IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-07-2025

CORAM

THE HON'BLE MR JUSTICE R. SURESH KUMAR

AND

THE HON'BLE MR.JUSTICE P. DHANABAL

CMSA Nos. 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 and 48 of 2025

AND

CMP Nos.17223, 17222, 17213, 17215, 17217, 17218, 17188, 17202, 17208, 17210, 17233, 17235, 17211 of 2025

State Bank of India Officers Association Chennai Circle (SBIOACC), Represented by its General Secretary, No.84, Rajaji Salai, Parrys Corner, Chennai -600 001.

..Appellant in all CMAs

Vs

1. R. Prasad
2. Agila Prasad

..Respondents in CMSA 36 /2025

Padma Srinivasan .. Respondent in CMSA 37 / 2025

K.P.Neelakandan .. Respondent in CMSA 38/2025

P.Gandhi .. Respondent in CMSA 39/2025

1.Nalini Prasad
2.Karthikeyan M. .. Respondents in CMSA 40/2025

R.Sridharan .. Respondent in CMSA 41/2025

G.Rajendra Kumar ... Respondent in CMSA 42/2025

P.Arun Kumar rep.by Power Agent R.Prasad ...Respondent in CMSA 43/2025

V.Subburaj ..Respondents in CMSA 44/2025

J.Gurumurthy ..Respondent in CMSA 45/2025

A.Sittarasu .. Respondent in CMSA 46/2025

Amarnath Shanmugam
rep.by Power Agent B.Perumal .. Respondent in CMSA 47/2025

Chinnathambi .. Respondent in CMSA 48/2025

Common Prayer : Civil Miscellaneous Appeals under Section 100 of CPC read with Section 58 of the Real Estate (Regulation and Development) Act, 2016 to set aside the common order dated 29.01.2025 in 29.01.2025 in M.A.(SR).Nos.578, 582, 586, 590, 594, 598, 602, 606, 610, 614, 618, 622 and 626 of 2024 in Appeal (SR) Nos.577, 581, 585, 589, 593, 597, 601, 605, 609, 613, 617, 621 and 625 of 2024 confirming the order dated 09.09.2024 in C.C.P Nos.73,74,75,76,77,78,79, 80,81,82,83,84 and 85 of 2021 on the file of the Tamil Nadu Real Estate Regulatory Authority, Chennai.

In all appeals

For Appellant : Mr.R.Sivakumar
for M/s.K.M.Vijayan Associates

For Respondents : Notice dispensed with

JUDGMENT
(Judgment of the Court was delivered by R.Suresh Kumar J.)

This batch of Civil Miscellaneous Second Appeals arise out of the common order passed by the Tamil Nadu Real Estate Appellate Tribunal (TNREAT) dated 29.01.2025 in M.A.SR.Nos.578, 582, 586, 590, 594, 598, 602, 606, 610, 614, 618, 622 and 626 of 2024 in Appeal (SR) Nos.577, 581, 585, 589, 593, 597, 601, 605, 609, 613, 617, 621 and 625 of 2024 confirming the order dated 09.09.2024 in CCP Nos.73,74,75,76,77,78,79, 80,81,82,83,84 and 85 of 2021.

2. As against the order passed by the RERA authority, the appellant had filed 13 appeals in Appeal SR Nos.577 of 2024 etc., batch, where, as per Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act') since at least 30% of the penalty or such higher percentage as may be determined by the appellate Tribunal has to be paid as pre-condition by way of pre-deposit to entertain the appeal, in order to seek waiver of such pre-deposit, the appellant has filed the aforesaid M.A.(SR) Nos.578 of 2024 etc., batch.

3. Those miscellaneous applications seem to have come up for hearing on 11.12.2024, where, according to Mr.R.Sivakumar, learned counsel appearing for the appellant, the Tribunal was of the view that it would not entertain the miscellaneous applications by giving a complete waiver of the pre-deposit as mandated under Section 43(5) of the Act. Therefore, it was made clear that such a pre-deposit shall be made by the appellant.

4. Having taken note of the stand taken by the Tribunal, according to the learned counsel for the appellant, the counsel who appeared before the Tribunal on 11.12.2024 sought for two weeks time for making the pre-deposit as contemplated

under Section 43(5) of the Act. That was recorded by the Tribunal and time was granted for reporting compliance till 06.01.2025.

5. Again the cases came up for hearing on 06.01.2025. In this context, it is contended by the learned counsel for the appellant before us that, on 06.01.2025 when they presented the demand draft as pre-deposit, it seems that the Tribunal required the appellant to file a petition to seek extension of time or to condone the delay in making the pre-deposit and therefore, in order to file such a petition and the demand drafts of pre-deposit, they took time till 10.01.2025 and according to the learned counsel for the appellant on 08.01.2025, they have filed petition to condone the delay in making the pre-deposit.

6. Such applications have not been entertained by the Office / Registry of the Tribunal and the applications were returned back. Subsequently, the Tribunal on 29.01.2025 has dismissed all the miscellaneous applications as not maintainable by citing a decision of the Hon'ble Supreme Court reported in **(2021) 18 Supreme Court Cases 1 (Newtech Promoters and Developers Private Limited Vs State of Uttar Pradesh and Others)** and by stating that the Promoter since has not made the pre-deposit as contemplated under Section 43(5) of the Act and in the absence of the pre-deposit, the Tribunal cannot entertain the appeal and the Tribunal also has no jurisdiction to either to waive or to reduce the quantum of pre-

deposit as mentioned in Section 43(5) of the Act. Therefore, following the ratio laid down by the judgment cited supra, the appeals filed by the promoter without making the pre-deposit since were not maintainable, all those applications were dismissed as not maintainable. As a sequel, the main appeals were also rejected as not maintainable through the impugned order dated 29.01.2025. Challenging this order only, the present C.M.S.As have been filed.

7. We have heard Mr.R.Sivakumar for M/s.K.M.Vijayan Associates, learned counsel for the appellants.

8. Since the impugned order has been passed by the Tribunal dismissing the miscellaneous applications only for want of compliance under Section 43(5) of the Act, in this context the respondents do not have any say. Hence notice to the respondents is dispensed with.

9. Insofar as entertaining of the C.M.S.As filed under Section 58 of the RERA Act is concerned, such kind of appeals can be entertained by this Court against any order passed by the Tamil Nadu Real Estate Appellate Tribunal. Therefore, to that extent these appeals can be entertained against the order passed by the Tribunal dated 29.01.2025 rejecting the miscellaneous applications.

10. However, such kind of appeals can be entertained only on any substantial question of law and in this context, even though two substantial questions of law have been framed by the appellant, when we posed a question to the learned counsel appearing for the appellant as to how the appellant can raise the question of law as to whether the Appellate Tribunal can dismiss the appeal without passing any order for pre-deposit and also by not affording sufficient time to comply Section 43(5) of the Act, the learned counsel for the appellant has relied upon the orders passed by the Tribunal on 11.12.2024 and 06.01.2025.

11. It is his further submission that as per the order dated 06.01.2025 since time had been given till 10.01.2025 for reporting compliance by filing petition to condone the delay in making pre-deposit, steps have been taken by the appellant to file such a petition and demand drafts were also taken. To show the bonafide on the part of the appellant, original demand drafts have been produced before this Court.

12. Though such an attempt has been made on behalf of the appellant before the Tribunal to seek for such condonation of delay in making the pre-deposit and to show their bonafide, after having calculated 30% of the amount awarded by the RERA authority in the respective orders which were under appeal before the Tribunal, since the demand drafts were taken in each of the case, the office has not entertained the same and in this regard no orders have been passed by the tribunal.

13. Only in this context, even though this Court has got some doubt over such a plea raised by the learned counsel for the appellant, that while making an application for condoning the delay on 08.01.2025, whether such an application has been received by the office of the Tribunal. If so, the office seal might have been affixed in the very application itself. In the absence of any such official seal of the office of the Tribunal, how such a plea could be made by the learned counsel for the appellant making a blame of the office of the Tribunal ?

14. Learned counsel for the appellant would submit that, having taken the demand drafts on 06.01.2025, there was no justification or reason for the appellant in not making the application on 08.01.2025 since such a time was given only upto 10.01.2025 by the Tribunal by its order dated 06.01.2025.

15. We have gone through the interim orders and we also noted that at the request of the appellant in fact time had been given initially upto 10.01.2025, subsequently upto 24.01.2025 and on 24.01.2025 also further request had been made by the learned counsel for the appellant to post the matter on 29.01.2025 for reporting compliance under Section 43(5) of the Act.

16. On 29.01.2025, since there has been no compliance by making the pre-deposit, the Tribunal having no other option, dismissed the miscellaneous applications by order dated 29.01.2025, which is impugned herein.

17. In this context, series of orders that have been passed by the Tribunal giving time extension to comply with the mandatory pre-deposit condition under Section 43(5) of the Act would go to show that the appellant has not complied with the order. However, one strange factor is also available, where the learned counsel for the appellant is able to produce the original demand drafts in all cases and in each of the case the draft has been taken on 06.01.2025 itself. Therefore, it cannot be the intention of the appellant to defeat the purpose of pre-deposit to be made within the time. The only question which could not be answered clearly is that, having taken the demand draft on 06.01.2025, when the matter came up for hearing on 10.01.2025 and subsequently on 24.01.2025, why the appellant requested the Tribunal to extend further time upto on 29.01.2025, which has been recorded by the Tribunal. The reason being that, had there been demand drafts taken on 06.01.2025, those demand drafts with necessary applications could have been filed or produced before the Tribunal either on 10.01.2025 or 29.01.2025.

18. Be that as it may. Insofar as the rejection of the miscellaneous applications through the impugned order by the Tribunal is only for want of pre-

deposit to be made by the appellant to comply with Section 43(5) of the Act and not on merits and by virtue of the dismissal of those applications through the impugned order, the valuable right of the appellant certainly would get defeated. At the same time, to show the bonafide on the part of the appellant to comply the mandatory requirement of depositing at least 30% of the amount, demand drafts in each case has been taken on 06.01.2025. Such genuineness on the part of the appellant has to be taken into account.

19. Therefore, in order to strike out a balance between those two aspects and also the delay unnecessarily caused by the appellant in making the pre-deposit knowing well that it is a mandatory one and the Tribunal does not have jurisdiction to waive such a pre-deposit in view of the language used by the legislature under Section 43(5) of the Act, we deem it fit that instead of 30% of the pre-deposit, some higher amount of pre-deposit may be imposed on the appellant to be deposited by the appellant before the Tribunal as a pre-condition to entertain the appeals.

20. In that view of the mater, we are inclined to dispose of these appeals with the following orders:

(a) That the appellant shall calculate 50% of the amount in each of the case for the purpose of pre-deposit, take the necessary demand drafts and file it before the Tribunal along with necessary applications along with a copy of this order, within a period of two weeks from the date of receipt of a copy of this order.

(b) On such compliance without fail or without seeking any further extension by the appellant, the Tribunal can entertain the main appeals and decide the same on merits and in accordance with law.

21. With the above directions, all these appeals are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K.,J.) (P.D.B.,J.)
29-07-2025

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
KST

Note :
1.Issue order copy on 31.07.2025
2. Registry to return back the original Demand Drafts dated 06.01.2025 to the learned counsel for the appellant after getting necessary acknowledgment.

R.SURESH KUMAR J.
AND
P.DHANABAL J.

KST

To

The Chairman
Tamil Nadu Real Estate Regulatory Authority,
Chennai.

CMSA Nos. 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 and 48 of 2025

29-07-2025