over their rights.*" Therefore, their applications for the condonation of delay deserve to be dismissed and consequently, reliefs sought by the applicant be rejected.
- 9.** From the submissions as above, a short point that arises for our determination is whether applicant has explained sufficient cause for condonation of delay in filing of the aforesaid application for restoration of the instant appeal filed for setting aside the order of this tribunal dismissing the application filed for condonation of delay in filing the captioned appeal and consequent dismissal of appeal and to this, our finding is in the affirmative for the reasons to follow: -

REASONS

- 10.** Before we advert to the merits of the controversy, let us first consider the settled position of law on condonation of delay.
- 11.** In the case of Collector, Land Acquisition, Anantnag & Anr. Vs. Ms. Katiji and Others [(1987) 2SCC 107]; The Hon'ble Supreme Court in paragraph 3 reiterated the principles as follows: -

a) "*Ordinarily a litigant does not stand to benefit by lodging an appeal late.*"



- b) *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned, then the highest that can happen is that a cause would be decided on merits after hearing the parties.*
- c) *"Every day's delay must be explained", does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense and pragmatic manner.*
- d) *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred and other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
- e) *There is no presumption that delay is occasioned deliberately or on account of culpable negligence or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.*
- f) *It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. It is needless to state that there should be liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, but at the same time 'sufficient cause' should be understood in proper spirit and be applied in proper perspective to the facts and situations of a particular case."*

12. In this connection, principles culled down by the Hon'ble Supreme Court in *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Ors.* [(2013) 12 SCC 649] are as hereunder; -

- a. *Lack of bona fide imputable to a party seeking condonation of delay is significant and relevant fact.*
- b. *The concept of liberal approach has to encapsulate the concept of reasonableness and totally unfettered free play is not allowed.*
- c. *The conduct, behavior and attitude of a party relating to its negligence. cannot be given a total go-bye in the name of a liberal approach.*



- d. If the explanation offered is concocted or the grounds urged in the applications are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such litigation.*
- e. It is to be borne in mind that no one gets away with fraud, misrepresentation, or interpolation by taking recourse to the technicalities of the law of limitation.*
- f. An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harboring the notion that the Courts are required to condone the delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*
- g. The increasing tendency to perceive the delay as a non-serious matter and hence lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal Parameters".*

- 13.** In the above background, we have to now examine whether causes put forth by applicant amount to sufficient cause within the provision of Section 44 of the Act for restoration of the delay condonation application and captioned appeal. It is not in dispute that the order in complaint was passed by MahaRERA on 4th March 2020, whereas appeal against this order, was filed by applicant on 21st September 2020 with the delay of 142/ 144 days. Accordingly, applicant has filed miscellaneous application no. 428/ 2020 for condonation of this delay on account of various reasons, as mentioned in the said application.
- 14.** However, captioned delay condonation application no. 428 of 2020 along with the appeal came to be dismissed on 9th March 2022 on account of non-appearance of applicant. Thereafter, applicant filed delay condonation application no. 1039 and 1040 of 2022 on 24th November 2022 along with restoration application nos. 997 and 998 of 2022 for setting aside dismissal order 9th March 2022 on various grounds as set out in the above referred applications. Miscellaneous applications 1039 and 1040/ 2022 were allowed to be withdrawn with liberty to file a fresh



application on 17th April 2023. Thereafter, applicant filed the current delay condonation application nos. 338 and 339 of 2023 on 1st June 2023 seeking condonation of delay of 4 days in filing of the restoration application nos. 997 and 998 of 2022 and also for restoration of the miscellaneous application no. 428 of 202 by setting aside the dismissal order dated 9th March 2022 on various grounds as set out here in above, more particularly based on the order of The Hon'ble Supreme Court of India in *Suo Motu writ petition (C) no. 3 of 2020* dated 10th January 2022.

15. It is apposite to reproduce para 5.3 of the said order of The Hon'ble Supreme Court of India in *Suo Motu writ petition (C) no. 3 of 2020* as follows.

- i. *"The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
- ii. *Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
- iii. *In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply."*

16. It is more than evident from the order of The Hon'ble Supreme Court in *Suo Motu (Civil) Writ Petition No.3 of 2020 (supra)* more particularly in view of order in para [5.3.iii] that the said order is without any qualification *for all judicial or quasi-judicial proceedings and has ordered that limitation period to be extended to such litigants for 90 days from 01.03.2022.* Therefore, this judgment is applicable to the present applications.



- 17.** According to the applicant, the dismissal order dated 9th March 2022 of the tribunal was not communicated to him by the registry. Therefore, dismissal order dated 9th March 2022 came to be known to him only on 4th October 2022, when he visited the tribunal to ascertain about the status of the appeal filed by him. Therefore, he applied for the certified copy on 10th October 2022, which was issued to him on 13th October 2022. Therefore, the delay in filing of Application nos. 1039 and 1040 of 2022 for condonation of delay against the order dated 9th March 2022 is of only 4 days.
- 18.** However, based on the prayer of the applicant, tribunal has already allowed to withdraw these applications on 17th April 2023 with liberty to file fresh applications. Accordingly, applicant has filed the current MA nos. 338 and 339 of 2023 on 01st June 2023. According to applicant, delay in filing appeal/ applications have happened entirely due to factors beyond control of applicant. Therefore, the delay occurred is unintentional and without any negligence on the part of applicant. These applications are supported by the affidavit.
- 19.** It is also a settled principle of law for condonation of delay that ordinarily litigant does not stand to benefit by lodging an appeal or application late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, then the highest that can happen, is that matter would be decided on merits after hearing the parties.
- 20.** Facts of the case on hand as mentioned herein above, reflect that applicant does not appear to have gained any undue benefits by delay in filing of the application for setting aside order dated 09th March 2022, and the delay has happened to be unintentional and not deliberate. In the light of the settled position of law that if, reasons put forth by



applicant do not indicate any smack of *malafides*, or if it is not advanced as part of dilatory strategy, then, court ought to show utmost consideration to applicant. In this background, particularly, when the aforesaid delay being not intentional, nor deliberate and the said delay in filing of the applications has happened as dismissal order dated 9th March 2022 came to be known to the applicant only on 4th October 2022, applicant *prima facie* has made *bona fide* efforts in filing captioned applications and in the interest of justice, we are inclined to allow the applications. Accordingly, the solitary point is answered in the affirmative and we proceed to pass the following order.

ORDER

- (a) Delay in filing the above Misc. Application Nos. 997 of 2022 as well as 998 of 2022 for restoration of delay condonation application i.e., Misc. Application No. 428 of 2020 are condoned.
- (b) Accordingly, order dated 09th March 2022 passed by this Tribunal is set aside, consequently Misc. Application No. 428 of 2020 and the captioned appeal No. AT006000000052649 are restored to the original file.
- (c) No costs.
- (d) Captioned Misc. Applications 338 of 2023 and 339 of 2023 are allowed and disposed of on the above terms.
- (e) In view of the provisions of Section 44(4) of the Act, a copy of the order be sent to the parties and MahaRERA.


(DR. K. SHIVAJI)


(SHRIRAM R. JAGTAP, J.)