



IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Civil Appellate Jurisdiction)

Friday, the Third day of September Two Thousand Twenty One

PRESENT

THE HON`BLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HON`BLE MRS JUSTICE V.BHAVANI SUBBAROYAN

CMP.No.12225 of 2021

IN CMSA.NO.32 of 2020

1 M/S.SYLVANUS BUILDERS & [PETITIONERS]
DEVELOPERS LTD, REP BY ITS
DIRECTOR SANJIL RAMESH CHANDHANI.

2 M/S.PACIFICA (CHENNAI PROJECT) I
INFRASTRUCTURE PVT LTD, REP BY ITS DIRECTOR
ROCKY ISRANI, NR, SRR ENGINEERING COLLEGE,
RAJIV GANDHI SALAI (OMR), PADUR,
CHENNAI- 600 103.

Vs

MR.K.SRIKAR REDDY [RESPONDENT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to extend the time for payment of 40 percent mandatory Pre-deposit before the Authority and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.(IN CMP.NO.12225/2021)

Order : This petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.MUKUNTH, Advocate for M/S. SARVABHAUMAN ASSOCIATES, Advocate for the petitioner, the court made the following order:-

(Order of the Court was made by T.S.Sivagnanam, J.)

Heard Mr.Mukunth, learned counsel for M/s.Sarvabhauman Associates, learned counsel appearing for the petitioners.

2.This petition has been filed to extend the time for payment of 40 percent mandatory Pre-deposit before the Authority to enable the petitioners/appellants to pursue the appeal filed before the Appellate Tribunal.



3.The appeal filed before this Court in C.M.S.A.No.32 of 2020 was challenging the order passed by the Tribunal dated 16.03.2020. By order dated 03.12.2020, we dispose of C.M.S.A.No.32 of 2020 by passing the following order:

"We have heard Mr.S.Mukunth, learned counsel appearing for M/s Sarvabhauman Associates, counsel for the appellant.

2.This Civil Miscellaneous Second Appeal has been filed under Section 100 of Civil Procedure Code read with Section 58 of the Real Estate (Regulation and Development) Act 2016 [the 'Act' for brevity] challenging the order passed by the Tamil Nadu Real Estate Appellate Tribunal ('Tribunal' for brevity) in Appeal No.33 of 2020 confirming the order passed in C.C.P. No.125 of 2019 dated 12.11.2019 by the Tamil Nadu Real Estate Regulatory Authority ('Authority' for brevity). The authority by the said order directed mandatory pre-deposit of 40% of the amount due. The appellants sought for extension of time, which was granted, however, they did not deposit the amount and they filed an appeal before the Tribunal. The Tribunal after noting the entire facts found that the conduct of the appellants to be not appreciable that they did not deposit the amount even though extension of time was granted. Subsequently, they have not even filed a further application for extension and therefore, was of the view that the appellants have not complied with the provisions of Section 43(5) of the Act and accordingly, the appeal was rejected.

3.It is the submission of Mr.S.Mukunth, learned counsel appearing for the appellants that in terms of the Act, the appellants are required to deposit 30% and on account of financial hardship, the appellants could not comply with the conditional order.

4.On a reading of the statutory provision, it is clear that there is a discretion vested with the Authority to direct the party to deposit more than 30%, therefore, the authority has jurisdiction to pass an order to impose condition of 40%. This exercise of discretion has not been found to be erroneous or unsustainable. The conduct of the appellants was tested by the Tribunal and the appeal was rejected.

5.We find absolutely no grounds to interfere with the order passed by the Tribunal, however, with a view to give one more opportunity to the



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appellants, we direct the appellants to deposit 40% mandatory pre-deposit, as ordered by the Authority, **on or before 28.12.2020**. If they fail to do so, the appeal would stand automatically dismissed and the order passed by the Tribunal shall stand confirmed.

With the above observation, the Civil Miscellaneous Second Appeal stands disposed of. Consequently, connected miscellaneous petition is closed. No costs."

4. In terms of the directions contained in the above order, the mandatory Pre-deposit of 40% as ordered by the authority ought to have been deposited on or before 28.12.2020. Since, this has not been complied with, the appeal before the Tribunal in Appeal No.33 of 2020 stood automatically dismissed.

5. The appellants are now before us seeking for extension of time. The appellants would state that on account of financial difficulty, the entire activities of the Company came to a standstill and they found it very difficult to even pay the salary for the staff and the workmen.

6. The learned counsel for the petitioners would submit that on account of Pandemic, the situation became very worse and because of stringent lock down conditions, no activity of the Company could be done, as a result of which, there is severe fall in revenue and the Company was pushed to great financial strain. It is further submitted that with great difficulty, the petitioners have been able to mobilize Pre-deposit amount, which according to the petitioners is about Rs.96 lakhs and a Demand Draft is ready with the petitioners and if one opportunity is granted to the petitioners, they would deposit the money and pursue the appeal before the tribunal.

7. We had disposed of the appeal without notice to the respondent because the order of Pre-deposit is a matter between the appellants/petitioners and the Tribunal, on which the respondent have no say. Equally in this petitions also, since we had fixed the time limit while disposing of the main appeal notice to the respondent is not required and in the discretion of this Court, time can be extended.

8. Thus, taking note of the submissions made by the learned counsel for the petitioners and the averments set out in the affidavit filed in support of the petition, time for compliance of the order stands extended till 20.09.2021. and the appellants/petitioners are directed to deposit 40% of the Mandatory Pre-deposit as ordered by the authority on or before **20.09.2021**. If the petitioners complies with the said order, then the Tribunal may restore Appeal No.33 of 2020 to its file and decide the same on merits and in accordance with law.



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9. Accordingly, this civil miscellaneous petition stands disposed of.

-sd/-
03/09/2021
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Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE TAMIL NADU REAL ESTATE
REGULATORY AUTHORITY,
CHENNAI.

2 THE TAMIL NADU REAL ESTATE
REGULATORY APPELLATE TRIBUNAL,
CHENNAI.

Order
in

CMP.No.12225 of 2021

IN CMSA.NO.32 of 2020

Date :03/09/2021

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