

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 473 OF 2024**

Shri Viresh Kamalanath Nadkarni, son of Kamalanath Nadkarni, aged 58 years, C/o K.V. Nadkarni & Assosicated, L-45/46, 4th Floor, Alfran Plaza, M.G. Road, Panaji, Goa.

... PETITIONER

Versus

Sugandaha Pravinkumar Shirodkar, wife of Pravinkumar Shirodkar, age not known, r/o H. No. 1038/3, Ground Floor at Zosswado, Sucorro, Bardez, Goa – 403 501.

... RESPONDENT

Mr. Gaurish N. Agni with Mr. Kishan Kavlekar, Advocates for the Petitioner.

Ms. Sushma T. Mandrekar, Advocate for the Respondent.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 9th AUGUST 2024

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith.

2. The matter is taken up for final disposal at the admission stage itself with consent of parties.

3. The challenge in the present Petition is to the order passed by the RERA Appellate Tribunal dated 26.02.2024, by which, an Application for condonation of delay filed by the Petitioner along with an Appeal, thereby challenging the order of Goa RERA Authority, came to be rejected.

4. Mr. Agni appearing for the Petitioner would submit that the order was passed by the Goa RERA Authority on 24.04.2023, thereby directing the Petitioner to hand over the possession of the flat, upon receiving an amount of Rs.9,95,800/- from the Respondent. He submits that apart from such an order, the Goa RERA Authority directed the Petitioner to pay interest towards the delay in delivery of the possession, which the Petitioner wants to challenge before the Appellate Tribunal.

5. Mr. Agni would submit that sufficient cause was disclosed in the Application, however, the impugned order shows that the Appellate Tribunal deliberated upon the conduct of the Petitioner during the period of limitation and there is absolutely no discussion about the reasons disclosed in the Application causing delay in approaching the said Appellate Tribunal from the last date of the period of limitation till the filing of the Appeal.

6. Mr. Agni submits that though decisions were referred, the same were not applied properly to the matter in hand and in fact, the Application of the Petitioner, which disclosed sufficient cause is rejected on extraneous grounds. Mr. Agni submits that during the pendency of such proceedings before the Appellate Tribunal, even possession of the flat is handed over to the Respondent, however, the Respondent failed to deposit the amount of Rs.9,95,800/-, which is the condition imposed while deciding the matter by the Goa RERA Authority.

7. The learned Counsel for the Respondent, Ms. Mandrekar submits that there is total confusion about the number of days of delay as the Petitioner failed to disclose the exact number of days of delay. She submits that the Petitioner has disclosed the delay as 90 days, which has been reproduced by the Appellate Tribunal in its order.

8. Ms. Mandrekar submits that there is no sufficient cause disclosed by the Petitioner and no documentary evidence was placed regarding his ailment. She submits that the impugned order is justified and there are no grounds made out in the present Petition to exercise jurisdiction and more particularly, writ of certiorari.

9. The rival contentions fall for consideration.

10. The matter before the Goa RERA Authority filed by the Respondent against the Petitioner came to be disposed of on 24.04.2023. The order passed by the Goa RERA Authority shows that the Petitioner is directed to hand over the possession of the flat along with the parking slot together with all amenities and facilities as disclosed in the agreement for sale within two months from the date of the order and upon taking the balance amount of Rs.9,95,800/- . Similarly, the second part of the order shows that the Petitioner is also directed to pay interest at the rate of 10.70% per annum for every month delayed on the amount of Rs.37,10,320/- paid by the Respondent, from 26.12.2019 till the date of delivery of the possession. A further penalty of Rs.1,00,000/- is also imposed on the Petitioner.

11. The Petitioner who is based in Goa was desirous of filing an Appeal. It is a fact that the Appellate Tribunal situated in Mumbai has jurisdiction over the matters decided by the Goa RERA Authority. Admittedly, the Appeal is required to be filed by approaching the Appellate Tribunal situated in Mumbai.

12. The impugned order clearly goes to show that the Appeal was filed/presented before the Appellate Tribunal on 21.08.2023.

The period for filing an Appeal is 60 days as per the provisions of the RERA Act.

13. There is no doubt that some confusion was created by the Petitioner himself with regard to the number of days of delay. The Application which is now placed on record by Mr. Agni shows that there is a delay of only 32 days whereas the copy which is handed over to the Respondent and presented before the Appellate Tribunal shows that the delay was of 90 days. Such 90 days delay is also referred to in the impugned order passed by the Appellate Tribunal. However, if the delay is to be calculated, it shows that the actual delay is only 58 days considering the date of the order and the date of filing of Appeal.

14. The question before the Appellate Tribunal is to consider whether there is sufficient cause explained to condone the delay in filing the Appeal. If no sufficient cause is found in the Application, the Appellate Tribunal could have been justified in rejecting such Application. However, the impugned order clearly goes to show that the Appellate Tribunal deliberated upon the bonafide of the Petitioner right from the date of passing of the order by the Goa RERA Authority, without touching the contentions raised/disclosed on affidavit in the Application for condonation of delay.

15. It is a well settled proposition of law that the party is not required to explain as to why the Appeal is not filed till the last date of the limitation. The explanation needs to be given only with regard to the delay beyond the period of limitation. Thus, in the present matter, the Petitioner was supposed to explain the delay of 58 days i.e. from the date of expiry of period of limitation till the filing of the Appeal. However, the observations of the Appellate Tribunal would clearly go to show that the said Tribunal was expecting the Petitioner to disclose as to why he failed to file an Appeal even during the period of limitation. Such observations are found in paragraph 1 itself and later on in paragraph 5.

16. Though the Appellate Tribunal considered the decision of the Apex Court in the case of the **Collector, Land Acquisition, Anantnag & Another Vs. Ms. Katiji & Others, (1987) 2 SCC 107**, completely failed to consider the ratio laid down therein.

17. The Petitioner in his Application for condonation of delay though mentioned that he is a patient with diabetes and not keeping well, the main grounds are mentioned thereafter in paragraphs 4 to 7. The Petitioner has disclosed that he was informed that the Appeal is required to be filed before the

Appellate Tribunal which is situated in Mumbai. He further disclosed that on contacting the Advocate in Goa, the said Advocate informed him that he would not be able to appear before the RERA Appellate Tribunal in Mumbai. Accordingly, the Petitioner was trying to contact some other Advocate in Goa, who would be able to appear and file an Appeal before the Appellate Authority in Mumbai, but no one from Goa was ready. Finally, somewhere in July 2023, the Petitioner approached an Advocate in Mumbai, who agreed to file an Appeal and appear before the RERA Appellate Tribunal. Accordingly, the Appeal was prepared within ten days and presented on 21.08.2023. Though an explanation is disclosed giving the cause for delay from the time of expiry of period of limitation till the filing of the Appeal in the Application for condonation of delay, that too on affidavit, there is absolutely no whisper about it in the impugned order. The Appellate Tribunal has failed to consider the above explanation in its impugned order and by not discussing it clearly, shows that the Tribunal has failed to consider the grounds mentioned therein and committed serious error.

18. In paragraph 8 of the impugned order, the principles laid down in the case of **Ms. Katiji** (supra) are quoted, however, the same were not applied to the matter in hand. These principles are

settled propositions of law, which need to be applied to the facts and circumstances of each case. Only quoting such observations would not be sufficient enough.

19. The Appellate Tribunal also quoted the observations in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Other, (2013) 12 SCC 649**. However, it again needs to be observed that such principles

were not at all applied or even considered while deciding the matter. Paragraph 11 of the impugned order shows that the entire discussion is with regard to the inaction on the part of the Petitioner to file an Appeal within a period of 60 days. Similarly, much stress was given to the contentions of the Petitioner that he is a diabetic patient, but failed to produce any document in that regard.

20. It is necessary to note here that though such contentions are one of the grounds, the main contention of the Petitioner is that he was supposed to file an Appeal before the Appellate Tribunal situated at Mumbai and no Advocate from Goa was ready to appear before the Appellate Tribunal in Mumbai and thus, he was forced to approach an Advocate who is situated in Mumbai and is ready and willing to appear before the concerned Authority.

Paragraphs 11 and 12 of the impugned order nowhere discusses such an aspect. The Application for condonation of delay was filed along with the affidavit, however, the same was not considered in its proper perspective and by applying the correct proposition of law.

21. In the case of **N. Balakrishnan Vs. M. Krishnamurthy, (1998) 7 SCC 123**, the Apex Court observed in paragraphs 9 and 10 as under:

*9. Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are*

meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

10. *A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749].*

22. In the case of **Esha Bhattacharjee** (supra), the Apex Court in paragraph 12 referred to the earlier decisions and discussed the expression “sufficient cause”. Finally, in paragraph 15, the broad principles were culled which are already quoted in the impugned order in paragraph 9.

23. Accordingly, it is clear that the Appellate Tribunal has failed to apply the ratio of the above two decisions to the matter in hand and more particularly, failed to disclose the reason given by the Petitioner that since no Advocate from Goa was ready to draft the

Appeal and appear before the Appellate Tribunal in Mumbai, he was prevented from filing the Appeal in Mumbai.

24. This ground mentioned in the present Application requires to be considered as sufficient ground for the purpose of condoning the delay of 58 days. It is also required to be noted that the Petitioner to show his bonafide, even handed over possession of the suit flat to the Respondent during the pendency of such Application before the RERA Appellate Tribunal and that too without receiving the amount of Rs.9,95,800/-.

25. For all the above reasons, the impugned order is required to be quashed and set aside and the Petition needs to be allowed. Accordingly, the impugned order dated 26.02.2024 is hereby quashed and set aside. The Application filed by the Petitioner for condonation of delay in filing the Appeal stands allowed.

26. Rule is made absolute in the above terms.

27. Parties to act on an authenticated copy of this Order.

BHARAT P. DESHPANDE, J.