

Surendra G. Shankar & Anr Vs Esque Finamark Pvt. Ltd & Ors

Court: Supreme Court Of India

Date of Decision: Jan. 22, 2025

Hon'ble Judges: Pamidighantam Sri Narasimha, J And Hon. Manoj Misra

Bench: Division Bench

Advocate: Vinay Navare, Harshad Bhadbhade, Siddharth Mehta, Samridhi S. Jain, Harshada Shrikhande, Chaitanya Dixit, Vinayak Bhandari, Arnav Narain, Surekha Raman, Amarjit Singh Bedi, Shreyash Kumar, Imilikaba Jamir, M/s. K J John And Co, B. Sunita Rao

Final Decision: Allowed

Judgement

Manoj Misra, J

1. Leave granted.

2. These two appeals assail a common judgment and order of the High Court of Judicature at Bombay $\hat{\mathcal{A}}\hat{\mathcal{C}}\hat{\mathcal{A}},\neg\hat{\mathcal{E}}\hat{\mathcal{C}}\hat{\mathcal{A}}$ The High Court $\hat{\mathcal{A}}\hat{\mathcal{C}}\hat{\mathcal{A}},\neg\hat{\mathcal{A}},\hat{\mathcal{C}}$ dated 23.08.2023, inter

alia, passed in Second Appeal Nos.475 and 188 of 2023. As these appeals assail a common order, they have been heard together and are being

decided by a common order.

3. Special Leave Petition (Civil) No. 25540 of 2023 arises from Complaint No. CC006000000056663 whereas Special Leave Petition (Civil) No.

24959 of 2023 arises from Complaint No.006000000056656; both complaints were filed before the Maharashtra Real Estate Regulatory Authority,

Mumbai $\hat{\mathcal{A}}\hat{\mathcal{C}}\hat{\mathcal{A}},\neg\hat{\mathcal{E}}\hat{\mathcal{C}}\hat{\mathcal{A}}$ RERA Mumbai $\hat{\mathcal{A}}\hat{\mathcal{C}}\hat{\mathcal{A}},\neg\hat{\mathcal{A}},\hat{\mathcal{C}}$ for possession of flat in a building complex known as $\hat{\mathcal{A}}\hat{\mathcal{C}}\hat{\mathcal{A}},\neg\hat{\mathcal{A}}$ "Lodha Venezia $\hat{\mathcal{A}}\hat{\mathcal{C}}\hat{\mathcal{A}},\neg$ & $\hat{\mathcal{A}}\hat{\mathcal{C}}\hat{\mathcal{A}},\neg\hat{\mathcal{A}}$ "Lodha Azzuro $\hat{\mathcal{A}}\hat{\mathcal{C}}\hat{\mathcal{A}},\neg$. The appellants

herein separately filed the aforesaid complaints claiming themselves to be allottees in a building project registered with RERA. The complainants,

inter-alia, impleaded Esque Finmark Pvt. Ltd (Respondent No.1 herein) (for short R-1) and Macrotech Developers Ltd. (erstwhile $\hat{\mathcal{A}}\hat{\mathcal{C}}\hat{\mathcal{A}},\neg\hat{\mathcal{A}}$ "Lodha

Developers Ltd. $\hat{\mathcal{A}}\hat{\mathcal{C}}\hat{\mathcal{A}},\neg$) (Respondent no.2 herein) (for short R-2) as opposite parties to the complaint. During the course of the proceedings before RERA,

Mumbai, on the objection raised by R2 that there is no privity of contract between the complainant and R2, RERA, Mumbai, vide order dated

23.07.2019, discharged R2 from the proceedings. Thereafter, the two complaints, including other similar complaints, were dismissed by RERA,

Mumbai by a common order dated 16.10.2019.

4. Aggrieved by dismissal of their complaints, the appellants herein separately filed appeals before the Maharashtra Real Estate Appellate Tribunal,

Mumbai Appellate Tribunal, Mumbai questioning the final order dated 16.10.2019 as well as the order dated 23.07.2019. Importantly, these

appeals were filed on 10.12.2019 i.e., within 60 days of the final order dated 16.10.2019. However, since these appeals also questioned the order

dated 23.07.2019, a formal application seeking condonation of the delay was also presented, though later.

5. The Appellate Tribunal, Mumbai vide order dated 1.12.2022 dismissed the appeals as barred by limitation while observing that since the order dated

23.07.2019 was passed in the presence of the parties (which includes their counsel), there was no sufficient cause to condone the delay in filing the

appeal.

6. Aggrieved by dismissal of those appeals, the appellants along with other aggrieved parties separately preferred second appeals before the High

Court.

7. By the impugned common order, the High Court dismissed the appeals while observing as under:

"In the normal circumstances, I would have condoned the delay. However, it appears that the order dated 23 July 2019 was passed with consent. According to the

learned counsel for the appellant(s), the Advocate was not authorized to give such consent. However, admittedly, no application was thereafter made seeking recall

of the said order. On the contrary, it appears from the final order dated 16 October 2019, that the same submissions were made at the time of final hearing of the

complaint(s). The learned counsel for the appellant(s) submit that the merits of the order dated 23 July 2019 cannot be examined at this stage. However, considering

the overall facts and circumstances of the case, I am not inclined to interfere with the impugned order(s). The Second Appeals are dismissed.

8. We have heard Mr. Vinay Navare for the appellants and Mr. S. Niranjana Reddy for the respondents. Although multiple submissions were raised

from both sides touching upon the merits of the case, we do not deem it necessary to refer to them as the present appeals can be allowed on a short

ground, which is, that the order impugned before the High Court was of refusal to condone the delay in preferring the appeals before the Appellate

Tribunal, Mumbai. Once the High Court opined that in normal circumstances the delay ought to have been condoned, it ought not to have commented

upon the merits of the orders dated 23.07.2019 and 16.10.2019, particularly, when the Appellate Tribunal, Mumbai had not dealt with the correctness

of those orders. In such circumstances, the High Court should have set aside the order rejecting the delay condonation application, condoned the delay

and restored the appeals on the file of the Appellate Tribunal, Mumbai for consideration on merits.

9. This we say so because the scope of the appeal before the High Court was limited to examining the correctness of the order of the Appellate

Tribunal, Mumbai declining condonation of delay. Only when the delay is condoned, the merits of the order could be examined by the Appellate Court

(See: Ram Kali Devi (Smt) v. Manager, Punjab National Bank, Shamshabad and Others, (1998) 9 SCC 558).

10. We may also put on record that before the Appellate Tribunal, the appellants had disputed that the order dated 23.07.2019 was based on consent

of the parties. In these circumstances, when merits of the orders impugned in the appeal was not touched upon by the Appellate Tribunal, the High

Court ought not to have commented on the merits.

11. For the reasons above, these appeals are allowed. The judgment and order of the High Court dated 23.08.2023 passed in Second Appeal Nos.475

and 188 of 2023 is set aside. The order dated 01.12.2022 passed by the Appellate Tribunal, Mumbai, refusing to condone the delay in filing the appeals

by the appellants herein against the orders dated 23.07.2019 and 16.10.2019, is set aside. The delay in filing those appeals is condoned. Those appeals

shall stand restored on the file of the Appellate Tribunal, Mumbai. The Appellate Tribunal, Mumbai shall proceed to decide the appeals on its own

merits without being prejudiced by any observations made in the orders which have been set aside herein above.

12. It is made clear that we have not expressed any opinion on the merits of the orders dated 23.07.2019 and 16.10.2019 passed by RERA, Mumbai.

13. Pending applications, if any, shall stand disposed of.