

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

**M.A. No. 166/23 (Setting aside Ex-Parte Order)
WITH
M.A. No. 167/23 (Strike Out Name of R-2)
IN
APPEAL NO. AT006000000053300/21**

Mehmood Alam Khan & 3 Ors.

... Appellants

-VS-

M/s. Sapankumar Naskar & 3 Ors

... Respondents

Ms. Vandana, Advocate for Appellants.

Mr. Jayprakash Tiwari, Advocate for Respondent no. 2.

None for Respondent nos. 1, 3 and 4.

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

DR. K. SHIVAJI, MEMBER (A)

DATE : 1st DECEMBER, 2023

(THROUGH VIDEO CONFERENCE)

IN MISCELLANEOUS APPLICATION NO. 166/23

Heard learned counsel for parties.

2. By this application, Respondent no. 2 is seeking to set aside the ex-parte order dated 14th Sept. 2022 passed by this Tribunal wherein appeal has proceeded against the Respondent no. 2.
3. Adv. Jayprakash Tiwari submits that even though the Appellants have informed that the appeal has been filed, he was never informed about any date of hearing in the appeal proceedings.
4. In the absence of the intimation about the date of hearings, Respondent no. 2 could not appear earlier. He came to know about the



date of hearing only after the receipt of the Tribunal letter dated 16th Jan. 2023 and he appeared on 10th Feb. 2023.

5. Adv. Vandana submits that Appellants have served the appeal sets. Respondent no. 2 was not informed about any date of hearings. However, it is the duty and responsibility of Respondent no. 2 that he should enquire from the Tribunal about the next date of hearing, which is a serious lapse on the part of Respondent no. 2. Accordingly, captioned Misc. Application deserves to be dismissed with costs.

6. Perused.

7. It is more than clear that Respondent no. 2 has not been informed of any date of hearing and this being admitted position, we are of the view that there is no impediment in allowing the captioned Misc. Application. Accordingly, we proceed to pass this order as follows:

ORDER

- a) Misc. Application No. 166/23 is allowed.
- b) Order dated 14th Sept. 2022 by which, the appeal has proceeded ex-parte against Respondent no. 2, stands recalled and set aside.
- c) No costs.



IN APPEAL

8. Adv. Vandana seeks time to file reply on Misc. Application No. 167/23
9. Stand over to 26th Feb. 2024 for reply and hearing on Misc. Application No. 167/23.


(DR. K. SHIVAJI)


(SHRIRAM. R. JAGTAP)

MS/-