

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3638 OF 2022
WITH
INTERIM APPLICATION NO.1945 OF 2022
IN
WRIT PETITION NO.3638 OF 2022

Dr. Banmali Tandan .. Petitioner.
v/s.
Larsen & Toubro Limited .. Respondent.

Dr. Banmali Tandan, Petitioner-in-person, present.
Ms. Nidhi Singh with Zoheb Khatri i/b. India Law LLP, for the Respondent.

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CORAM: G.S. KULKARNI,J.
DATED : 17th FEBRUARY, 2023.

PC:-

This is a peculiar case. Petitioner who appears-in-person has contended that the Respondent's appeal in question filed before the Maharashtra Real Estate Appellate Tribunal (for short "the Appellate Tribunal) being Appeal No. AT006000000031569, was heard by the Appellate Tribunal and a judgment on the same was pronounced in favour of the Petitioner on 3rd August, 2021. However, it appears that, such judgment as pronounced was not on the record of the Appellant Tribunal, although, it is Petitioner's case that, it ought to have been on record. Further, one of the learned Member of Bench which pronounced the said order, retired on 3rd August, 2021. In these circumstances, the Petitioner, moved the subsequent bench of the Appellate Tribunal, contending that the judgment on the appeal being already pronounced be modified and be made available. The Appellate Tribunal considered such case of the

Petitioner and in the peculiar circumstances, opined that a report from the learned Registrar of the Tribunal be called for so as to ascertain the factual position on the official record. The Registrar submitted a report in a sealed envelope. Considering the said report, the Appellate Tribunal on 23rd December, 2021 passed an order which reads thus:-

“ Heard the Respondent in person and learned counsel for Appellant in view of Application filed by Respondent for uploading and communicating the order pronounced dismissing the Appeal on 03.08.2021 in the captioned Appeal.

2. Pursuant to the Application report was called from learned Registrar and the same is submitted along with sealed envelope. Learned Registrar has submitted that the then steno-typist of the Member (J), who retired on 03.08.2021, submitted report to Registrar on 05.08.2021 mentioning that the hand written notes of draft judgment in the instant Appeal were given to her on 03.08.2021.

3. The sealed envelope is opened in the presence of the parties during the video conference. The contents of the envelope revealed 5 pages of hand written draft judgment by the former Member (Judicial) on the basis of which order dismissing the Appeal was pronounced on 03.08.2021.

4. Parties are apprised of the contents of the report and the draft hand written judgment obtained from the envelope attached with the report. Parties were advised to take view with regard to rehearing of the matter as the draft hand written judgment was neither transcribed nor could be signed by the Member (J) before his retirement on 03.08.2021.

5. Learned counsel for Appellant has no objection for rehearing of the matter. Respondent who appeared in person seeks time to study the matter and refer to legal sources before proceeding further with the matter.

6. Stand over to 04.02.2022 for further consideration.”

2 The Petitioner would submit that he had succeeded in the

proceedings filed by him before the First Authority which had decided the proceedings in his favour namely proceedings in Complaint Case No. CC006000000057215, whereby the Respondent was directed to make payment of the amounts of service tax and MVAT in the following terms:-

“ The respondent shall pay the complainant Rs.7,76,628/- the amount of service tax and MVAT amount of Rs.1,94,715/- within two months with simple interest at the rate of 10.75% from 28.06.2018 till their payment.

The respondents are hereby warned to be more careful while dealing with the customers.

The tax Authority is requested to take decision in the matter of refund of service tax and MVAT pending before it preferably within less than two months.”

3 It was the above order of the Maharashtra Real Estate Authority which was assailed by the Respondent before the Appellate Tribunal in the proceedings of the said appeal being Appeal No. AT006000000031569.

4 As stated above, Petitioner although had contended that judgment was pronounced in the open Court on 3rd August, 2021, however, as per the report of the Registrar of the Appellate Tribunal, the judgment of the Appellate Tribunal as purportedly pronounced was not on the record, requiring the Appellate Tribunal to pass an order that the appeal as filed by the Respondent would be required to be heard afresh. The Petitioner has filed this Petition being aggrieved by such order, dismissing the Petitioner's application for pronouncement of orders passed by the earlier Bench of the Appellate Tribunal on 3rd August, 2021 as also ordering a fresh hearing of the appeal.

5 I have heard Dr. Tandan, the Petitioner-in-person for quite

some time, as also learned Counsel for the Respondent. I have also perused the relevant documents on record and the impugned order.

6 In the facts and the circumstances of the case, in my opinion, it is appropriate that the Appellate Tribunal, considering the peculiar circumstances as reflected in the report of the Registrar of the Appellate Tribunal, decides the Appeal filed by the Respondent (AT006000000031569) on its own merits. The same be decided as expeditiously as possible within a period of two months from today. The Petitioner would also not be averse to such course of action. Ordered accordingly.

7 All contentions of the parties are expressly kept open.

8 Needless to observe that the parties would be entitled to refer to the several orders passed in the proceedings before the Appellate Tribunal so as to enable the Appellate Tribunal to take appropriate view of the matter.

9 Writ Petition is disposed of in the above terms. No costs.

10 In view of the disposal of the Petition itself, nothing survives in the Interim Application and the same is also disposed of as infructuous.

11 Parties to act on an authenticated copy of this order.

(G.S. KULKARNI,J.)