

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8340 OF 2024

Varad Developers,  
A Registered Partnership Firm,  
Through its Partner,  
Sanjay Chandrakant Chavan,  
Age: Major, Occupation: Developer,  
R/o. Plot No.27/K/9 Datta Krupa,  
Sar Lashkar Park, Opposite Circuit House,  
'E' Ward, Kolhapur.

.....Petitioner

Vs.

Shyam Sundar Korgaonkar,  
Age: 45 Years, Occupation: Business,  
R/o. Atharv Apartment, 'E' Ward,  
Tarabai Park, Kolhapur.

.....Respondent

Mr. Chetan G. Patil with Mr. Bhushan S. Jadhav, Ms. Siddheshwari R. Chavan & Mr. Prathamesh P. Magdum, i/b. Mandar Bagkar, for the Petitioner.

Mr. R. R. Kad-Deshmukh with Mr. Mandar S. Khambete, for the Respondent.

**CORAM : S. G. CHAPALGAONKAR, J.**

**DATED : 1<sup>st</sup> OCTOBER 2025**

**JUDGMENT :-**

1. The Petitioner impugns order dated 14<sup>th</sup> September 2023 passed by Maharashtra Real Estate Appellate Tribunal at Mumbai, (For short, '**Appellate Tribunal**'), thereby declining to condone delay for filing the appeal.

2. The Respondent had filed a complaint under Section 13 of Real Estate (Regulation and Development) Act, 2016 (For short, '**the Act**') against Petitioner before Maharashtra Real Estate Regulatory Authority, Mumbai (For short, '**Maha RERA**'). The complaint was allowed vide order dated 23<sup>rd</sup> December 2019. Petitioner filed appeal before Appellate Tribunal along with application for stay. On 18<sup>th</sup> December 2020, appeal was dismissed for want of prosecution. Petitioner moved an application for restoration of appeal vide Miscellaneous Application No.480 of 2022. Since the application was time barred, it was accompanied by Miscellaneous Application No.497 of 2022 seeking condonation of delay. Appellate Tribunal declined to condone delay vide impugned order dated 14<sup>th</sup> September 2023. Hence, this Writ Petition.

3. The record indicates that Appellate Tribunal dismissed appeal of Petitioner vide order dated 18<sup>th</sup> December 2020. Admittedly, it was a period of COVID situation. On 27<sup>th</sup> May 2022, Petitioner filed an application for restoration along with application for delay condonation under Section 5 of the Limitation Act. Petitioner claimed that there was delay of 481 days, however, it was

unintentional. Appellate Tribunal observed that though COVID-19 pandemic situation was prevailing, Tribunal was consistently functional online and/or virtual. Therefore, Petitioner cannot claim delay condonation merely on the ground of COVID situation. Appellate Tribunal further relied upon observation of Supreme Court in case of *Sagufa Ahmed & Ors. v. Upper Assam Plywood Products (P) Ltd.*<sup>1</sup> and observed that Supreme Court extended benefit of limitation only to vigilant persons about their rights and not those, who slept over their rights.

4. Mr. Chetan Patil, learned Advocate appearing for Petitioner submits that Hon'ble Supreme Court in *Suo Motu Writ Petition (C) No.3 of 2020* passed several directions, particularly as regards to application of provision under Limitation Act. By inviting attention of this Court to order dated 10<sup>th</sup> January 2022 passed in *Miscellaneous Application No.21 of 2022* in *Suo Motu Writ Petition (C) No.3 of 2020*, he submits that Petitioner is entitled for benefit of exclusion of limitation period, as limitation for filing application for restoration was expired during the period from 15<sup>th</sup> March 2020 till 28<sup>th</sup> February 2022. Therefore, notwithstanding balance period of

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<sup>1</sup> (2021) 2 SCC 317.

limitation, Petitioner was entitled for extension of limitation period of 90 days from 1<sup>st</sup> March 2022.

5. Having considered submissions advanced, there is no dispute on the point that appeal filed by Petitioner was dismissed for want of prosecution on 18<sup>th</sup> December 2020 and application for restoration is filed on 27<sup>th</sup> May 2022. The Supreme Court in *Suo Motu Writ Petition (C) No.3 of 2020* observed in paragraph No.5(III) as under:

*“5(III) In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”*

6. In light of aforesaid observations, although limitation for filing application for restoration was expired in the month of January 2021, Petitioner would get benefit of exclusion of limitation of further 90 days period of limitation from 1<sup>st</sup> March 2022. Petitioner filed his application for restoration on 27<sup>th</sup> May 2022, i.e., within 90 days period from 1<sup>st</sup> March 2022. In that view of the matter, in fact, Petitioner is entitled for benefit of exclusion period.

7. Pertinently, learned Appellate Tribunal in case of ***Rajesh Tukaram Bhatkar v. M/s. Gadkari Builders & Associates***, while deciding Miscellaneous Application No.338 of 2023 with companion applications seeking condonation of delay in filing application for restoration on 29<sup>th</sup> September 2023, referred to directions of Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No.3 of 2020* and extended benefit of exclusion of period of limitation. Apparently, Appellate Tribunal had applied two different scales in similar set of facts.

8. In result, Writ Petition is allowed in terms of prayer clause (a).

**(S. G. CHAPALGAONKAR, J.)**

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DATTATRAYA  
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