

Arjun

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

WRIT PETITION NO.5893 OF 2021

Man Global Limited ...Petitioner

V/s.

Ram Prakash Joukani ...Respondent

**WITH
WRIT PETITION NO.5894 OF 2021**

Man Global Limited ...Petitioner

V/s.

Bharat Prakash Joukani ...Respondent

Mr. Vikram Garewal a/w Mr. Vinod Talreja, Mr. Avinash Undhare i/b G. D. Talreja & Associates, for the Petitioner in both the Writ Petitions.

Mr. Anosh Sequeira a/w Mr. Dhiren Durante, Sahil Namavati, Hamza Mir i/b Lexicon Law Partners, for the Respondent in both the Writ Petitions.

**CORAM : MADHAV J. JAMDAR, J.
DATED : OCTOBER 04, 2023**

P.C.:

1. The impugned order in these Writ Petitions is the common order dated 18th March 2021 passed by the learned Maharashtra Real Estate Appellate Tribunal, Mumbai (for short “**the Appellate Tribunal**”) in Misc. Application No.570 of 2020 in Appeal No.AT006000000011028 as well as Misc. Application No.571 of

2020 in Appeal No.AT006000000011032. The Writ Petitions are filed challenging the said impugned order by which the Petitioner has been directed to deposit 60% of the amount as directed vide order dated 16th December 2019 of the Appellate Tribunal within two weeks failing which, appropriated order in accordance with law was to be passed and for that purpose the matter was adjourned to 1st April 2021.

2. In these Writ Petitions, a learned Single Judge [G. S. Kulkarni J.] framed the following question and directed that these Writ Petitions along with the said order be placed before the Hon'ble the Chief Justice to consider constituting an appropriate larger Bench to decide the said question:

“As to whether the decision of the learned Single Judge in *Nirman Realtors & Developers Ltd.* (supra) which holds that an appeal under Section 58 of the RERA would be maintainable only against the final order passed by the Appellate Tribunal, lays down the correct position in law.”

The said reference was necessary as another learned Single Judge of this Court in *Nirman Realtors & Developers Ltd. V. Danish Ansari*¹ has held that the Second Appeal would not be maintainable against an order passed by the Appellate Tribunal if by such order the Appeal pending before the Appellate Tribunal is not finally disposed of as an Appeal would be maintainable only

1 2018 SCC OnLine Bom 16498

against a final order passed by the Appellate Court. In the said reference order, a learned Single Judge [G. S. Kulkarni J.] in paragraphs 11 and 12 has observed as follows :

“11. In my opinion, on a plain reading of Section 58 of the RERA, it is quite clear that against “a decision” or “order” of the Appellate Tribunal an appeal can be filed before the High Court on any ground as specified under Section 100 of the CPC. Thus, the provision itself contemplates a remedy of an appeal not only from “the decision” but also against “an order”. However, on a interpretation of Section 58 as made by the learned Single Judge in *Nirman Realtors & Developers Ltd.* (supra), it is held that only when the appeal is finally disposed of by the Appellate Tribunal, a second appeal would lie under Section 58 of the RERA, meaning thereby that no appeal under Section 58 would lie against an order of the Appellate Tribunal if by such order, the Appellate Tribunal does not dispose of the appeal finally even when a question of law would arise from such order.

12. With utmost respect to the observations made by the learned Single Judge in *Nirman Realtors & Developers Ltd.* (supra) in my opinion, as to what has been held by the learned Single Judge appears to be contrary to the plain reading and purport of sub-section (1) of Section 58 of the RERA, which provides that a person aggrieved by “any decision” or “order” of the Appellate Tribunal can file an appeal before the High Court on one or more of the grounds specified in Section 100 of the Code of Civil Procedure. In these circumstances, the decision of the learned Single Judge in *Nirman Realtors & Developers Ltd.* (supra) whether lays down the correct position in law needs to be decided by a larger Bench as the Hon’ble the Chief Justice may constitute.”

3. A reference has been decided by the order dated 6th March 2023 and the view of a learned Single Judge [G. S. Kulkarni J.] has been upheld and it has been held that the Appeal under

Section 58 lies with the High Court against any decision or order of the Appellate Tribunal.

4. It is the contention of Mr. Garewal, learned counsel that although a reference is decided, the question whether the Writ Petition is maintainable is kept open. He submits that, in view of the settled legal position as reiterated by the Supreme Court in the decision of *Assistant Commissioner of State Tax & Ors. V. Commercial Steel Limited*², in spite of alternate remedy, a Petition under Article 226 is maintainable and can be entertained when there is either a breach of fundamental rights, or a violation of the principles of natural justice, or an excess of jurisdiction is exercised or a challenge to the vires of the statute or delegated legislation and, therefore, according to him, the Writ Petition is maintainable. It is his contention that, the Appellate Tribunal has not given reasons for passing the impugned order and, therefore, there is violation of the principles of natural justice.

5. On the other hand, it is the contention of Mr. Sequeira learned counsel appearing for the Respondent that reasons are given by the Appellate Tribunal and, therefore, there is no violation of the principles of natural justice.

6. The paragraph 11 of the decision in *Assistant Commissioner of State Tax & Ors.* (supra) on which Mr. Garewal,

2 2021 SCC OnLine SC 884

learned counsel appearing for the Petitioner has relied, reads as under :

“11. The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:

- (i) a breach of fundamental rights;
- (ii) a violation of the principles of natural justice;
- (iii) an excess of jurisdiction; or
- (iv) a challenge to the vires of the statute or delegated legislation.”

7. Thus, the Supreme Court has held that in exceptional circumstances, a Writ Petition under Article 226 of the Constitution of India can be entertained instead of an alternate statutory remedy and for entertaining such a Writ Petition the parameters are set out as above.

8. Although, it is the contention of Mr. Garewal, learned counsel appearing for the Petitioner that reasons are not given in the impugned order, paragraphs 9 and 10 of the impugned order clearly set out the reasons, which read as under :

“9] Perused material placed on record. Prima facie, it appears that appellant would be entitled to adjust the

amount of Rs.1,28,50,000/- towards dues to be recovered from each of the allottees on handing over possession of respective flats. Admittedly possession has not been delivered so far and therefore, in our view sum of Rs.1,28,50,000/- cannot be unilaterally adjusted by appellant. Respondents emphatically denied having allowed such adjustment.

10] In the above premise we find that there is no escape at this stage to appellant from depositing amount as required prior to entertaining the appeals as compliance to Proviso to Section 43(5) of the Act is mandatory. Consequently prayer clause (b) in stay applications being unacceptable, meritless and against the record stands rejected.”

9. Therefore, this not a case where, the Writ Petition under Article 226 of the Constitution of India is required to be entertained and this case does not fall within the abovementioned parameters.

10. In view of above, at this stage Mr. Garewal, learned counsel appearing for the Petitioner seeks withdrawal of the Writ Petitions with liberty to adopt alternate remedy of Appeal under Section 58 of the Real Estate (Regulation and Development) Act, 2016 (for short “**the RERA Act**”). Accordingly, the Writ Petitions are dismissed as withdrawn with liberty as prayed.

11. The impugned order is dated 18th March 2021 and the Writ Petitions were filed 31st March 2021. Therefore, the Petitioner is

entitled for the benefit of Section 14 of the Limitation Act, 1963.

12. For the purpose of availing alternate remedy of filing Appeal under Section 58 of the RERA Act, the protection granted by order dated 9th April 2021 shall remain in operation for a period of six weeks from today.

13. It is clarified that this Court has not examined the merits of the case and all the contentions on merits are expressly kept open.

[MADHAV J. JAMDAR, J.]