

BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI.

MA 105/19

In

APPEAL NO. AT006000000021476

Shree Construction Company

... Applicant

Vs.

Rushikesh Patil

... Respondent

(Mr. Abdullah Shaikh i/b K.K. Associates, Advocate for Applicant)

Respondent Mr. Rushikesh Patil in person a/w Mr. Aditya Deolekar i/b Trgna Legal, Advocate for Respondent)

CORAM : SUMANT M. KOLHE, (Member J.)

DATE : 21ST SEPTEMBER, 2019.

ORDER BELOW APPLICATION FOR CONDONATION OF DELAY

Read the application for condonation of delay and say
filed on behalf of Respondent.

Heard Learned Counsel for both the sides.

Perused the papers and case laws.

The following points arise for my determination;

POINTS

- i) Whether Appellant has sufficient cause for condonation of delay?
- ii) What order?

My findings on above points for reasons stated below are as under :

FINDINGS

- i) Affirmative.
- ii) As per final order.

REASONS

POINT NOS.1 AND 2

2. It is revealed that the petitioner intends to challenge impugned order dated 20.2.2019 passed by Chairperson, MahaRERA in the complaint No.CC006000000056754. The petitioner received impugned order on 20.2.2019 vide email from MahaRERA Authority. The petitioner immediately sent order on email to Learned Advocate on 21.2.2019 and thereafter also, forwarded the necessary papers to Learned Advocate for the purpose of

W/S
drafting an appeal. Meantime, petitioner made an attempt to partly execute impugned order by sending an email on 11.4.2019 and making an offer of another flat to Respondent. It appears that Respondent did not pay any heed to such offer and demanded the refund of the amount as per the impugned order. Such reply was sent by Respondent on 22.4.2019. Thereafter, petitioner preferred an appeal against impugned order for which delay of 24 days has been caused. The petitioner under bonafide belief made an attempt to settle the matter by making an offer of another flat to respondent and at the same time made necessary preparation by sending papers to Learned Advocate for drafting the appeal. It cannot be said that there was intentional and deliberate delay on the part of petitioner in preferring the appeal after 24 days on expiry of period of limitation. In such circumstances, it can be easily said that delay of 24 days is caused in preferring the appeal as some time was spent by making offer of another flat to Respondent and necessary time was required to prepare the draft of the appeal by concerned Advocate for petitioner. Thus, there is sufficient cause to substantiate the condonation of delay of 24 days.

3. Let us consider the principle of legal position for condonation of delay. It is laid down by Hon'ble Supreme

Court in **Collector Land Acquisition Vs. MST Katiji 1987**
law Suit (S.C.) 214, that –

“refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. Similarly, every day's delay must be explained does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner”.

W/S

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay.

5. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Hon'ble Supreme Court has also laid down in **N. Balakrishnan Vs. M. Krishnamurthy**(1998 Law Suit Supreme Court 872) that -

“ Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. Law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. The word sufficient cause as used should receive a liberal construction so as to advance substantial justice. When there is a reasonable ground to condone the delay and that delay was not occasioned deliberately and intentionally, then delay should be condoned.

6. In view of above discussion, I am of the opinion that this is a fit case for condonation of delay of 24 days. No prejudice would be caused to Respondent if delay is condoned and

petitioner is directed to pay suitable costs to Respondent for condonation of delay. I answer points accordingly. In the result, I pass following order.

ORDER

- W/S
1. MA 105/19 is allowed.
 2. The delay is condoned subject to payment of costs of Rs.10,000/-(Ten Thousand) by Petitioner to Respondent within one month from the date of this order i.e on or before 21.10.2019. Failure to pay costs as directed above, the petition for condonation of delay shall stand dismissed.
 3. On payment of costs as directed above, appeal No. AT006000000021476 shall be confirmed as registered with the same number and shall be listed on board on 2.11.2019.

Date: 21.09.2019

U. Kolhe 21-09-19.
(SUMANT KOLHE)
MEMBER (J)