

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL STAMP NO. 14061 OF 2019
WITH
CIVIL APPLICATION NO. 894 OF 2019

Larsen and Toubro Limited	.. Appellant
Vs.	
Ms.Rekha Sinha	.. Respondent

Mr.Anand Pai a/w Mr.Nilesh Gala & Mr.Manish Gala i/b Law Square, for the Appellant.
Ms.Samiksha Manek i/b PRA Law Offices, for the Respondent.

CORAM : M.S.KARNIK, J.

DATE : 17th OCTOBER, 2019

P.C. :

. Heard learned Counsel for the appellant and the learned Counsel for the respondent.

Admit on the following substantial question of law :-

(a) Whether a sole member of the Maharashtra Real Estate Appellate Tribunal can decide any appeal or application for condonation of delay or any application contemplated under the provisions of Real Estate (Regulation and Development) Act, 2016 or the same has to be heard and can be disposed of only by the Bench comprising of two members including one judicial member ?

2. The Appeal is heard finally by consent of the parties. The issue involved in this Appeal is squarely covered by the decision rendered by learned Single Judge of this Court in Second Appeal Stamp No. 14845 of 2019 decided on 01/10/2019 in the case of **Man Global Limited Vs. Bharat Prakash Joukani**. Learned Single Judge was of the opinion that on plain reading of section 43(3) of the Real Estate (Regulation and Development) Act, 2016 (for short 'said Act'), the sole member of the Tribunal does not have jurisdiction to dispose of appeal or any application including even an application for condonation of delay in filing appeal. Learned Single Judge held that the order passed by the sole administrative member sitting singly is without jurisdiction and therefore the same is set aside.

3. As the issue involved in the present Appeal centres around section 43(3) of the said Act, it would be convenient to reproduce the same which reads thus:

“**43(3)** - Every bench of the Appellate Tribunal shall consist of atleast

one Judicial Member and one Administrative or Technical Member.”

4. Learned Counsel for the respondent submitted that the view of the learned Single Judge may not be correct as the issue is decided without considering the provisions of section 55 of the said Act. According to learned Counsel the order passed by the Member of the Appellate Tribunal sitting singly would stand validated by operation of section 55. Section 55 reads thus :

“No act or proceeding of the Appellate Tribunal shall be invalid merely by reason of-

(a) any vacancy in, or any defect in the constitution of, the Appellate Tribunal, or

(b) any defect in the appointment of a person acting as a Member of the Appellate Tribunal; or

(c) Any irregularity in the procedure of the Appellate Tribunal not affecting the merits of the case.”

5. I see no reason to defer with the view taken by learned Single Judge as in my opinion, conjoint reading of section 43(3) and section 55 of the said Act will make it clear that orders passed by the Member of the Appellate Tribunal sitting singly will not stand validated by virtue of section 55 as this could violate the plain language of section 43(3) of the said

Act. The Apex Court in **Gulzari Lal Agarwal Vs. Accounts Officer reported in (1996) 10 Supreme Court Cases 590** held that every provision in the Act needs to be construed harmoniously with a view to promote the object and spirit of the Act but while doing so, no violence would be done to the plain language used in the section.

6. The next contention of the learned Counsel for respondent is that similar provision exists under the Consumer Protection Act, 1986 and that the Apex Court in the case of **Gulzari Lal Agarwal** (*supra*) by harmoniously construing the object of Consumer Protection Act validated similar such orders passed. In the present case, the issue that arises for consideration is whether the order passed by the Member of the Appellate Tribunal sitting singly is valid even though the requirement of sub-section 3 of section 43 of the said Act is that the bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member. **Gulzari Lal Agarwal** 's case, in my opinion is not an authority for

the proposition that arises for consideration in the present case and hence not applicable. The issue in **Gulzari Lal Agarwal's** case was whether the absence of the President of the Commission would render the Commission non-functional and whether the order passed by the Commission in the absence of the President is illegal and void. No doubt and as held by the Apex Court in **Gulzari Lal Agarwal's** case (*supra*) every provision in the Act needs to be construed harmoniously with a view to promote the object and spirit of the Act, however, Their Lordships have held that while doing so, no violence would be done to the plain language of the section.

7. The next submission urged by learned Counsel for the respondent is that the decision of the learned Single Judge of this Court in the case of **Man Global Limited** will have no application as the learned Single Judge was considering the fact situation where an order was passed by the Administrative Member alone whereas in the present case, the impugned order is passed by the Judicial Member sitting singly. In my opinion,

this submission can only be stated to be rejected in view of the language used in sub-section 3 of section 43 of the said Act which does not make a distinction between a Judicial or Administrative Member and that it is for the composition of the Bench of the Appellate Tribunal the requirement of law is that it shall consist of at least one Judicial Member and one Administrative or Technical Member.

8. I do not see any reason to disagree with the view taken by learned Single Judge in **Man Global Limited**. The present Appeal therefore succeeds and is accordingly allowed with no order as to cost.

9. The impugned order dated 14/03/2019 passed by the Tribunal is set aside.

10. Matter is remitted back to the Tribunal for hearing the same afresh on its own merits and in accordance with law. All contentions on merits are kept open. The Tribunal is requested to hear the Appeal as expeditiously as possible.

11. The parties to appear before the Appellate Tribunal on 05/11/2019 at 11.00 a.m.

12. In view of disposal of the Second Appeal, Civil Application does not survive and the same stands disposed of accordingly.

(M.S.KARNIK, J.)

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by Urmila P.
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