

Awnindra Dutt Tiwari
v/s
BPTP Ltd.
Appeal No.1393 of 2019

Present: Shri Nitin Kant Setia, Advocate, Ld. counsel for the appellant.
Shri Hemant Saini, Advocate, Ld. counsel for the respondent.

The present appeal has been preferred against the order dated 16th October, 2019 passed by the Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called 'the Authority') whereby the complaint filed by the appellant along with other complaints was dismissed for non-prosecution.

2. Ld. counsel for the appellant contended that the complaint filed by the appellant has been dismissed in default just due to non-appearance on 16th October, 2019. He further contended that on that date he was held up in the Hon'ble High Court, Armed Forces Tribunal, NCLT, Chandigarh District Forum and District Court of Panchkula. He further contended that his associate had reached the office of the Ld. Authority at about 01:00 P.M. but by that time the impugned order was already passed. He further contended that the rights of the appellant are involved which require a decision on merits. A single absence should not be ground for such drastic step.

3. On the other hand, Shri Hemant Saini, Advocate, Ld. counsel for the respondent states that the Ld. Authority has given liberty to the appellant to file the fresh complaint, so the appellant has right to file the fresh complaint and there is no need for restoration of the complaint.

4. We have duly considered the aforesaid contentions for the parties. From the grounds of appeal, it comes out that the complaint filed by the appellant was taken up for the first time on 27th March, 2019 by the Ld. Authority on its own motion and the case was adjourned to 04th April, 2019. The parties were ordered to be informed the next date of hearing. On

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04th April, 2019 the respective replies were filed by the respondent and case was adjourned to 02nd May, 2019. On 02nd May, 2019 both the counsel for the parties were appearing before this Tribunal and their associates had requested the Ld. Authority for adjournment of the matter and the same was adjourned to 29th May, 2019. Thereafter, the date of hearing was changed to 25th July, 2019 and due to mix-up of the dates, the counsel failed to appear before the Ld. Authority on 25th July, 2019 and the matter was adjourned to 17th September, 2019. On that date, the rejoinder was filed and the case was listed for arguments on 16th October, 2019 when the impugned order was passed due to non-appearance of the counsel for the appellant.

5. From the proceedings narrated above, it comes out that the complainant or his counsel had failed to appear only on two dates i.e. 25th July, 2019 and 02nd May, 2019 which is stated to be due to change of the date and mixing of the cases. Thereafter, the counsel for the appellant appeared on 17th September, 2019 and had filed the rejoinder. The impugned order has been passed when the case was fixed for arguments. The interest of justice, requires that the rights of the party should be decided on merits rather than technicalities. Such a drastic step should not have been taken by the Ld. Authority due to non-appearance of Ld. counsel for the appellant only on one date when the case was fixed for arguments. The Ld. Authority should have waited for appearance of the counsel, so the matter should have been adjourned in the interest of justice.

6. Thus, keeping in view our aforesaid discussions, the impugned order cannot be sustained in the eyes of law. The appellant should have a chance to get his rights adjudicated on merits. The liberty to file the fresh complaint is not a substitution for restoration of the complaint

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already filed by the appellant as the complaint filed by the appellant has reached the stage of arguments after crossing all the stages. The fresh complaint will have to be started de novo.

7. Thus, keeping in view our aforesaid discussion, the present appeal is hereby allowed. The impugned order dated 16th October, 2019 is hereby set aside. The complaint filed by the appellant is ordered to be restored at its original number and the Ld. Authority will proceed further in accordance with law.

8. The parties are directed to appear before the Ld. Authority on 03rd April, 2020.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
09.03.2020

Inderjeet Mehta
Member (Judicial)
09.03.2020

Anil Kumar Gupta
Member (Technical)
09.03.2020