

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.706 OF 2024
IN
SECOND APPEAL (STAMP) NO.1816 OF 2024

NNP BUILDCON PRIVATE
LIMITED

...Appellant/Applicant

V/S
NTIN SONI

...Respondent

WITH
INTERIM APPLICATION NO.707 OF 2024
IN
SECOND APPEAL (STAMP) NO.1817 OF 2024

NNP BUILDCON PRIVATE
LIMITED

....Appellant/Applicant

V/S
REENA KHANDELWAL

....Respondent

...

Mr. Sharan Jagtiani, Senior Advocate, Mr. Akshay Doctor, Mr. Rishir Daulat, Ms. Rhia Mehta, Ms. Shruti Shirke for the Appellant/Applicant.
Mr. Omkar Kudale a/w Mr. Nikhil Dongre and Mr. Abhisek Wakhle for Respondent.

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CORAM: SANDEEP V. MARNE, J.
DATE : JANUARY 19, 2024.

P.C.:

1 The Interim Applications are filed seeking condonation of delay of 280 days in filing the Appeals.

2 The order of the MAHARERA Appellate Tribunal (**Tribunal**) which is impugned in the Second Appeals is passed on 6 February 2023. The

order of the Tribunal directs the Appellant to refund the amounts paid by the Respondent/s together with interest. In the Interim Applications, it is pleaded by the Applicant that after passing of order by the Tribunal, settlement talks ensued between the parties, on account of which, the Applicant was under *bona-fide* impression that all 19 complainants were likely to settle the disputes.

3 Mr. Jagtiani, the learned Senior Advocate appearing for the Applicant would submit that out of the total 19 complainants before the Tribunal, 8 complainants have already settled the disputes with the Applicant. That the Appeals were required to be filed only on account of settlement not fructifying in respect of the rest 11 complainants. Mr. Jagtiani would invite my attention to the order passed by the Tribunal in execution proceedings on 8 January 2024, which evidences the factum of ongoing settlement between the parties.

4 Mr. Kudale, the learned Counsel appearing for the Respondent/s on the other hand would dispute the submission of Mr. Jagtiani that 8 complainants have already settled their disputes. According to Mr. Kudale, only 4 complainants are in the process of partial settlement with the Applicant. That even qua those 4 complainants, full amounts are yet to be paid by the Applicant to them, which is recorded by the Tribunal in the order dated 8 January 2024. Mr. Kudale would submit that mere talks of settlement cannot be treated as sufficient cause for condonation of

inordinate delay of 280 days in filing the Appeals. In support of his contentions Mr. Kudale would rely upon judgments of this Court in ***Victor Albuquerque vs. Saraswat Co-operative Bank Ltd*** BLR 1998 Vol.100 (2) 395 and Delhi High Court in ***New Delhi Television Limited vs. M.J. Akbar***, 2018 (170) DRJ 339.

5 I have considered the submissions canvassed by the learned Counsel appearing for the parties. Though the factum of settlement talks between 19 complainants and the Applicant are sought to be disputed by Mr. Kudale, paragraph 2 of the order passed by the Maharera Appellate Tribunal on 8 January 2024 records thus:

“2) Advocate Mr. Omkar Kudale appearing for Applicants submits that settlement talks have failed and even though the judgment has been passed last year, only in four matters namely in sr. nos.3, 4, 6 and 16 some amounts have been refunded. Still the balance amounts are yet to be paid by Non-applicant in the remaining matters, not even a single penny has been paid.”

6 Thus from the order passed by the Tribunal on 8 January 2024, it appears that the settlement talks between the parties were going on till 8 January 2024. There appears to be some degree of dispute between the learned Counsel appearing for the rival parties about the exact number of complainants with whom the settlement has ultimately fructified. According to Mr. Jagtiani, 8 complainants have settled the disputes whereas Mr. Kudale submit that only 4 complainants are in the process of settling the disputes and that even their disputes are not fully settled on

account of only part payment being made to them. Be that as it may, the process of settlement talks were indeed going on between the Applicant and all 19 complainants which is apparent from specific findings recorded by the Tribunal in paragraph 2 of the order dated 8 January 2024. Whether 8 or 4, there appears to be some success in the settlement talks, where some of the complainants have apparently settled their disputes with the Applicant. According to Mr. Jagtiani 3 complainants have already executed supplementary agreements with the Applicant agreeing upon fresh terms for purchase of their respective flats. According to Mr. Jagtiani, the said 3 complainants have already been delivered possession of their respective flats. He would further submit that 3 complainants have already executed cancellation deeds by accepting the entire payment due to them under the cancellation deed. He would further submit that 2 more complainants are in the process of executing cancellation deeds with the Applicant. The above events undoubtedly demonstrate that the parties were negotiating settlement with the Developer. It appears that after the process of negotiations 11 complainants are not willing to enter into any settlement with the Developer. Therefore the cause for delay in filing the Appeals, as pleaded, cannot be rejected.

7 Mr. Kudale's reliance on the judgments of this Court in *Victor Albuquerque* (supra) is misplaced as the judgment would have no application to the facts of the present case. In that case, this Court refused to believe mere settlement talks not yielding to any result to be a

sufficient ground for condonation of delay in filing the Appeals. In paragraph 8 of the judgment, this Court has recorded that settlement attempts were made between the parties in the past as well and that the settlement process initiated after passing of the decree was not a new phenomenon. It is in the light of those peculiar facts that this Court refused to accept settlement talks as a sufficient cause for condonation of delay. In the present case, settlement talks with 19 complainants have yielded success in respect of 8 of them.

8 In the judgment of Delhi High Court in *New Delhi Television Limited* (supra), the issue was about condonation of delay in grant of opportunity for filing of Affidavit-of-evidence in pending suit. The Delhi High Court came to the conclusion that proposed amicable settlement was just a ruse for seeking repeated adjournments. In the present case, it cannot be contended that reason of settlement talks is pleaded only as a ruse set up by the Applicant when in fact the talks have fructified in successful settlement in respect of 8 complainants. In my view therefore the judgment of Delhi High Court in *New Delhi Television Limited* (supra) would have no application to the facts of the present case.

9 Condonation of delay is in the realm of discretion of Court. I am inclined to exercise discretion in favour of Applicant considering the unique facts and circumstances of the case. I am therefore of the view that sufficient cause is made out for condonation of delay of 280 days in filing the Second Appeals.

10 The Interim Applications are allowed. Delay in filing the Second Appeals is condoned.

(SANDEEP V. MARNE, J.)

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