IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 318 OF 2023
WITH
INTERIM APPLICATION NO. 4148 OF 2023

M/s. Westin Developers Pvt. Ltd. Thr.
Its Legal Representatives Manish J. Rach ...Petitioner
Versus
Vishal B. Upasham And Anr. ...Respondents

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Mr. Vinay J. Bhanushali a/w Mr. Sanmit Vaze for the Appellant.
Mr. Aditya R. Deolekar i/by Trsna Legal for the Respondents.

CORAM : JITENDRA JAIN, J.J.
DATE : 25th AUGUST, 2023.

JUDGMENT (JITENDRA JAIN, J.)

1. This appeal is filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016 (for short "RERA Act") challenging the order of the Appellate Tribunal dated 13th July, 2022. Although, the Appellant promoter has raised various questions of law in the appeal before this Court, however, only one question of law is pressed which reads thus :

> *"A. Whether Statement made by untrained advocate without instructions before Tribunal without there being anything in writing submitted, is capable of rewriting the registered agreement."*

Brief Facts :

2. The Appellant is a promoter/developer of a project 'Ratnadeep' situated at Chembur, Mumbai. The Respondent is the allottee in the said project.

3. The Respondent allottee filed a complaint to Maharashtra Real Estate Regulatory Authority (Regulatory Authority) against the Appellant promoter *inter alia* seeking waiver of the demand raised by the Appellant promoter on the Respondent allottee of the Goods and Service tax.

4. On 13th June, 2018, the Regulatory Authority passed an order wherein the statement of the Advocate of the Appellant promoter was recorded which reads as under :

> *"2. The advocate for the Respondent stated that GST is applicable only on the remaining balance consideration amount to be paid by the Complainant and stated that the GST input tax credit will be passed on the Complainant."*

5. In the light of the above statement, the Regulatory Authority passed an order directing the Appellant promoter to hand over the possession of the apartment with occupancy certificate and further, in the light of the statement made by the Advocate of the Appellant promoter held that the Goods and Service tax is to be paid by the Respondent allottee only on the remaining balance consideration and

the benefit of input tax credit will be passed on by the Appellant promoter to the Respondent allottee.

6. Being aggrieved by the aforesaid order, the Appellant promoter filed an appeal with the Maharashtra Real Estate Appellate Tribunal (Appellate Tribunal) on 29th September, 2018 for quashing and setting aside the order of the Regulatory Authority dated 13th June, 2018.

7. The aforesaid appeal was disposed of by the Appellate Tribunal on 13th July, 2022. The Appellate Tribunal dismissed the appeal of the Appellant promoter, by rejecting the contention of the Appellant promoter with regard to the authority of the Advocate of the Appellant promoter to make the statement before the Regulatory Authority. The Tribunal also observed that the Appellant promoter did not produce the GST registration number and directed the Appellant promoter to extend the benefit of input tax credit to the Respondent allottee. The Tribunal gave a detailed reasoning in paras 13 to 15 of its order and dismissed the appeal.

8. Being aggrieved by the order passed by the Appellate Tribunal, the Appellant promoter has preferred the present appeal under Section 58 of the RERA Act to this Court.

9. **Submission of the Appellant :** The only contention raised before this Court by the Appellant promoter is that the Advocate who made the statement was not an experienced Advocate and therefore the Regulatory Authority and the Appellate Tribunal were not justified in passing the impugned order on the basis of that statement.

10. **Submission of the Respondent :** The counsel for the Respondent allottee supported the orders of the lower authorities and submitted that except making allegations against the Advocate there is no other ground which the Appellant promoter has canvased and therefore the appeal deserves to be dismissed.

Analysis & Conclusion :

11. We have heard Mr. Bhanushali, learned counsel for the Appellant and Mr. Deolekar, learned counsel for the Respondent and with the assistance of the counsels have perused the records of the appeal filed before this Court.

12. Section 58 of the RERA Act provides for appeal to the High Court on one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (CPC). Section 100 of the CPC, provides for second appeal if the High Court is satisfied that the case involves a substantial question of law. Therefore, the question which

requires to be considered is whether the Tribunals order raises a substantial question of law or the findings are questions of fact.

13. In my view, the statement recorded of the Advocate of the Appellant promoter in Paragraph 2 of the Regulatory Authority's order dated 13th June, 2018 is a statement on fact and not on law. The Appellate Tribunal in its order dated 13th July, 2022 in Paragraph 13 to 15 has confirmed this finding of fact and has also given reasons of the practice followed in real estate sector of giving various benefits/concession to the flat purchaser. The memo of appeal filed before the Tribunal does not allege that the Advocate of the Appellant promoter was not authorized to make the statement which is reproduced in Paragraph 2 of the order dated 13th June, 2018, but on the contrary in Paragraph 7 of the appeal memo, the Appellant admits that the statement made by the Advocate was based on the facts. There is no averment that the statement made by the Advocate was without the authority of Appellant promoter. Therefore, in my view, this is a pure question of fact based on concurrent findings of both the lower authorities and therefore does not raise any substantial questions of law for this Court to admit the present appeal under Section 58 of the RERA Act.

14. It is well settled that a statement made by Advocate on facts is binding on the litigant and in the present case as observed above, the statement is based on the facts and as also admitted so by the Appellant in its appeal memo filed before the Tribunal, is binding on the Appellant. Therefore, even on this count there does not arise any substantial question of law. In the light of above, the appeal of the Appellant promoter is dismissed with no order as to cost.

15. Since the appeal is dismissed, interim application does not survive.

[JITENDRA JAIN, J.]