

Nalawade

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL  
MUMBAI**

**MISC. APPLICATION NO. 663 OF 2023**

(setting aside orders dt. 01.07.2022, 13.10.2022 and 31.01.2023)

**IN**

**APPEAL NO. AT006000000053009**

Mr. Rajesh Chaphekar

... Appellant

-VS-

M/s. Arun Bhoomi & M/s. Jagruti Developers

... Respondent

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*Mr. Hitesh C. Dabhi, Advocate for Appellant.*

*Ms. Lizum Wangdi, Advocate for Respondent No.1.*

*Mr. R. P. Ojha, Advocate for Respondent No.2.*

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

**DR. K. SHIVAJI, MEMBER (A)**

**DATE : 31<sup>st</sup> OCTOBER, 2023**

(THROUGH VIDEO CONFERENCE)

Learned counsel for parties joined the conference.

**MISC. APPLICATION NO. 663 OF 2023**

By this Application, Respondent No.1 is seeking to set aside the direction passed by this Tribunal in its orders dated 01.07.2022, 13.10.2022 and 31.01.2023, wherein the appeal has proceeded without the written submissions of Respondent No.1 and also seeks leave to file written submissions.

2] Heard learned counsel for Appellant and Respondent No.1/ applicant.

3] Advocate Ms. Lizum Wangdi submits that out of the 14



hearing occasions, counsel for Respondent No.1 could not appeared on 02.02.2022 due to certain medical reasons in the family and she further submits that even the other parties in the appeal have also sought for certain time and therefore the delay in filing written submissions are not only attributable to Respondent No.1. Accordingly, the delay in filing written submission is inadvertent and not deliberate and she undertakes to file written submission during the course of day. Accordingly, seeks that these three orders of this Tribunal be set aside and allow Respondent No.1 to file written submission.

4] Advocate Mr. Hitesh C. Dabhi, learned counsel appearing for Appellant vehemently opposed by submitting that Respondent No.1 has been delaying the matter on one point or other without any justifiable reasons and this is more than evident from the fact that with passage of so much time and despite giving enough opportunity, Respondent No.1 has failed to file even the written submission.

5] At the end, learned counsel for appearing for Appellant submits that if at all the captioned Misc. Application is allowed, then heavy cost be imposed on Respondent No.1.

6] Perused.

7] It appears that Respondent No.1 has not been able to file written submission on account of certain bonafide difficulties as pointed out in para 4 of application and more particularly Respondent No.1 is



willing to file and circulate written submission during the course of the day itself.

8] In view of the peculiar facts and circumstances of the matter and in the interest of justice, we are of the view that there is no impediment in allowing Misc. Application No. 663/2023 and we proceed to pass the order as follows: -


**ORAL ORDER**

- (a) Misc. Application No. 663/2023 is allowed, subject to cost of ₹ 10,000/- (Ten Thousand) to be paid within ten days directly to the account of Appellant and also with a condition that Respondent No.1 will file its written submission latest by tomorrow, failing which appeal will proceed without written submission of Respondent No.1.
- (b) Accordingly, orders of this Tribunal dated 01.07.2022, 13.10.2022 and 31.01.2023 stand recalled on compliance of the above terms.

**IN APPEAL NO. AT006000000053009**

Learned counsel for Respondent No.1 confirms that written submissions from Appellant and Respondent No.2 have already been received.

2] Stand over to 29<sup>th</sup> January, 2024 for written submissions of Respondent No.1 and final hearing.

  
(DR. K. SHIVAJI)

  
(SHRIRAM. R. JAGTAP, J.)