

M/s TDI Infrastructure Limited
Vs.
Vivek Kadyan
C.M. No.171 of 2021
In
Appeal No.332 of 2019

Present: Shri Rajnish Singh, Advocate, learned counsel for the applicant.

[The aforesaid presence is being recorded through video conferencing]

ORDER

This order shall dispose of an application filed by the applicant/appellant for restoration of Appeal No.332 of 2019 titled as M/s TDI Infrastructure Limited Vs. Vivek Kadyan pursuant to the order dated 16.10.2020 passed by the Hon'ble High Court of Punjab and Haryana, Chandigarh in CWP No.15647 of 2019 and the orders dated 05.11.2020 (Annexure A-2) and 25.11.2020 (Annexure A-3) passed by the Hon'ble Apex Court in SLP (Civil) No.13093 of 2020.

2. As per averments in the application, the applicant had filed the aforesaid appeal against the order dated 29.01.2019 passed by the learned Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called the 'Authority'), in Complaint No.607 of 2018. The said appeal filed by the applicant was dismissed by this Tribunal vide order dated 22.10.2019 (Annexure A-1) due to failure of the applicant to make the pre-deposit as required under the proviso to Section 43(5) of the Real

Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act').

3. In the month of May, 2019, the applicant had filed CWP No.15647 of 2019 before the Hon'ble High Court of Punjab and Haryana, Chandigarh challenging inter alia, the constitutional validity of retroactive application of Sections 12,14,18 and 19 of the Act. Vide judgment dated 16.10.2020, the said writ petition was dismissed by the Hon'ble High Court with many directions and the Hon'ble High Court was pleased to grant liberty to the applicant to make the pre-deposit in terms of Section 43(5) of the Act before this Tribunal not later than 16.11.2020 and this Tribunal was directed to recall the order dismissing the appeal, to restore the appeal and proceed to dispose of the same on merits.

4. Thereafter, the applicant filed SLP (Civil) No.13093 of 2020 before the Hon'ble Apex Court challenging the judgment and final order dated 16.10.2020 passed by the Hon'ble High Court. The Hon'ble Apex Court vide order dated 05.11.2020 (Annexure A-2) was pleased to stay the operation of the aforesaid order. It is further pleaded that vide order dated 25.11.2020 (Annexure A-3), the Hon'ble Apex Court was pleased to allow the appellate authority to take up the appeal for hearing and pass the decision on merits, in case there is no objection from the respondent herein. It is further pleaded that the intent of this order is that the objection, if to be exercised would be in the

context of not entertaining the appeal if the developer files the said appeal without depositing the pre-deposit under Section 43(5) of the Act. It is further pleaded that in the light of the aforesaid facts and circumstances, the captioned appeal No.332/2019 filed by the developer may be restored and this Tribunal may proceed to hear the same on merits. Hence, this application.

5. We have heard Shri Rajnish Singh, Advocate, learned counsel for the applicant and have carefully perused the record.

6. Learned counsel for the applicant has contended that the appeal filed by the applicant was dismissed by this Tribunal due to non-compliance of the provisions of Section 43(5) of the Act, vide order dated 22.10.2019 (Annexure A-1). He further contended that the constitutional validity of the provisions of Section 43(5) of the Act was under challenge before the Hon'ble High Court. The Hon'ble High Court was pleased to dismiss the bunch of writ petitions vide order dated 16.10.2020, but the Hon'ble High Court granted the liberty to the petitioner (applicant herein) to make the pre-deposit in terms of the proviso to Section 43(5) of the Act before the Appellate Tribunal not later than 16.11.2020 and upon making the pre-deposit, the Appellate Tribunal was required to recall the order dismissing the appeal, to restore the appeal and to further dispose of the appeal on merits.

7. He further contended that the applicant/developer filed SLP (Civil) No.13093 of 2020 challenging the judgment and final order dated 16.10.2020 passed in CWP No.15647 of 2019 and the Hon'ble Apex Court was pleased to stay the operation of the order dated 16.10.2020, vide order dated 05.11.2020 (Annexure A-2). He further contended that vide order dated 25.11.2020, the Hon'ble Apex Court has clarified that the Appellate Tribunal would be entitled to take up the appeal for hearing on merits, if there is no objection from the side of respondent. He contended that the applicant wants to avail this liberty granted by the Hon'ble Apex Court. He further contended that the intent of this order is that the objection, if to be exercised would be in the context of not entertaining the appeal if the developer files the said appeal without depositing the pre-deposit under Section 43(5) of RERA Act. Thus, he contended that appeal no.332 of 2019 filed by the applicant should be restored and be heard on merits.

8. We have duly considered the aforesaid contentions. It is an admitted fact that the appeal filed by the applicant bearing no.332/2019 was dismissed by this Tribunal due to non-compliance of the mandatory provisions of Section 43(5) of the Act vide order dated 22.10.2019 (Annexure A-1). The CWP No.15647 of 2019 was admittedly filed by the applicant/developer in the month of May, 2019 i.e. much before passing the order of dismissal of appeal. The said writ petition

was dismissed by the Hon'ble High Court along with bunch of other writ petitions, vide order dated 16.10.2020. However, certain liberties were granted to the petitioners/developers. The relevant portion reads as under: -

“95. Where the Petitioner's appeal already stands dismissed by the Appellate Tribunal for a failure to make the pre-deposit as directed, and that order is challenged in the writ petition, this Court as a one-time measure, permits the Petitioner to make the pre-deposit in terms of the proviso to [Section 43](#) (5) of the Act before the Appellate Tribunal not later than 16th November, 2020. Upon making of the pre-deposit within the time granted by this Court, the Appellate Tribunal will recall its order dismissing the appeal, restore the appeal to file and proceed to dispose of the appeal on merits, which will include examining the validity of the order of the Authority. On failure of the Petitioners to make the pre-deposit with the time as granted by this Court, the order of the Appellate Tribunal dismissing the appeal will stand affirmed without any further recourse to this Court.

9. As per the aforesaid direction of the Hon'ble High Court, the applicant was required to make the pre-deposit in terms of the proviso to Section 43(5) of the Act with this Tribunal not later than 16.11.2020 and only in that case, this Tribunal was required to recall the order dismissing the appeal, restore

the appeal to files and proceed to dispose of the appeal on merits. Admittedly, in this case, the applicant has not complied with the aforesaid direction of the Hon'ble High Court as the requisite amount of pre-deposit was not deposited before the stipulated date as ordered by the Hon'ble High Court, rather the applicant filed SLP (Civil) No.13093/2020 before the Hon'ble Apex Court against the above said order of the Hon'ble High Court.

10. Copy of the order dated 05.11.2020 in SLP (Civil) No.13093/2020 shows that the operation of the order dated 16.10.2020 passed by the Hon'ble High Court was stayed by the Hon'ble Apex Court.

11. Learned counsel for the applicant has vehemently relied upon the order dated 25.11.2020 passed by the Hon'ble Apex Court in the aforesaid SLP which reads as under: -

“IN ALL THE MATTERS EXCEPT 10396 OF 2020

Issue notice.

There would be stay of the operation of the impugned judgment and Order passed by the High Court till the disposal of the matters.

However, we clarify that the Appellate Authority under the Real Estate (Regulation and Development) Act, 2016 would be entitled to take up the appeal for hearing and decision on merits, in case there is no objection from the respondents.”

12. In the aforesaid order, the Hon'ble Apex Court has clarified that the Appellate Authority under the Act would be entitled to take up the appeal for hearing and decision on merits, in case there is no objection from the respondent. It is evident that the order passed by the Hon'ble Apex Court was applicable only to the cases which were the subject matter of the aforesaid SLPs and the appeals were pending before the Appellate Tribunal. In our opinion, this order passed by the Hon'ble Apex Court was not applicable to the appeals which had already been dismissed due to non-compliance of Section 43(5) of the Act. No direction has been given by the Hon'ble Apex Court in the order dated 25.11.2020 to revive or restore the appeals which have already been dismissed by the Appellate Tribunal due to non-compliance of the statutory provisions of Section 43(5) of the Act.

13. The applicant has tried to take undue advantage of the order dated 25.11.2020 passed by the Hon'ble Apex Court (Annexure A-3), even though the same was not applicable to this case. The applicant has un-necessarily wasted the valuable time of this Tribunal.

14. Consequently, the application moved by the applicant being without any merits is hereby dismissed with Rs.5,000/- as costs. The costs shall be deposited with the District Legal Services Authority, Panchkula within two weeks, failing which the District Legal Services Authority shall adopt the procedure as per law for recovery of the costs.

15. Copy of this order be communicated to parties, learned Haryana Real Estate Regulatory Authority, Panchkula and the Secretary, District Legal Services Authority, Panchkula for information and compliance.

16. The application along with this order be attached with the appeal file.

Announced:
September 17, 2021

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

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