

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

930 SECOND APPEAL NO.513 OF 2019
WITH CA/13851/2019 IN SA/515/2019
WITH SA/516/2019 WITH SA/515/2019
WITH CA/13849/2019 IN SA/514/2019
WITH CA/13850/2019 IN SA/513/2019
WITH CA/6470/2020 IN SA/516/2019
WITH CA/10677/2019 IN SA/516/2019
WITH SA/514/2019
WITH CA/10670/2019 IN SA/513/2019
WITH CA/13848/2019 IN SA/516/2019
WITH CA/10675/2019 IN SA/515/2019
WITH CA/10672/2019 IN SA/514/2019
WITH CA/2010/2021 IN SA/515/2019
WITH CA/2016/2021 IN SA/513/2019
WITH CA/2017/2021 IN SA/514/2019

M/s. Shree Narhari Builders and Developers
Thro. Partners Anil and another

.. Appellants

Versus

Dipak Vishwanath Jadhav

.. Respondent

...

Advocate for Appellants : Mr. Girish K. Naik - Thigale
AGP for the Respondent / State : Mr. B.V. Virdhe
Advocate for the Respondent : Mr. B.R. Kedar

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CORAM : MANGESH S. PATIL, J.

DATE : 19-01-2022

PER COURT :

. Heard Mr. Thigale, learned advocate for the appellants
and Mr. Kedar, learned advocate for the respondents in all the
matters.

2. These are the second appeals under Section 58 of the Real Estate (Regulation and Development) Act, 2016 r/w. Section 100 of the Code of Civil Procedure challenging the order dated 12-06-2019 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai in an appeal under Section 43, whereby, on failure of the appellants to comply with a direction under Sub-section (5) of Section 43 to deposit 30% of the amount, the appeals were dismissed.

3. After hearing the parties, it transpires that pursuant to the order dated 22-10-2019 ad-interim relief was granted directing the appellants to deposit an amount of Rs.21,51,061/-. Admittedly, pursuant to such direction the amount has been deposited and even the respondents have withdrawn their respective shares.

4. Admittedly, though these are the appeals to be heard and decided under Section 100 of the C.P.C., there is no adjudication of the matter by the appellate tribunal because of which this court is deprived of its views on the merits of the matters.

5. Since the appellate tribunal by the orders under

challenge had simply dismissed the appeals for failure to comply with the direction to deposit 30% of the amount, the order is in the nature of an order by default.

6. Learned advocate of both the sides submit that it would be proper if the matters are remanded to the appellate tribunal for decisions on merits.

7. In the facts and circumstances, in my considered view, when appellants have complied with the direction to deposit the amount and even the respondents have withdrawn their respective shares, it would be appropriate to quash and set aside the orders of the appellate tribunal and remand the appeals for decision afresh on merits.

8. In view of above, the following order is passed.

ORDER

(i) All the Second Appeals are partly allowed.

(ii) All the orders impugned in these appeals passed by the appellate tribunal are quashed and set aside. The matters are remanded back to the appellate tribunal for decision afresh on merits

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after hearing both the sides. The parties shall appear before it on 04-02-2022 and there shall be no need to issue notice to them.

(iii) The appellate tribunal shall decide the matters expeditiously.

(iv) Interim relief granted by this court shall continue till decision by the appellate tribunal.

9. It is made clear that all the issues are kept open.

10. Pending Civil Applications are disposed of.

**(MANGESH S. PATIL)
JUDGE**

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