

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 273 OF 2025

MKY Infrastructure & Anr.
Versus
Pankaj Mishra & Ors.

...Appellants.

...Respondents

Adv. Pankaj Jain a/w Pradeep Purohit i/b. P. D. Jain & Co., for the Appellants.

CORAM : GAURI GODSE, J.

DATE : 9th APRIL 2025

P.C.:

1. This Appeal is preferred by the Original Respondents to challenge the order passed by the RERA Appellate Tribunal allowing the application for condonation of delay filed by the complainants in preferring an Appeal against dismissal of their complaint.

2. The learned Counsel for the Appellants submits that the complaint filed by the Respondents was dismissed on 26th August, 2022 as not maintainable. He submits that since the complaint was not maintainable, there was no reason for the RERA Appellate Tribunal to entertain the application for condonation of delay. He submits that the reasons given for condonation of delay pertains only to the dates after expiry of the period of limitation. He submits that there is no explanation tendered by the complainant for not taking steps within the

period of limitation. He further submits that the reasons regarding ill-health of some of the complainants was disputed by the Appellants by explaining the particulars of the dates of hospitalization and discharge. He submits that a power of attorney was also executed by the complainants which is explained by the Appellants in paragraph 3 of the reply filed to the application for condonation of delay. He submits that in view of the well settled legal principles that in the absence of any sufficient cause shown with reference to the period of limitation, the reasons for delay after the period of expiry of limitation would not be relevant. He therefore submits that in view of the well settled legal principles by the Hon'ble Apex Court as were relied upon by the Appellants, the delay should not have been condoned by the Tribunal. He submits that the impugned order ignores the well settled legal principles with reference to the condonation of delay. He further submits that the Second Appeal raises the substantial questions of law on the incorrect appreciation of the reasons for delay and not considering the well established legal principles for deciding the application for condonation of delay.

3. I have perused the papers of the Second Appeal. The complainants have filed detailed application explaining the reasons for condonation of delay. The original complainants are the flat purchasers. The appeal is preferred by 38 flat purchasers who are the original complainants. The reasons for delay and the steps taken to file the Appeal are explained in detail in the application filed for condonation of delay. A perusal of the contents of the application refers to the ill-health of the some of the complainants and sudden death of some of the original complainants. The medical papers and the death

certificates are annexed to the application. The application further refers to the accident that occurred with the power of attorney holder of the complainants. The application also refers to the confusion created in the mind of the complainants due to the operative part of the order dismissing the complaint. The complainants have contended that considering the liberty granted by the Tribunal at the time of the dismissal of the complaint, they were under a bonafide impression that the liberty granted to some of the complainants was for approaching the Tribunal after 31st December 2025. The application was opposed by the present Appellants. A perusal of the reply indicates that the reasons are opposed, however, the death of the some of the complainants and ill-health including the accident of the power of attorney holder is not in dispute.

4. By the impugned order, the RERA Appellate Tribunal has in detail considered all the legal principles relied upon by the parties. The period of limitation and the reference to the reasons are discussed in detail in the impugned order. Considering the reasons given in the application for condonation of delay and the reply filed by the present Appellants, the RERA Appellate Tribunal accepted the reasons as justifiable and bonafide. The Appellate Tribunal held that the remedy of Appeal which is a valuable right conferred by the statute cannot be denied on hyper technical grounds. Considering the reasons stated by the complainants in their application for condonation of delay, I do not find any fault in the conclusion recorded in the impugned order. The grounds raised on behalf of the Appellants regarding maintainability of the original complaint cannot be a ground for refusing condonation of delay.

5. The appeal preferred before the Tribunal is to challenge the dismissal of the complaint including the issue of maintainability. Hence, the merits regarding the maintainability would be decided in the Appeal. To balance the equities, the Appellate Tribunal has found it fit to condone the delay on payment of costs. Thus, the Appellate Tribunal has condoned the delay after considering all the aspects with reference to the reasons for the delay and the reply opposing the condonation of delay. I do not find any illegality or perversity in the reasons recorded in the impugned order.

6. The Second Appeal does not raise any substantial question of law. Hence, the Second Appeal is dismissed.

[GAURI GODSE, J.]