

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL (ST) NO. 14845 OF 2019
ALONGWITH
CIVIL APPLICATION NO.787 OF 2019**

**Man Global Limited,)
A company registered under the)
Companies Act, 1956 having office)
at 101, Man House,)
Opposite Pawan Hans, S.V.Road,)
Vile Parle (East), Mumbai 400 056)**

**..... Appellant/
Applicant**

VERSUS

**Bharat Prakash Joukani,)
Indian Inhabitant, having address at)
207, Bhullar Star Estate,)
Behind Sakinaka Telephone Exchange))
Andheri Kurla Road, Sakinaka,)
Andheri (East), Mumbai – 400 072)**

..... Respondent

**ALONGWITH
SECOND APPEAL (ST) NO. 14840 OF 2019
ALONGWITH
CIVIL APPLICATION NO.785 OF 2019**

**Man Global Limited,)
A company registered under the)
Companies Act, 1956 having office)
at 101, Man House,)
Opposite Pawan Hans, S.V.Road,)
Vile Parle (East), Mumbai 400 056)**

**..... Appellant/
Applicant**

VERSUS

**Ram Prakash Joukani,)
Indian Inhabitant, having address at)
207, Bhullar Star Estate,)
Behind Sakinaka Telephone Exchange))
Andheri Kurla Road, Sakinaka,)
Andheri (East), Mumbai – 400 072)**

..... Respondent

Mr.Prasad Dhakephalkar, Senior Advocate, a/w. Ms.Saloni Shah, i/b. DSK Legal for the Appellant/Applicant.

Mr.Nimay Dave, a/w. Mr.Anosh Sequeira, Mr.Dhiren Durante, Ms.Viloma Shah, Mr.Prakash Khati, i/b. Hariani & Co. for the Respondents.

CORAM : R.D. DHANUKA, J.

DATE : 1st OCTOBER, 2019

ORAL JUDGMENT

Admit on the following substantial question of law :-

(a) Whether a sole member of the Maharashtra Real Estate Appellate Tribunal can decide any appeal or application for condonation of delay or any application contemplated under the provisions of Real Estate (Regulation and Development) Act, 2016 or the same has to be heard and can be disposed of only by the Bench comprising of two members including one judicial member ?

2. By consent of parties, both the appeals were heard finally and are being disposed off by a common order.

3. By these two second appeals filed under section 58 of the Real Estate (Regulation and Development) Act, 2016, the appellant has impugned the order dated 2nd May, 2019 passed by the Administrative Member of the Maharashtra Real Estate Appellate Tribunal, Mumbai refusing to condone the delay of 62 days in filing an appeal by the appellant.

4. Mr.Dhakephalkar, learned senior counsel for the appellant invited my attention to the section 43 of the Real Estate (Regulation and Development) Act, 2016 and in particular section 43(3) thereof and would submit that though the application for condonation of delay was made by the appellant before the Real Estate Appellate Tribunal, under section 43 of the said Act, which has to consist atleast one judicial member and one administrative member or technical member, the application for condonation of delay was heard by the non-judicial member alone. He also strongly placed reliance on the judgment of this court in case of **Neelkamal Realtors Suburban Pvt. Ltd. and Anr. vs. Union of India and Ors., 2017 SCC OnLine Bom 9302** and in particular paragraph 339 in support of the submission that the Maharashtra Real Estate Appellate Tribunal would always consist of two members i.e. one judicial member and another either administrative member or technical member. He submits that the entire order thus passed by the one of the member of the Tribunal is totally without jurisdiction and thus deserves to be set aside on this ground alone.

5. Mr.Dave, learned counsel for the respondents could not point out any provision under the said Act empowering one member of the said Tribunal to decide any appeal or any application.

6. A perusal of the section 43(3) of the Act clearly indicates that every bench of the Appellate Tribunal shall consist of at least one judicial member and one administrative or technical member.

7. In case of **Neelkamal Realtors Suburban Pvt. Ltd. and Anr.** (supra) this court has held that two member bench of the Tribunal shall

always consist of a judicial member. It is also held that in the constitution of the Tribunal, majority of the members shall always be judicial members. The judgment of the Division Bench of this court in case of **Neelkamal Realtors Suburban Pvt. Ltd. and Anr.**(supra) applies to the facts of this case. On plain reading of section 43(3) of the Act, it is clear that the sole member of the said Tribunal does not have jurisdiction to dispose of appeal or any application including even an application for condonation of delay in filing appeal. The impugned order thus passed by the Administrative member alone is without jurisdiction and deserves to be set aside on this ground alone. Substantial question of law formulated aforesaid is answered accordingly in aforesaid terms.

8. I, therefore, pass the following order :-

(a) The impugned order dated 2nd May,2019 passed by the Administrative Member of the Maharashtra Real Estate Appellate Tribunal, Mumbai is quashed and set aside.

(b) The application for condonation of delay is restored to file and to be heard by the Real Estate Appellate Tribunal comprising of one judicial member and one administrative or technical member as contemplated under section 43(3) of the Act. The application for condonation shall be disposed of within 30 days from the date of communication of this order.

(c) This court has not expressed any views on the merit of the application for condonation of delay.

kvm

5/5

9-SA14845.19

9. Both the second appeals are allowed in the aforesaid terms. No order as to costs.

10. In view of disposal of the second appeals, civil applications do not survive and are accordingly disposed of.

[R.D.DHANUKA, J.]