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16.12.2020

**C.O. 1573 of 2020**
**WITH**
**C.O.1314 of 2020**

**EMAMI REALTY LIMITED VS. VIKASH KUMAR BATHWAL**

**Mr. Tanmoy Mukherjee**
**Mr. Amal Krishna Saha**
**Mr. Iresh Paul**
**..for the petitioner**
**Ms. Siddhartha Banerjee**
**Mr. S.N. Ghosh**
**..for the respondent**

This is an application filed by a promoter being aggrieved by an order dated November 27, 2020 passed by the learned West Bengal Housing Industry Appellate Tribunal in Appeal-003 of 2020 thereby affirming the order dated February 25, 2020 passed by the West Bengal Housing Industry Regulatory Authority in complaint case no. COM-000158.

Mr. Siddhartha Banerjee, learned advocate appearing on behalf of the opposite party submits that this application is not maintainable in view of the specific bar contained in Section 58 of the West Bengal Housing Industry Regulation Act, 2017 (hereinafter referred to as the "said Act"). The said provision is quoted below:

**"58. (1) any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908.**

**Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.**

**(2) no appeal shall be against and decisions or order made by the Appellate Tribunal with the consent of the parties."**

It is the further contention of Mr. Banerjee that in view of the provision of the said Section that a decision or order of the Appellate Tribunal would be appealable before the High Court on the grounds specified in Section 100 of the Code of Civil procedure, this application under Section 227 would not be maintainable. He further submits that the appeal before this Court should have been in the nature of a tribunal application filed before the Division Bench which are actually in the nature of appeals challenging orders of Tribunals. Mr. Banerjee further adds that Section 58 of the said Act has not been declared to be ultra vires by any court of law nor has the petitioner challenged the validity of the same in this proceeding.

To rebut such argument, Mr. Mukherjee, learned advocate for the petitioner submits that the application under Article 227 of the Constitution of India was maintainable. He submits that although Section 58 speaks about the grounds available under Section 100 would be available to the party aggrieved by an order of the Appellate Tribunal under the said Act. Yet, the order not being a decree could not be challenged by filing a second appeal as classified under the Appellate Side Rules of this Court. It is further submitted that in order to entertain appeals under Section 58 of the said Act, the High Court is required to classify such an appeal and codify the same just like MACC appeals or other appeals from Tribunals, constituted under Article 323A and 323B of the Constitution of India. He relies on a decision of the Allahabad High Court in the matter of **Supertech Ltd. versus Subrat Sen, reported in (2019) 1 All LJ 1**. In the said judgment it has been categorically held that appeals of similar nature contained in the R.E.R.A. Act, (the provisions of which are pari materia with the provision of Section 58 of the said Act) stand on a similar footing and are in the nature of income tax appeals filed under Section 260 of the Income Tax Act, 1961.

According to Mr. Mukherjee, the Allahabad High Court categorically held that the appeals of the appellate tribunal under the R.E.R.A. Act could not be classified as a Second Appeal filed before the High Courts and the Appellate Tribunal is only a civil court for the limited purpose of execution of its order. Mr. Mukherjee further submits that the proceedings before the Appellate Tribunal as laid down by the Allahabad High Court was not a suit and the order impugned before this Court was not a decree as there has not been a final adjudication of the dispute.

I agree with the decision of the Allahabad High Court to the extent that this is not a Second Appeal. The reasons assigned by the learned Judge of the Allahabad High Court are a considered view taken by his Lordship upon examining the provision of the Civil Procedure Code vis-à-vis Section 58 of the R.E.R.A. Act. The doctrine of comity of courts require that decisions taken by different High Courts on questions of law, if found reasonable and not blatantly erroneous should normally be followed by Coordinate Courts and Benches.

Just as an appeal under Section 260 of the Income Tax Act, 1961 was specifically provided for and classified under the Original Side Rules of this Court, similarly, unless this Court frames Rules and provides for appeals arising out of Section 58 of the said Act in the Rules and prescribes a procedure, an application under Article 227 of the Constitution of India invoking the superintending power of the High Court over other subordinate courts and authorities would be permissible.

I am also in agreement with Mr. Mukherjee to the extent that the interim order passed by the learned Tribunal under Section 58 is not a decree amenable to the jurisdiction of the Hon'ble High Court as a regular Second Appeal. The interpretation of the section, in my opinion would be that an appeal would lie before the High Court from the order of the appellate Tribunal on substantial questions of law just like income tax appeals and other tax appeals. Therefore, until and unless the High Court makes a special provision by amending the Rules and incorporates appeals under Section 58 as a special class of appeals, an application under Article 227 of the Constitution of India would be maintainable as the general power of superintendence guaranteed by the Constitution over Courts and Tribunals cannot be taken away.

This application, however is not entertained on merits as I find that the learned Tribunal in paragraph 5 of the order dated November 27, 2020 has recorded that the learned advocate for the petitioner had submitted before that his client did not have any objection in the matter of handing over possession of the flat provided both the proposed sub-lessees would join in the deed of conveyance.

Once an admission of such a nature has been recorded, it is not proper for this Court to entertain this application challenging the validity of the order impugned, when there is a finding of the learned Tribunal that the order was passed on consent. It has been settled by different judicial decisions that if a party is aggrieved by an order on the ground that an admission recorded was not made, the party aggrieved should go before the court or Tribunal which records the same and pray for cancellation thereof. It has also been settled that a party aggrieved by any undertaking given by the learned advocate was not bound by such an admission unless the parties have authorized the learned advocate to make such an admission. These issues cannot be decided in this Forum and the parties aggrieved must approach the Tribunal by filing a proper application, if it is their case that the consent of the learned Advocate was wrongly recorded.

This revisional application is dismissed.

All points are left open for the learned Tribunal to decide. The learned Tribunal will decide the application, if any, filed before the Tribunal in accordance with law without being influenced by any observations made herein. The application, if any, is to be filed within a period of ten days upon service of an advance copy to the learned Advocate-on-Record of the opposite party. The opposite party will be at liberty to file a written objection to such application in the meantime.

The learned Tribunal shall dispose of the same within a period of two weeks.

In view of the reasons aforesaid, this Court has not interfered with the order impugned.

In view of the dismissal of the revisional application being C.O. 1573 of 2020, C.O. 1314 of 2020 is dismissed as infructuous.

There will be however no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

***(Shampa Sarkar,J.)***