

**BEFORE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL MUMBAI**

**M.A. No. 341/23(withdrawal of Amt.)
with
M.A. No. 342/23
(Setting aside Ex-Parte Order)
with
M.A. No. 463/23
(Withdrawal of Penalty Amt.)
in
Appeal No. G-02/2022**

M/s. Navkar Goa Enterprises

... Appellant

V/s.

Ann Marie D'souza

...Respondent

Adv. Mr. Parth Chande for Appellant.

Adv. Ms. Shivani Shukla for Respondent.

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

**DATE : 06th December, 2023
(THROUGH VIDEO CONFERENCE)**

Misc. Application No. 463/2023

We have heard learned counsel for respective parties on Misc.
Application No.463/2023.

2] By this Application the Appellant has prayed to allow him to
withdraw an amount of Rs.5,00,000/- deposited by him against
imposition of penalty on the grounds enumerated in the Application
mainly on the ground that he has already deposited Rs.5,00,000/-

S. Jagtap

with the learned Authority and his project is now registered. Learned Advocate Mr. Parth Chande submits that the Appellant is not going to challenge that part of the Order as Appellant has complied with that part of the Order and requests to allow the Application for withdrawal of penalty amount.

3] No doubt the Respondent has stiff opposition to the Application but at the same time it cannot be ignored that the Appellant has complied with that part of the Order. It is not in dispute that the Appellant has already deposited the amount with the learned Authority and the project of the Appellant is duly registered by the learned Authority.

4] Under the circumstances, we are of the view that there is no impediment in allowing Misc. Application No.463/2023. Accordingly, Misc. Application No.463/2023 is allowed.

5] The Registry is directed to refund amount of Rs.5,00,000/- deposited by Appellant against the penalty amount with accrued interest to Appellant as per Rules.

Misc. Application No. 342/2023

We have heard learned counsel for respective parties on Misc. Application No.342/2023.

2] The Respondent has moved this Application for setting aside the ex-parte Order dated 11.11.2022 on the grounds set out in the Application mainly on the ground that the Respondent had received

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call from Department of this Tribunal informing her of the hearing of the Appeal, but she being a layman was not aware of the steps to attend the hearing of the Appeal and she was not able to inform the date of the hearing to her Advocate because of short notice.

3] No doubt the Appellant has stiff opposition to the Application but at the same time it cannot be ignored that on the next date of hearing the Respondent had put her appearance. This conduct of the Respondent clearly indicates that she had no intention to appear on 11.11.2022 but because of the reasons mentioned in the Application she was not able to appear in the matter. Therefore, considering the grounds put forth by the Applicant we are of the view that there is no impediment in allowing the Application. Accordingly, Misc. Application No.342/2023 is allowed.

4] Order dated 11.11.2022 proceeding the Appeal ex-parte against the Respondent is set aside.

5] Cost will abide in the main Appeal.

6] Respondent is directed to file reply to Appeal and serve the copy of the same to other side.

7] Stand over to 6th February, 2024 for filing reply.


(DR. K. SHIVAJI)

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(SHRIRAM. R. JAGTAP)