

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.4068/2021

M/s Hagwood Commercial Developers Pvt.Ltd, Mumbai V Rahul Deshmukh and
another

Office notes, Office Memoranda of

Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. Shyam Dewani, Advocate for petitioner.

Mr. Devendra Chauhan, Advocate for resp.no.1/Caveator.

Mrs. Mrunal Barabde, AGP for resp.no.2.

CORAM : AVINASH G GHAROTE, J.

DATE : 12-08-2022

Heard Mr. Dewani, learned Counsel for the petitioner
and Mr Chauhan, learned Counsel for the respondent
no1/Caveator.

2. This Petition challenges the order dated 07-04-2021, passed by the Appellate Authority under the Real Estate (Regulations and Development) Act, 2016 (for short, the 'said Act'), whereby the application under Section 42(5) of the said Act for waiver of deposit of the amount, has been rejected and the petitioner has been directed to deposit the entire amount as directed by the Authority under Section 31 of the said Act.

During the pendency of this Petition, the Appeal itself has been dismissed by the Appellate Authority on 26-07-2021. Though much argument has been advanced on the basis of *Newtech Promoters and Developers Pvt. Ltd. vs State of UP and others*¹, regarding the powers of the Authority and that of the adjudicating officer and so also regarding the jurisdiction of the learned Single Member of the Authority to pass an order on a complaint filed by the respondent as it is contented that on 16-10-2019 order has been passed by a Single Member instead of Three Members to be constituted under Section 31 of the said Act, it remains a fact that the appeal in which such a challenge has been raised itself has been dismissed on 26-07-2021 by the Appellate Authority. Though, an amendment has been permitted by this Court to raise a challenge to the order of the Appellate Authority dated 26-07-2021 finally dismissing the appeal, learned counsel for the respondent would be correct in submitting that a challenge to the final dismissal of the Appeal would be tenable under Section 58(1) of the said Act, for the reasons that the scope and ambit of Section 58(1) of the said Act is distinct and separate from the scope of Article 226 of

1 2021 SCC OnLine SC 2044.

the Constitution and therefore when Section 58(1) of the said Act contemplates a specific remedy against the dismissal of an appeal by the Appellate Authority on whatsoever grounds, it is an Appeal under Section 58(1) of the said Act which would be an appropriate remedy, if challenge to the order dated 26-07-2021 of the Appellate Authority is laid.

3. Mr Dewani, learned counsel for the petitioner, at this stage, seeks leave to withdraw the petition in order to prefer an Appeal under Section 58(1) of the said Act in view of the objection raised. It is also his contention that the interim order dated 18-06-2021 in Second Appeal (Stamp) No.10242/2021 which has been continued from time to time be continued for a further period of four weeks more in order to enable him to avail the appellate remedy.

4. This request has been opposed by Mr. Chauhan, learned Counsel for the respondent no.1/Caveator by relying upon the judgment of the Hon'ble Apex Court in the case of *Kalabharati Advertising vs Hemant Vimalnath Narichania and others*². No doubt, *Kalabharati Advertising* (supra) holds that after

the Petition is withdrawn the interim order could not be continued to enable the petitioner to avail the alternate remedy, however, in the instant matter, the amount equivalent to 40% of the compensation directed by order dated 16-10-2019 has already been deposited by the petitioner in this Court which to some extent secures the interest of the respondent, considering which, the Petition is dismissed as withdrawn. However, the interim order dated 18-06-2021 is continued for a period of two weeks to enable the petitioner to avail the remedy under Section 58(1) of the said Act.

5. The Registry is directed to invest the amount deposited in this Court by order dated 17-12-2021 in any nationalized bank for a period of six months and shall seek appropriate orders from the Appellate Court in case Appeal is filed, for continuation of the deposit till the decision of the said Appeal.

JUDGE