

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8743-2024

Reserved on : 25.04.2024

Pronounced on : 06.05.2024

Komal Gupta

..... Petitioner

Versus

Real Estate Appellate Tribunal, Punjab and another

..... Respondents

**CORAM : HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present : Mr. Sahil, Advocate for the petitioner.
Petitioner present in person.

VIKRAM AGGARWAL, J

1. The petitioner has knocked the doors of this Court seeking quashing of the orders dated 21.04.2022 (Annexure P/5A), 04.07.2022 (Annexure P-6) and 16.02.2023 (Annexure P-8) vide which the appeals filed by the petitioner against the order dated 18.06.2021 (Annexure P-4), passed by Real Estate Regulatory Authority (for short 'RERA'), Punjab, the restoration applications and the review applications were dismissed for non-prosecution.

2(i). Briefly put, the petitioner was aggrieved of acts of commission and omission of respondent No.2 with whom the petitioner had booked two units in the commercial project named as 'Chandigarh City Centre' on VIP Road, Zirakpur. Under the circumstances, she preferred a complaint (Anneuxre P-

3) before the RERA .

2(ii) Vide order dated 18.06.2021 (Annexure P-4), the said complaint was dismissing leading to the filing of two appeals bearing Nos.101 of 2021 and 102 of 2021 (Annexure P-5). Vide order dated 21.04.2022 (Annexure P-5/A), for no one appeared on behalf of the appellant (the petitioner herein), the appeals were dismissed for want of prosecution. Applications for restoration of the appeals were filed which also met with the same fate and the same were dismissed in default on 04.07.2022 (Annexure P-6).

2(iii) Review applications were filed which also came to be dismissed for want of prosecution vide order dated 16.02.2023 (Annexure P-8) for once again the counsel representing the petitioner did not appear before the Appellate Authority, leading to the filing of the instant writ petition.

3. Since no notice in the appeals had ever been issued and the respondents had not put in appearance, we do not deem it necessary to issue notice of the present writ petition to the respondents and proceed to decide the same without issuing notice.

4. We have heard learned counsel for the petitioner.

5. It would be essential to mention here that keeping in view the observations made by the Appellate Tribunal in the order dated 15.11.2022 (Annexure P-7), the petitioner was summoned by this Court. She duly appeared in person on 25.04.2024 and was heard.

6. Learned counsel for the petitioner strenuously urged that the petitioner has suffered an irreparable loss for no fault of hers as her counsel did not appear before the Appellate Authority during the hearing of the appeal, the applications for restoration and the review applications which led

to dismissal of all three for non-prosecution. Learned counsel has contended that the orders passed by the Appellate Authority deserve to be set aside and the matter deserves to be remanded for a decision on the appeals on merits. The petitioner submitted that she had not been apprised by her counsel about the dismissal of the appeals in time and since her husband is in the Army and she was earlier in Assam and thereafter at other places with her husband, she could only contact her counsel telephonically and she was always assured that she should have no cause for worry. She submitted that she had been misled by her counsel and pleaded that her case be decided on merits.

7. We have given our thoughtful consideration to the issue in hand.

8 (i). The complaint filed by the petitioner was dismissed by the RERA vide order dated 18.06.2021. When the appeals against the said order came up for hearing before the Appellate Authority, no one appeared on behalf of the appellant (petitioner herein) as a result of which the appeals were dismissed for want of prosecution. The application for restoration met with the same fate on 04.07.2022. The Appellate Authority expressed its annoyance and displeasure on account of non-appearance before it by passing the following order on 04.07.2022:-

“Present:- None.

This is an application for restoration of the appeal, which was dismissed in default on 21.04.2022 for non-appearance.

When the case was called out today, there was no representation on behalf of the applicant/appellant.

Evidently, the applicant has scant respect for the proceedings of the Court as his repeated default in appearance would demonstrate.

We thus do not deem it appropriate to wait for the appearance of the counsel any further.

Dismissed.

Photocopy of this order be placed in connected case.

-sd/

JUSTICE MAHESH GROVER (RETD.)

CHAIRMAN

-sd/

S.K.GARG D & S. JUDGE (RETD.)

MEMBER (JUDICIAL)

-sd/

ER. ASHOK KUMAR GARG, C.E.(RETD.)
MEMBER (ADMINISTRATIVE/TECHNICAL)”

8 (ii) When the Review Applications were preferred, the Appellate Authority made some scathing observations and passed the following order on 15.11.2022:-

“Present:- None for the applicant

This case has been called out number of times during the course of the day. There is no representation on behalf of the applicant. We have perused the application. It is styled as below:-

“Review Application under Order 47 Rules 1 and 2 CPC read with Section 114 CPC, praying that in exercise of extra ordinary and plenary powers vested in this Hon’ble Court under Article 215 read with Article 226/227 of the Constitution of India, this Hon’ble Court be pleased to Review/Recall its order dated 21.04.2022 & 04.07.2022.”

We are afraid that power with regard to both the provisions of law mentioned in the prayer made in the

application do not vest in us. Neither Order 47 Rule 1 and 2 nor Section 114 CPC or powers under Article 215, 226 and 227 are available to us.

In fact Section 53 of the Real Estate (Regulation and Development) Act, 2016 says that the Tribunal shall not be bound by the procedures laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and that the Tribunal shall have the power to regulate its own procedures. By invoking the aforesaid provisions the appellant has shown ignorance of the statutory powers.

We do not say that we do not have powers to review as Section 53 (4) (e) gives us the power to review our orders as well but we expect the counsels to invoke appropriate statutory provisions while making a prayer before us.

Apart from the fact that the application has been styled erroneously and wrong provisions of law have been invoked, we also notice that this appeal was dismissed in default on account of the non-appearance of the learned counsel for the appellant initially on 21.04.2022, thereafter an application for restoration was filed which was also dismissed for want of prosecution vide order dated 04.07.2022. The counsel for the applicant did not appear despite repeated calling out of the case.

We have perused the application. The dismissal of the appeal on 21.04.2022 has been attributed to the wrong noting of the date by the counsel Sh. Harnek Singh who was prosecuting the appeal. This very counsel then filed an application for restoration but failed to appear leading to another order dated 04.07.2022 dismissing the application for restoration for want of prosecution. It is then pleaded in the present application that the appellant feeling dissatisfied

with the conduct of earlier counsel i.e. Sh. Harnek Singh, took away the file from him and engaged the present counsel Sh. Devinder Kumar who has now filed the present application.

It is also suggested in the application that the appellant was vigilant and following the matter with the earlier counsel Sh. Harnek Singh. The Tribunal therefore expected that the appellant and the counsel now engaged would be vigilant enough to pursue the matter but instead no one came present when the case was called out repeatedly during the course of the day.

We have also perused the entire file, to notice, that the appellant is resident of H.No.102, Bajaj Road, Ghantaghar Chowk, Mkandru Ganj, Pratapgarh, Uttar Pradesh. Her Signatures appearing on the Power of Attorney filed at the time of presentation of the appeal, engaging the services of Sh. Harnek Singh Advocate are totally at variance with the signatures that appear on the Power of Attorney now presented along with the present application for review filed by Sh. Devinder Kumar Advocate.

It appears to us that the appellant Ms. Komal Gupta who resides in Uttar Pradesh has been a victim of irresponsible professionals who either by design or sheer negligence have caused incalculable harm to the appellant's cause. We therefore deem it appropriate to issue notice of the pendency of the present proceedings along with the copy of this order to the appellant.

List for 12.12.2022.

We also direct that the counsels Sh. Harnek Singh (email-harneks86@gmail.com. Mob: 8728030002-9896420352) and Sh. Devinder Kumar (SCO No.137-138, 2nd Floor, Sector 8 C, Chandigarh) remain present on the next

date of hearing.

Photocopy of this order be placed in connected case.

-sd/
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

-sd/
S.K.GARG D & S. JUDGE (RETD.)
MEMBER (JUDICIAL)

-sd/
ER. ASHOK KUMAR GARG, C.E.(RETD.)
MEMBER (ADMINISTRATIVE/TECHNICAL)”

8 (iii). However, on 16.02.2023, the Review Applications were also dismissed and the following order was passed:-

“Present:- None for the applicant.

The case has been called out number of times during the course of the day. On 15.11.2022 we had passed a detailed order and thereafter the matter was taken up atleast twice over. It has to be noticed that the case had been dismissed for want of prosecution and even the application for restoration met the same fate. It is thereafter, a review application has been filed seeking recall of those orders.

Today, even though the matter has been called out number of times there is a default in appearance by the counsel who moved the application.

Evidently, this indicates not only a scant respect for the procedures of the law but also for the Court. We have thus no reason to keep the matter alive any further.

The application is accordingly dismissed.

Photocopy of this order be placed in connected case.

-sd/

**JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN**

-sd/

**S.K.GARG D & S. JUDGE (RETD.)
MEMBER (JUDICIAL)**

-sd/

**ER. ASHOK KUMAR GARG, C.E.(RETD.)
MEMBER (ADMINISTRATIVE/TECHNICAL)”**

9 (i). Having gone through the entire file, we find absolutely no fault with the orders passed by the Appellate Authority dismissing the appeals, the applications for restoration and the review applications. Once no one put in appearance before the Authority, there was no option but to non-suit the appellant and to dismiss the appeals, the applications for restoration and the review applications for non-prosecution. The Appellate Authority issued notice to the counsel as also to the appellant vide order dated 15.11.2022 but no one put in appearance. It is the case of the petitioner that she was never informed about any such proceedings.

9 (ii). There would be a lot to comment upon but we refrain ourselves at this stage from delving any further into the issue of non-appearance of counsel before the Appellate Authority. One thing which is certain is that the petitioner has suffered for no fault of hers. The interest of justice, therefore, demands that the clock be put back so that the petitioner can be heard on merits.

Accordingly, the writ petition is allowed. The orders dated 21.04.2022 (Annexure P/5A), 04.07.2022 (Annexure P-6) and 16.02.2023 (Annexure P-8) are set aside. Consequently, the appeals are ordered to be

restored to their original numbers and we request the Appellate Tribunal to hear and decide the same on merits. The petitioner may put in appearance before the Appellate Authority on 13th May, 2024 at 11:00 a.m.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

06.05.2024
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No