

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.614 OF 2019

Vinay Agrawal

...Petitioner

Versus

Hon'ble Member and Adjudication
Authority of Real Estate Regulatory
Authority, Mumbai

...Respondent

.....

Mr. Ritika Agrawal with Ms Deepti Jethna for Petitioner.

Mr. J. Shekhar with Mr. Sairuchita Chaudhary I/b. M/s. J. Shekhar and
Co. for the Respondents.

CORAM : B.P. DHARMADHIKARI AND

SMT. ANUJA PRABHUDESSAI, JJ.

DATED: 14th FEBRUARY, 2019.

P.C.:-

It is admitted position that 25th October, 2018 was a date scheduled before Respondent-Authority. Petitioner-Builder, who is appearing in other matters and is aware of procedure, did not appear before the authority though the complainants did appear. He submitted request for adjournment in inward section to concerned clerk, obtained acknowledgment and went away.

2. On the basis of this acknowledgment contention of Petitioner is that the Respondent-Authority could not have passed final

order on 25th October, 2018. In the alternate it is pointed out that in identical matters filed by other complainants the difficulties explained by Petitioner were taken note of and the revised time schedule was accepted. This order passed by very same authority has not been looked into.

3. Counsel appearing for Respondent -Authority states that when matter was taken up by Authority, there was no appearance for Petitioner and there was no application for adjournment. The application submitted in inward section reached to Respondent-Authority on next day in normal course. He submits that in proceedings before Quasi Judicial Authority application is to be filed directly in the matter before the Authority whenever matter is called out and that procedure was not followed here. It is further submitted that order in the other matters was because of consent given by those complainants and it cannot constitute a precedent. Those complainants are also aggrieved by interest component and approached Appellant-Forum.

4. This Court has on 21st January, 2019 directed the Petitioner to show bonafides by depositing amount of Rs.5,00,000/-with the

registry of this Court. Accordingly that amount has been deposited. This Court also then granted ad-interim relief and stayed the operation and effect of final order dated 25th October, 2018.

5. The learned counsel for the Petitioner submits that total amount of interest payable to 10 complainants may roughly workout little over Rs.48,00,000/- on higher side. She submits that procedure being followed in such matters was resorted to by Petitioner on 25th October, .2018.

6. The order dated 25th October, 2018 expressly mentions that present Petitioner did not appear on that day. Petitioner has not approached that authority immediately to point out that in fact the Petitioner did appear. Grievance has been against impugned before this Court in a writ petition by placing reliance upon a letter delivered in inward section on that day. Delivering a letter in inward section cannot be accepted as an appearance in a matter fixed for hearing before a Judicial or Quasi Judicial Authority.

7. Not only this, we find that order dated 25th October, 2018 is passed in 10 separate complaints instituted by individuals and those

individuals are not party Respondents before this Court.

8. Counsel for Petitioner has attempted to demonstrate the difficulties which according to her led to accepting the revised schedule. She pointed out that there was a change in Planning Authority which resulted in delayed procurement of occupation certificates.

9. In this situation we find no case for intervention made out in present petition. Petition is accordingly dismissed with cost of Rs.20,000/- payable to Respondent. We permit the Respondent to withdraw amount of Rs.20,000/- from the amount of Rs.5,00,000/- which was deposited by Petitioner in the registry. Balance amount with interest accrued upon the sum of Rs.5,00,000/- can be withdrawn by Petitioner.

10. Since Respondent is a Quasi Judicial Authority, the amount of cost be transferred by RTGS to their account.

(SMT. ANUJA PRABHUDESSAI, J.) (B.P. DHARMADHIKARI, J.)