

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

**SECOND APPEAL NO.510 OF 2022
WITH
IA/10439/2022 IN SA/510/2022**

M/S. Sailee Developers A Partnership

Firm Thr. Managing Partner

Mr. Mangesh Tukaram Sawant

...Appellant

Versus

Mr. Hitesh Chovatia & Ors.

...Respondent

....

Mr. Manish Gala, a/w. Mr. Sachin Mhatre, Ms.Rochelle Fernandes
i/b. Mhatre Law Associates, for Appellant.

Mr. Aditya Deokar, a/w. Shivlee Satam i/b. Trsna Legal.

Mr. Ashok S. Gawai, AGP for State.

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CORAM : SANDEEP V. MARNE, J.

DATED : 14 MARCH 2024.

P. C. :

By this Appeal, Appellant challenges Order dated 13 April 2022 passed by Maharashtra Real Estate Appellate Tribunal rejecting Miscellaneous Application No.410 of 2021 filed for the purpose of seeking condonation of delay in filing the Appeal against Order dated 19 July 2019 passed by the Maharashtra Real Estate Regulatory Authority, Mumbai.

2. This Court, by its Order dated 14 November 2022 has already formulated substantial of law as under :

2. The question of law which in my opinion warrants consideration is as to whether the appellant has sufficiently established a cause in support of the claim for condonation of delay in preferring an Appeal against the order of rejection of Review Application.

3. However, it appears that after formulating substantial question of law, the Appeal was not formally admitted. Accordingly, the Second Appeal is **admitted** on the above substantial question of law formulated by Order dated 14 November 2022.

4. By Order dated 14 November 2022, the learned counsel appearing for parties were made aware about the question of law on which the Appeal is to be heard. Accordingly, both the learned counsel have canvassed submissions on the question of law and they agree that the Appeal can be taken up for final hearing and disposal as directed in the Order dated 14 November 2022.

5. I have heard Mr. Gala, the learned counsel appearing for Appellant and Mr. Deolekar, the learned counsel appearing for Respondent No.1.

6. It appears that the Appellant sought to file Appeal before the Appellate Tribunal challenging Order dated 19 April 2019 passed by the Regulatory Authority. It appears that the Appellant first filed Review petition on 14 August 2019 before the Regulatory Authority seeking review of Order dated 19 July 2019. While the Review Petition remained pending, Appellant was advised to file Appeal against the Order dated 19 July 2019 before the Appellate Tribunal. Accordingly, the Appellant filed substantive Appeal before the Appellate Tribunal challenging the Order dated 19 July 2019. Since the Review Petition

filed by the Applicant was already pending consideration before the Regulatory Authority, Appellant was advised to withdraw the Appeal filed before the Appellate Tribunal. Accordingly, Appeal came to be withdrawn on 13 February 2020. Thereafter the Review Petition filed by the Appellant came to be taken up for hearing by the Regulatory Authority and by Order dated 06 March 2020, the Review came to be rejected.

7. Thus, the cause for the Petitioner to file an Appeal against impugned Order dated 19 July 2019 as well as Review Order arose on 06 March 2020. While Appellant's Review petition was pending before the Regulatory Authority, it was not supposed to file Appeal before the Appellate Tribunal. Nonetheless Appellant did file an Appeal which came to be withdrawn on 13 February 2020. Be that as it may, after 06 March 2020, Appellant was supposed to file Appeal challenging impugned Order as well as review order. However shortly after 06 March 2020, the entire nation came into the grip of Covid-19 pandemic and functioning of the Courts was crippled. By orders passed by Apex Court from time to time, the period from 15 March 2020 to 28 February 2022 was directed to be excluded for the purpose of computation of delay in filing proceedings. In that view of the matter, the period from 15 March 2020 to 28 February 2022 was required to be ignored while computing period of limitation. It appears that the Appellant filed his Appeal before Appellate Tribunal on 30 April 2021.

8. In my view therefore, sufficient cause was shown by the Appellant for condonation of delay in filing the Appeal.

9. Perusal of the Order dated 13 April 2022 passed by the Appellate Tribunal would indicate that it has not taken into

consideration the conduct of the Appellant in filing timely proceedings against the Order dated 19 July 2019. Before the Appellant filed Appeal on 30 April 2021, it filed Application for review as well as substantive Appeal. Thus, it cannot be stated, by any stretch of imagination, that Appellant was vigilant in prosecuting his remedies. The Appellate Tribunal has committed an error holding that Appellant was not a vigilant litigant. Despite specific directions of the Apex Court for excluding the period from 15 March 2020 to 28 February 2022 while computing period of limitation, Appellate Tribunal has committed an error in holding that there was delay of one and half years in filing Appeal by the Appellant. While recording erroneous findings of delay of one and half years, Appellate Tribunal has ignored the fact that the Appellant's Review Petition was pending before the Regulatory Authority till 06 March 2020.

10. In my view therefore, Order passed by the Appellate Tribunal on 30 April 2022 is indefensible and liable to be set aside.

11. Second Appeal is accordingly allowed. The Order dated 19 July 2019 passed by the Appellate Tribunal is set aside. Appellate Tribunal shall entertain the Appeal filed by the Appellant on merits. Parties shall bear their respective costs. It is clarified that this Court has not expressed any opinion on the merits of the Appeal. All pending Interim Applications are also disposed of.

SANDEEP V. MARNE, J.

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