

M/s Cosmos Infra Engineering India (P) Ltd.

Vs.

Captain Promod Kumar Sharma

Appeal No.53 of 2022

Present: Sh. Gaurav Chopra, Ld. Senior Advocate with Sh. Reshabh Bajaj, Advocate, Ld. counsel for the appellant.

Sh. Sumit Mehta and Ms. Sanskriti Tyagi, Advocates, Ld. counsel for the respondent.

(The Court proceedings conducted through VC)

The present appeal has been preferred against the order dated 23.08.2021 vide which the defence of the appellant was struck off by the Ld. Adjudicating Officer, Gurugram.

Ld. Senior Counsel for the appellant has contended that practically the appellant was granted only one opportunity and on other dates, the complaint was adjourned due to Covid or otherwise.

On the other hand, Sh. Sumit Mehta, Ld. counsel for the respondent has contended that the complaint was filed by the respondent in the month of November, 2019 and notice of the same was issued to the appellant. Even as per the notice, they were required to file reply within 30 days, so they could have filed the reply well within time.

We have duly considered the aforesaid contentions.

We have perused the proceedings before the Ld. Adjudicating Officer (Annexure E). It shows that on various dates, the case has been adjourned due to Covid or otherwise. No doubt, as per practice of the Ld. Authority, they invite the reply in the notice itself. So, the appellant could have filed the reply with the office of Ld. Authority, even though the complaint was not taken up for hearing, but at the same time, the parties should have adequate opportunity to defend the case and the lis between the parties shall be decided on merits rather than technicalities.

It is settled principle of law that procedural law is hand maid to impart the substantial justice. It cannot be invoked to deny the adequate and proper opportunity to the parties.

Thus, keeping in view our aforesaid discussion, the present appeal is hereby allowed and the impugned order dated 23.08.2021 is hereby set aside. The appellant is granted one opportunity to file the reply subject to Rs.10,000/- as costs payable to the respondent/allottee. The reply should be filed within four weeks with the fora concerned.

Copy of this order be conveyed to parties/Ld. counsel for the parties and Ld. Authority/Ld. Adjudicating Officer for information and compliance.

File be consigned to the registry.

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

03.03.2022

Gaurav