

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

SECOND APPEAL NO.69 OF 2022

Amol N. Pednekar

..Appellant

Versus

Mrs. Shubhangi A. Malwankar

..Respondent

Mr. Dushyant S. Pagare, for the Appellant.

Mr. Abhishek Sawant a/w Adv. Yohaán Ruben, Adv. Christine Rewrie, Adv. Mohammed Naved I. Mulla & Krutika Poojary i/by L. R. & Associates for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATED : 13th OCTOBER, 2022

P.C.:

1. Heard respective counsels for sometime. By consent taken up for final disposal.
2. On 24/08/2021 the second appeal was admitted on the following question of law.

"(i) Whether the evidence on record has been properly appreciated by the Appellate Authority MahaRERA and is justified in ignoring the fact that an amount of Rs.26,00,000/- are stuck in the Punjab and Maharashtra Co-operative bank due to which, the Waiver was applied for and the Appellant is not in position to use the said amount."

3. The adjudicating officer, MahaRERA on 20/06/2019 passed the following order in the proceedings taken out by the

respondent:

1. The complainant is allowed to withdraw from the project.
2. Respondent to pay Rs. 30,18,140/- to the complainant, except stamp duty amount, which can be refunded as per rules, together with interest @10.75% p.a. from the date of payments till final realization subject to complainant repaying the loan amount to LIC Housing Finance Ltd.
3. The respondent to pay Rs.20,000/- to the complainant as costs of this compliant.
4. The complainant to execute cancellation deed at the cost of the respondent.
5. The respondent to pay above amounts within 30 days from the date of this order."

4. The present appellant feeling aggrieved, preferred an appeal in which the application for waiver came to be moved. Vide order impugned dated 25/11/2020 the prayer for waiver was disallowed with a direction to the appellant to deposit 40% amount as per order dated 20/06/2019 within a period of 30 days.

5. After having heard the respective counsels for sometime, Mr. Pagare learned counsel for the appellant on instructions makes a categorical statement that 40% amount as was directed to be deposited vide order dated 20/06/2019 so also vide order dated 25/11/2020 shall be deposited before the MahaRERA, Mumbai i.e.

the Appellant Tribunal in any case by 25/11/2022.

6. Since the statement is made on instructions, the same is accepted as an undertaking to this Court.

7. In view of the aforesaid statement, the Second Appeal stands disposed of.

8. Once the amount is deposited, it shall be open for the appellant to move before the Appellate Tribunal for restoration of the appeal.

9. Till 25/11/2022, order passed by MahaRERA authority shall not be executed.

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(NITIN W. SAMBRE, J.)