

BEFORE THE HON'BLE MAHARASHTRA REAL ESTATE APPELLATE  
TRIBUNAL, MUMBAI

MISCELLANEOUS APPLICATION NO. OF 2020

IN

MISCELLANEOUS APPLICATION NO. 465 OF 2019

IN

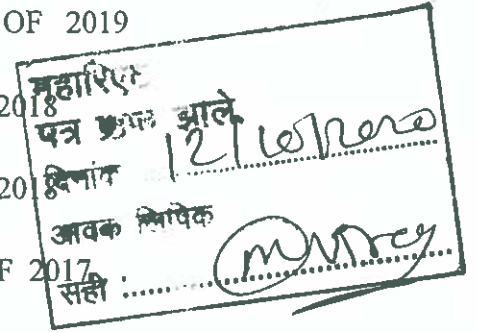
APPEAL NO. AT006000000010381 OF 2018

WITH

APPEAL NO. AT006000000010401 OF 2018

IN

COMPLAINT NO. CC006000000000693 OF 2017



Shahaji Baba Javir ... APPLICANT

IN APPEAL NO. AT006000000010381 :

Shahaji Baba Javir ... APPELLANT

Vs.

Asha Devi Mall ... RESPONDENT

IN APPEAL NO. AT006000000010401 :

Asha Devi Mall ... APPELLANT

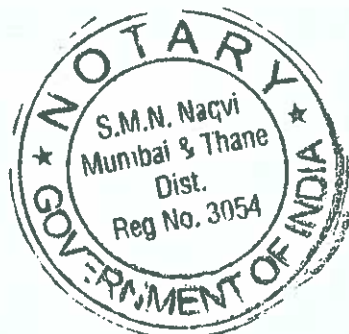
Vs.

Shahaji Baba Javir ... RESPONDENT

INDEX

Sr. No.	Annex	Particulars	Page No.
1.		Memo of Misc. Application to decide Misc. Appln. No. 465/2019 prior to hearing of Execution Application	259 - 262 07 - 04
2.	MA-1	Copy of judgment delivered by Hon'ble High Court in Second Appeal (St.) No. 14061/2019 in Civil Application No. 894/2019 filed by Larsen and Toubro Ltd. vs. Ms. Rekha Sinha	263 - 269 05 - 11
3.		Affidavit in Support	270 - 272 12 - 14
Last Page			272

*Vinod Joshi*  
**VINOD JOSHI**  
Advocate for Applicant



BEFORE THE HON'BLE MAHARASHTRA REAL ESTATE  
APPELLATE TRIBUNAL, MUMBAI

MISCELLANEOUS APPLICATION NO. OF 2020  
IN

MISCELLANEOUS APPLICATION NO. 465 OF 2019  
IN

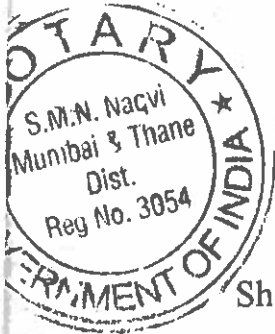
APPEAL NO. AT006000000010381 OF 2018

WITH

APPEAL NO. AT006000000010401 OF 2018

IN

COMPLAINT NO. CC006000000000693 OF 2017



Shahaji Baba Javir

... APPLICANT

IN APPEAL NO. AT006000000010381 :

Shahaji Baba Javir

... APPELLANT

Vs.

Asha Devi Mall

... RESPONDENT

IN APPEAL NO. AT006000000010401 :

Asha Devi Mall

... APPELLANT

Vs.

Shahaji Baba Javir

... RESPONDENT

APPLICATION TO DECIDE MISCELLANEOUS

APPLICATION NO. 465/2019 PRIOR TO

HEARING OF EXECUTION APPLICATION.

MAY IT PLEASE YOUR HONOUR :

*Shahaji*

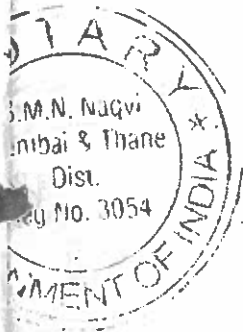
2

1. The Applicant, by way of Miscellaneous Application No. 465/2019, had requested this Hon`ble Court to recall the order passed by the Ld. Senior Judge and re-heard by the Division Bench as per provisions of section 43(3) of Real Estate Regulatory Act (RERA) and as per judgment dtd.1.10.2019 delivered by the Hon`ble Bombay High Court in the case of Man Global Ltd. vs. Bharat Prakash Joukani and Man Global Vs. Ram Prakash Joukani and also in the judgment by the Hon`ble Bombay High Court in Second Appeal (St.) No. 14845/2019 alongwith Civil Application No. 787/2019. The said Miscellaneous Application is pending before this Hon`ble Court.

2. The Applicant states that the Respondent is pressing hard to hear Execution Application. No doubt, the Respondent has every right to press his application before this Hon`ble Court. However, considering the change in circumstances, if at the first instance, the Miscellaneous Application No. 465/2019 filed by the present Applicant for recalling order is decided, then the question of deciding the Execution Application filed by the Respondent may not even arise.

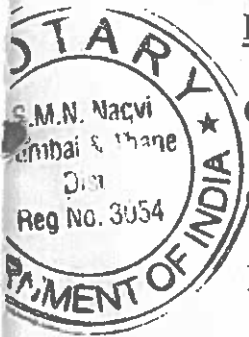
3. The Applicant states that the Appeal ought to be heard by the Division Bench afresh as the Applicant feels that he has good case on merits before this Hon`ble Court. It is, therefore, necessary that

Prakash



the said Application needs to be heard prior to hearing of Execution Application.

4. The Applicant states that the judgment dtd. 1.10.2019 delivered by the Hon`ble High Court in Second Appeal (St.) No. 14845/2019 alongwith Civil Application No. 787/2019 in has already been annexed with M.A. No. 465/2019. However, copy of another judgment delivered by the Hon`ble High Court in Second Appeal (St.) No. 14061/2019 in Civil Application No. 894/2019 filed by Larsen and Toubro Ltd. vs. Ms. Rekha Sinha is annexed hereto and marked as Exhibit MA-1. Therefore, in the interest of justice, this Hon`ble Court be pleased to hear the Miscellaneous Application for recalling order on the basis of said judgments delivered by the Hon`ble Bombay High Court and till than the execution proceedings may be kept in abeyance.



PLACE : MUMBAI

DATED : 10 /10/2020.

**VINOD JOSHI**  
Advocate for Applicant.

  
RESPONDENT

**VERIFICATION**

I, Shahaji Baba Javir, Age : 51 years, Proprietor of M/s. S.B. Enterprises Builders & Developers, residing at 303, Mitra Niwas, Shreerang CHS Ltd., C-1, 57A, Dist. Thane – 400 601, do hereby verify and solemnly state on oath that the above referred averments are true to my personal knowledge and belief and I have not suppressed any material fact from this Hon`ble Court.

Solemnly affirmed at Mumbai

this 10 day of October, 2020.

*Shahaji*  
(DEPONENT)

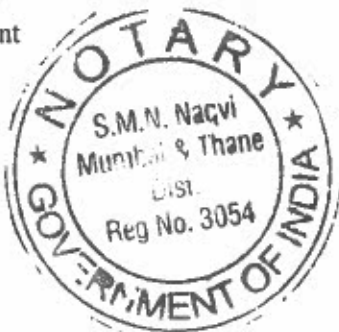
BEFORE ME.

*Vinod Joshi*

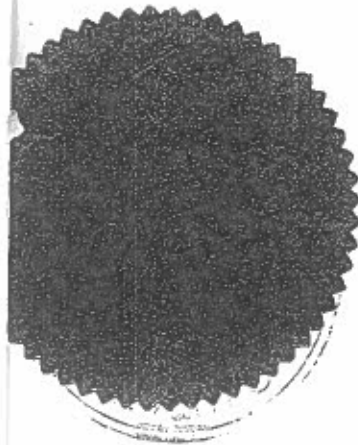
**VINOD JOSHI**  
Advocate for Applicant

**BEFORE ME**

*S.M.N.*  
12-10-2020  
**S. M. N. Naqvi**  
NOTARY  
Government of India,  
Mumbai & Thane Dist



No. 1044 P. No. 0247  
NOTARY Register. 454 Date. 12/10/2020



Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
SECOND APPEAL STAMP NO. 14061 OF 2019  
WITH  
CIVIL APPLICATION NO. 894 OF 2019

Larsen and Toubro Limited .. Appellant  
Vs.  
Ms.Rekha Sinha .. Respondent

Mr.Anand Pai a/w Mr.Nilesh Gala & Mr.Manish Gala i/b Law  
Square, for the Appellant.  
Ms.Samiksha Manek i/b PRA Law Offices, for the Respondent.

CORAM : M.S.KARNIK, J.

DATE : 17<sup>th</sup> OCTOBER, 2019

P.C. :

Heard learned Counsel for the appellant and the  
learned Counsel for the respondent.

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 ?



*Manish*

2. The Appeal is heard finally by consent of the parties. The issue involved in this Appeal is squarely covered by the decision rendered by learned Single Judge of this Court in Second Appeal Stamp No. 14845 of 2019 decided on 01/10/2019 in the case of **Man Global Limited Vs. Bharat Prakash Joukani**. Learned Single Judge was of the opinion that on plain reading of section 43(3) of the Real Estate (Regulation and Development) Act, 2016 (for short 'said Act'), the sole member of the Tribunal does not have jurisdiction to dispose of appeal or any application including even an application for condonation of delay in filing appeal. Learned Single Judge held that the order passed by the sole administrative member sitting singly is without jurisdiction and therefore the same is set aside.

3. As the issue involved in the present Appeal centres around section 43(3) of the said Act, it would be convenient to reproduce the same which reads thus:

“43(3) - Every bench of the Appellate Tribunal shall consist of atleast



*Prakash*

9

901. sast14061.19.doc

one Judicial Member and one Administrative or Technical Member.”

4. Learned Counsel for the respondent submitted that the view of the learned Single Judge may not be correct as the issue is decided without considering the provisions of section 55 of the said Act. According to learned Counsel the order passed by the Member of the Appellate Tribunal sitting singly would stand validated by operation of section 55. Section 55 reads thus :

“No act or proceeding of the Appellate Tribunal shall be invalid merely by reason of-

(a) any vacancy in, or any defect in the constitution of, the Appellate Tribunal, or

(b) any defect in the appointment of a person acting as a Member of the Appellate Tribunal; or

(c) Any irregularity in the procedure of the Appellate Tribunal not affecting the merits of the case.”

5. I see no reason to defer with the view taken by learned Single Judge as in my opinion, conjoint reading of section 43(3) and section 55 of the said Act will make it clear that orders passed by the Member of the Appellate Tribunal sitting singly will not stand validated by virtue of section 55 as this could violate the plain language of section 43(3) of the said

3/7

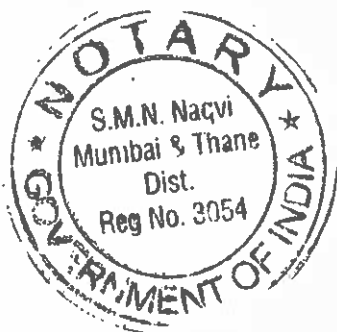


18/1/2018



Act. The Apex Court in **Gulzari Lal Agarwal Vs. Accounts Officer** reported in (1996) 10 Supreme Court Cases 590 held that every provision in the Act needs to be construed harmoniously with a view to promote the object and spirit of the Act but while doing so, no violence would be done to the plain language used in the section.

6. The next contention of the learned Counsel for respondent is that similar provision exists under the Consumer Protection Act, 1986 and that the Apex Court in the case of **Gulzari Lal Agarwal (supra)** by harmoniously construing the object of Consumer Protection Act validated similar such orders passed. In the present case, the issue that arises for consideration is whether the order passed by the Member of the Appellate Tribunal sitting singly is valid even though the requirement of sub-section 3 of section 43 of the said Act is that the bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member. **Gulzari Lal Agarwal** 's case, in my opinion is not an authority for



18/11/18

the proposition that arises for consideration in the present case and hence not applicable. The issue in **Gulzari Lal Agarwal's** case was whether the absence of the President of the Commission would render the Commission non-functional and whether the order passed by the Commission in the absence of the President is illegal and void. No doubt and as held by the Apex Court in **Gulzari Lal Agarwal's** case (*supra*) every provision in the Act needs to be construed harmoniously with a view to promote the object and spirit of the Act, however, Their Lordships have held that while doing so, no violence would be done to the plain language of the section.

7. The next submission urged by learned Counsel for the respondent is that the decision of the learned Single Judge of this Court in the case of **Man Global Limited** will have no application as the learned Single Judge was considering the fact situation where an order was passed by the Administrative Member alone whereas in the present case, the impugned order is passed by the Judicial Member sitting singly. In my opinion,



Final

this submission can only be stated to be rejected in view of the language used in sub-section 3 of section 43 of the said Act which does not make a distinction between a Judicial or Administrative Member and that it is for the composition of the Bench of the Appellate Tribunal the requirement of law is that it shall consist of at least one Judicial Member and one Administrative or Technical Member.

8. I do not see any reason to disagree with the view taken by learned Single Judge in **Man Global Limited**. The present Appeal therefore succeeds and is accordingly allowed with no order as to cost.

9. The impugned order dated 14/03/2019 passed by the Tribunal is set aside.

10. Matter is remitted back to the Tribunal for hearing the same afresh on its own merits and in accordance with law. All contentions on merits are kept open. The Tribunal is requested to hear the Appeal as expeditiously as possible.



*Signature*

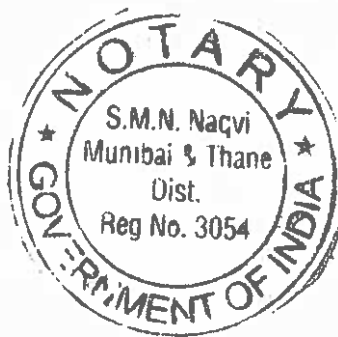
11. The parties to appear before the Appellate Tribunal on 05/11/2019 at 11.00 a.m.

12. In view of disposal of the Second Appeal, Civil Application does not survive and the same stands disposed of accordingly.

(M.S.KARNIK, J.)

Urmila  
P. Ingle

Digitally signed  
by Urmila P.  
Ingle  
Date: 2019.10.18  
16:24:17 +0530



b

BEFORE THE HON'BLE MAHARASHTRA REAL ESTATE APPELLATE  
TRIBUNAL, MUMBAI

MISCELLANEOUS APPLICATION NO. OF 2020  
IN  
MISCELLANEOUS APPLICATION NO. 465 OF 2019  
IN  
APPEAL NO. AT006000000010381 OF 2018  
WITH  
APPEAL NO. AT006000000010401 OF 2018  
IN  
COMPLAINT NO. CC006000000000693 OF 2017

Shahaji Baba Javir ... APPLICANT

IN APPEAL NO. AT006000000010381 :

Shahaji Baba Javir ... APPELLANT

Vs.

Asha Devi Mall ... RESPONDENT

IN APPEAL NO. AT006000000010401 :

Asha Devi Mall ... APPELLANT

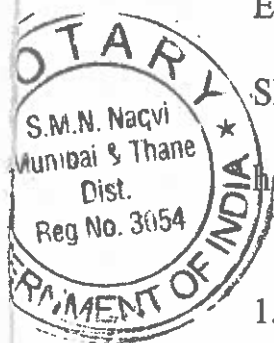
Vs.

Shahaji Baba Javir ... RESPONDENT

AFFIDAVIT IN SUPPORT

I, Shahaji Baba Javir, Age : 51 years, Proprietor of M/s. S.B. Enterprises Builders & Developers, residing at 303, Mitra Niwas, Shreerang CHS Ltd., C-1, 57A, Dist. Thane – 400 601, the Applicant herein, do hereby state on solemn affirmation as under :

1. I say that I am well conversant with the facts of the case and hence competent to depose by way of present Affidavit.



*Shahaji*

18

2. That the accompanying Misc. Application to decide Miscellaneous Application No. 465/2019 prior to hearing of Execution Application has been drafted under my instructions. I have gone through the Application and the contents therein are true and correct to my knowledge.

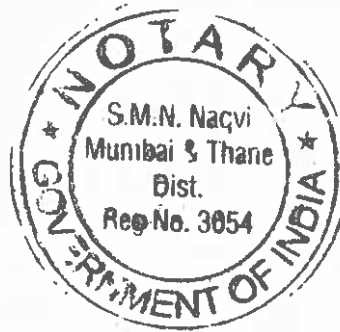
PLACE : MUMBAI

DATED : 10/10/2020.

  
APPLICANT



**VINOD JOSHI**  
Advocate for Applicant



H

VERIFICATION

I, Shahaji Baba Javir, Age : 51 years, Proprietor of M/s. S.B. Enterprises Builders & Developers, residing at 303, Mitra Niwas, Shreerang CHS Ltd., C-1, 57A, Dist. Thane – 400 601, the Applicant herein, do hereby verify and solemnly state on oath that the above referred averments are true to my personal knowledge. I have not suppressed any material fact from this Hon'ble Authority.

Solemnly affirmed at Mumbai

this 12 day of October, 2020.

*Shahaji Baba Javir*  
(DEPONENT)

BEFORE ME.

*Vinod Joshi*

**VINOD JOSHI**  
Advocate for Applicant

BEFORE ME  
*S.M.N. Naqvi*  
12.10.20

**S. M. N. Naqvi**  
NOTARY  
Government of India,  
Mumbai & Thane Dist.



No. 1044 P. No. 042  
NOTARY Register. 454 Date 12/10/2020

