

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

**M. A. No. 389/23 (Set aside Ex-Parte Order)
IN
APPEAL NO. U-28/2019**

Malcom M. Mowdawala & Anr.

... Appellants

-VS-

Victoria Enterprises Ltd.& Anr.

... Respondents

Mr. Ranjeev Carvalho, Advocate for Appellants.

Mr. Omkar Khaiyam Shaikh, Advocate for Respondents.

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

DATE : 8th NOVEMBER, 2023

(THROUGH VIDEO CONFERENCE)

IN Misc. APPLICATION NO. 389/23:

By this application, Respondents are seeking to set aside the ex-parte order dated 17th Nov. 2022 based on the ground as set out in the captioned application. Whereas appeal has proceeded ex-parte against Respondents.

2. Applicants are Respondents/Promoters and Non-applicants are Allottees in the captioned appeal.

3. Heard learned counsel for parties.

4. Learned counsel for Applicants/Promoters seek^{la} to set aside the ex-parte order on the ground that they came to know about the passing of the ex-parte order dated 17th Nov. 2022 only on 13th June 2023. Immediately after coming to know about this order, they immediately took



steps and filed its captioned application for setting aside the order on 22nd June 2023 itself within fortnight.

5. He further submits that they came to know about the attempt for settlement and the earlier purported affidavit of service and email sent to them. However, these emails were not received because these were not functioning. Moreover, he further submits that if the captioned ex-parte order is set aside, then no prejudice will be caused to other side, and it is desirable in the interest of justice that the appeal be heard on merits. Accordingly, he sought allow him to participate in the appeal proceeding.

6. Adv. Ranjeev Carvalho vehemently opposed this captioned application based on the ground as set out in its reply filed by him and primarily on the following points;

A) Promoters/Applicants have been served twice and intimated the next date of hearing, besides that have also been intimated by email and first affidavit of service was filed on 27th Jan. 2021 and second was filed on 10th Jun 2021. Moreover, the addresses of Applicants are same. The delay in filing of the application for setting aside the order by the Applicants on the ground that settlement is going on, is not tenable.

7. He further relied upon the judgments of the Hon'ble Supreme Court in the case of **Balwant Singh (Dead) vs Jagdish Singh & Ors. (2010)** and further contended that ground^{vs} put forth by the Applicants does^{vs} not



amount to sufficient cause, which is prerequisite for setting aside the ex-parte order.

8. At the end, learned counsel for Non-applicants submit that if at all the captioned appeal is to be allowed, then it should be allowed at appropriate cost.

9. Perusal of record reveals that Applicants have been served twice. However, Applicants claim that they came to know about passing of this order only on 13th June 2023.

10. Perusal of record further reveals that Applicants/Promoters are taken prompt and expeditious action for filing of the captioned application within fortnight praying for setting aside this ex-parte order. Moreover, Applicants further submit that in the interest of justice, it is desirable to pursue the appeal on merits and by recalling the ex-parte order will not cause prejudice to Allottees.

11. Considering the facts and circumstances of the case and the pleadings made by respective parties and in the interest of justice, it is desirable that the appeal be disposed of on merits and, we find that there is no impediment, if we allow the captioned Misc. Application No. 389/23 for setting aside the order dated 17th Nov. 2022 subject to certain costs and we proceed to pass the order as follows:



ORDER

- i. Captioned Misc. Application No. 389/23 is allowed subject to the cost of Rs. 25,000/- to be paid to Non-applicants/Allottees within 2 weeks from the date of uploading of this order.
- ii. Misc. Application No. 389/23 is accordingly allowed on above terms.
- iii. Payment of cost will be condition precedent.

Adv. Omar Khaiyam Shaikh appearing for Applicants/Promoters upon instructions undertakes to pay Rs. 25,000/- within 2 weeks.

IN APPEAL

12. Adv. Omar Khaiyam Shaikh seeks two weeks' time to file additional reply. Granted.
13. Liberty to Appellants to file rejoinder, if any.
14. Stand over to 3rd Jan. 2024 for completion of pleadings and compliance.


(DR. K. SHIVAJI)


(SHRIRAM. R. JAGTAP)

MS/-