BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

DATED 16-06-2023

Coram : Hon'ble Mr.Justice M.Duraiswamy, Chairperson
Mr.R.Padmanabhan, Judicial Member
Ms.Leena Nair, Administrative Member

M.A.No.58 of 2023
in
Appeal (SR).No.189 of 2023

M/s.Casa Grande Shelter LLP
Rep by its Authorized Signatory G.Sethupathy
Now rep by its Authorized Signatory
Mohanraj. Y ... Applicant/Appellant

- Vs -

1.Imran Malik Zafrulla Malik
2.Nafeesatal Misria Packir Mohamed ... Respondents/Respondents

M.A.No.58 of 2023 has been filed by the applicant/appellant to condone the delay of 210 days in filing the appeal.

The appeal has been filed by the appellant to set aside the order passed by the Adjudicating Officer attached to the TNRERA in C.C.P.No.10 of 2021 dated 27.05.2022.

Verified RegEstate™

For Applicant : Mr.K.Mohan

For Respondents : Ms.Yogalakshmi
for Mr.M.R.Gokul Krishnan

ORDER

Heard Mr.K.Mohan, learned counsel for the applicant and Ms.Yogalakshmi, learned counsel representing Mr.M.R.Gokul Krishnan, learned counsel appearing for the respondents.

2. The applicant has filed the above application seeking to condone the delay of 210 days in filing the appeal challenging the order passed by the Adjudicating Officer dated 27.05.2022 in C.C.P.No.10 of 2021.

3. In the affidavit filed in support of the application, the applicant has stated that by virtue of the order passed by the Hon'ble Supreme Court in *Suo Motu* Writ Petition No.3 of 2020, the period of limitation was extended by 90 days from 01.03.2022, hence, the delay of 210 days in filing the appeal is neither willful nor wanton and the same is only due to certain unavoidable circumstances.

4. The learned counsel appearing for the respondents vehemently contended that the applicant has not stated any reason for condoning the delay, hence, the delay should not be condoned. The learned counsel also drew the attention of this Tribunal to the averments stated in paragraph-3 of the affidavit filed in support of the application.

5. It would be appropriate to extract paragraph-3 of the affidavit, which reads as follows:

> "...
> 3. I submit that there is a delay of 210 days (Applying extension of limitation period of 90 days from 01.03.2022 as per the Honourable Supreme court's order in Suo motu writ

Verified by RealEstate ™

petition No.03 of 2020) from the date of pronouncement of the said order in CCP 10 of 2021. The same is neither willful nor wanton and the same is only due to certain unavoidable circumstances. The applicant company has also deposited the 100% costs viz., Rs.37,42,279/- (Rupees Thirty Seven Lakh Forty Two thousand Two Hundred and Seventy Nine only) by a demand draft dated 09.02.2023, no.052544 with this application. The applicant company has got sufficient merits to succeed the appeal. The main appeal and stay application are filed along with this application and the same may be taken on file by condoning the delay and sufficient opportunity may be given to the appellant."

6.It is pertinent to note that the Hon'ble Supreme Court extended the period of limitation from 01.03.2022 only for the cases where the period of limitation had expired prior to 01.03.2022 and not after that. In the case on hand, the Adjudicating Officer had passed the order impugned in the appeal only on 27.05.2022. That being the case, the order passed by the Hon'ble Supreme Court in *Suo Motu* Writ Petition No.3 of 2020 is not applicable. Inspite of the Adjudicating Officer passing the order on 27.05.2022, the appellant chose to file the appeal only on 21.02.2023 (i.e.) after a lapse of 269 days. The reasoning stated in paragraph-3 of the affidavit cannot be accepted for condoning the inordinate delay of 210 days. The applicant has only stated that the delay is neither willful nor wanton and the same is only due to unavoidable circumstances. The applicant has not stated anything about the unavoidable circumstances mentioned in parapraph-3 of the affidavit.

7. The Hon'ble Supreme Court in the judgment reported in ***(2015) 1 Supreme Court Cases 680 [H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another***] has categorically held

Verified by PreEstate™

that unless the party seeking for condonation of delay gives sufficient reason, the delay should not be condoned. The relevant portion is extracted hereunder:

> "...
>
> 24.When we apply those principles of *Bhattacharjee case* [*Esha Bhattacharjee* v. *Raghunathpur Nafar Academy, (2013) 12 SCC 649 : (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450 : (2014) 2 SCC (L&S) 595]* to the case on hand, it has to be stated that the failure of the respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides as displayed on the part of the respondents. Further, when the respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the court fee at the time of the filing of appeal papers on 6-9-2007, the reasons which prevented the respondents from not paying the court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bona fides in its approach. It also requires to be stated that in the case on hand, not refiling the appeal papers within the time prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, courts are required to weigh the scale of balance of justice in respect of both the parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing

of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.

25.We, therefore, find total lack of bona fides in its approach and the impugned order [*Nahar Exports Ltd.* v. *Hardeep Kaur, Civil Misc. Nos. 11354-55 of 2012 in RFA No. 268 of 2012, order dated 16-12-2013 (Del)]* of the High Court in having condoned the delay in filing as well as refiling, of 9 days and 1727 days respectively, in a casual manner without giving any reason, much less acceptable reasons, cannot therefore be sustained. The appeals are allowed and the impugned order is set aside. Direction to admit the appeals of the respondents in RFAs Nos. 268-88 of 2012 and 319 of 2012 is also set aside and shall stand dismissed. No costs."

8. The ratio laid down by the Hon'ble Supreme Court in the judgment reported in ***(2015) 1 Supreme Court Cases 680*** (cited supra), squarely applies to the facts and circumstances of the present case.

9. The applicant has not stated a single reason to condone the delay of 210 days. In these circumstances, the application filed by the applicant seeking to condone the delay of 210 days cannot be allowed. Accordingly, the same is dismissed. Consequently, the Appeal in Appeal (SR).No.189 of 2023 is rejected. Connected miscellaneous applications are hereby closed.

Sd/-xxxx
CHAIRPERSON

Sd/-xxxx
ADMINISTRATIVE MEMBER

Sd/-xxxx
JUDICIAL MEMBER

Verified RealEstate™