

BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI

Misc. Application No. 388/19

In

Appeal No. AT006000000010815

Mr. Girish Chopra ...Applicant

Versus

M/s P.G. Enterprises ...Non-Applicant

With

Misc. Application No. 389/19

In

Appeal No. AT006000000010816

Mrs. Uma Tekchandani ...Applicant

Versus

M/s P.G. Enterprises ...Non-Applicant

*(Advocate Mr. Mustafa Safiyuddin a/w Jessica Rastogi
for Appellant*

Advocate Arvind Giriraj for Non-Applicant)

CORAM: SUMANT KOLHE, MEMBER (J)

S. S. SANDHU, MEMBER (A)

DATE : 20TH NOVEMBER, 2019



ORDER (PER S. S. SANDHU, MEMBER (A))

Heard parties on applications for condonation of delay filed by above applicants.

2 Learned Counsel for Applicants submits that the impugned order is passed on 1.8.2018 and on coming to notice thereof, the same was downloaded on 18.8.2018 from MahaRERA portal. Counting from the said date, there is a delay of 10 days in filing the appeal on 29th October, 2019. She submits that delay is on account of circumstance beyond the control of applicants as they had to change the Advocate and it took some time to receive the legal advice. It is further submitted that applicants also suffered from medical emergency and they were receiving medical treatment for the same. In support of their contentions, applicants have submitted necessary medical certificates along with applications on affidavits.

3. With the above submissions, the applicants submitted that there is no intentional delay and therefore the delay be condoned in the light of principles laid down by Hon'ble Apex Court in the case of **Collector Land Acquisition Vs. MST Katiji [1987 Law Suit (S.C.) 214]**.

4. Per contra, Learned Counsel for Non-Applicant in his oral submissions strongly opposed the condonation of delay. He contended that principles enumerated in the aforesaid judgment cited by applicants can be invoked only when sufficient cause shown by applicant is bona fide and not mala fide. He reasoned that mala fide on the part of



applicants is evident from the fact that on one hand they have filed Execution Application with MahaRERA for non-compliance of the order, on the other hand the same is challenged by them in these appeals also. He further submitted that it is hard to believe the coincidence that both applicants fell ill at the same time and have identical period of delay in filing the appeals. He argued that back dated medical certificates submitted by applicants in support of their illness and being under treatment are false and fake as they are not issued by doctors from the area where the applicants usually reside. He also alleged that the other ground for pursuing engagement of another advocate while being ill also appears to be doubtful and false. Accordingly, the Learned Counsel for Non-Applicant pleaded to take serious cognisance of the mala fide of applicants and reject the frivolous applications for condonation of delay with heavy costs.

5. We have considered submissions of parties carefully and having regard the facts and circumstances of the case, we find the cause shown for delay that the applicants had medical emergency and were under treatment for some time is well supported by medical certificates with affidavits. Learned Counsel for Non-Applicant has not rebutted or controverted the same on affidavit. We have no reasons to disbelieve the reasons tendered by applicants for delay. We also find no mala fide, intentional or deliberate delay on the part of applicants in filing the appeals. In such circumstances, we incline to hold that cause shown by



applicants for condonation of delay in filing appeals is justifiable and applications therefore deserve to be allowed.

6 In the result, we pass following order:

: O R D E R :

- 1) Misc. Application Nos. 388/19 and 389/19 are allowed.
- 2) Delay is condoned.
- 3) No costs.
- 4) Appeals be listed for further consideration on 20.12.2019.


(S. S. SANDHU)
R/ -


20-11-19
(SUMANT KOLHE)