

BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI
Misc. Application No. 18/19
In
Appeal No. AT00600000010473

M/s. Abott Anthony QuinnyAppellant

V/s.

Mr. Mangilal R. Jain & Ors.)Respondent

CORAM : **SUMANT KOLHE, MEMBER (J)**
S. S. SANDHU, MEMBER(A)

DATE : **25th OCTOBER, 2019.**


ORDER : (PER S.S. SANDHU, MEMBER(A))

This application is filed by the allottee applicant to restore the captioned appeal dismissed for default by this Tribunal on 30th January, 2019. The said order reads as follows:

"Called.
None for the appellant.
Keep back.
Called at 12.35 P.M.
Second time none appears for appellant.
On 5th September, 2018 and 18th January, 2019 also none appeared for appellant. Today even on second call, appellant is absent.
Appeal stands dismissed for default.
No costs."

2. The learned counsel for applicant submits that he remained absent in the hearing of appeal before the designated Appellate Tribunal on 5th September, 2018. He could not get the next date


despite enquiries. However, it later turned out that notice was sent on email dated 16th January, 2019 for the hearing on 18th January, 2019. As he is an elderly person unfamiliar with the use of electronic media and having no access to computers/emails on regular basis and since there was no any physical notice, he was not in a position to appear on the appointed dates for hearing. He came to know of the dismissal of his appeal on 22nd February, 2019 and filed the instant application for restoration on 16th March, 2019. He further submits that there is no malafide on his part and his absence was unintentional. He pleaded that he has a good case on merits and therefore considering the aforesaid facts the appeal be restored in the interest of natural justice.



3. Opposing the plea for restoration, the learned Counsel for Non-applicant argues that once the email address is shared by applicant for communication with him it is necessary for him to access and refer to intimations received for appearing in the matter. Besides Advocate of the applicant also has to keep track of the proceedings in appeal. He, therefore, argued to reject the application for restoration.

4. Considered the rival submissions and also perused the record of proceedings that culminated in dismissal of the appeal. The facts on record in the office reveal that the appeal was first listed on 5th September, 2018 before the designated Appellate Tribunal. In the order recorded on the said date the applicant is

shown to be absent despite communication dated 30th August, 2018. The matter was, therefore, adjourned to 27th September, 2018. It is also directed therein to Respondent and the MahaRERA to inform applicant to appear on the adjourned date failing which the appeal shall be dismissed. On 24th September, 2018 an email is sent by office to applicant informing postponement of the date. It is also mentioned that next date of hearing will be communicated shortly. In reply to this, the applicant requested for informing him of the next date. The facts obtained from record further reveal that appeal was taken up for hearing thereafter only on 18th January, 2019 after formation of the Tribunal by giving notice dated 15th January, 2019. Since the applicant remained absent on the said date and also on the subsequent dates i.e. 25th January, 2019 and 30th January, 2019 the appeal came to be dismissed in default on 30th January, 2019.




5. From the above facts, it appears that no hearing took place immediately after adjourning the matter listed on 27th September, 2019. The matter was listed next only on 18th January, 2019. In the intervening period, this Tribunal became functional from 24th December, 2019. This being the initial phase of the Tribunal, the administrative processes had not fully stabilized and, therefore, in such circumstances it seems uncertain that the notice dated 15th January, 2019 for hearing on 18th January, 2019 has actually been received by the applicant. As a result it is likely that for want of

-: 4 :-

receipt of this notice, he could not appear in the hearing on 18th January, 2019. We also find that there was no notice sent after the last notice dated 15th January, 2019 sent for hearing listed on 18th January, 2019. It therefore, also implies that in case the applicant has missed to receive the notice dated 15th January, 2019 he had no occasion to be in the notice for the hearings fixed on 18th January, 2019 and thereafter till his appeal was dismissed in default on 30th January, 2019.

6. Having regard to the above facts and circumstances, it appears that on account of transitional phase subsequent to formation of this Tribunal, the applicant was not in receipt of sufficient and proper notice for the hearings scheduled by the Tribunal. Therefore, he was unable to appear on the dates fixed for hearing resulting in dismissal of his appeal in default. This has resulted in depriving him of the natural justice. Therefore, we are of the considered view that in the circumstances enumerated hereinabove, the case of the applicant deserves to be considered sympathetically and to be decided on merits in the interest of justice.

7. Accordingly, the application for restoration of appeal is allowed and the appeal stands restored to its original stage. No costs.


(S. S. SANDHU)
MEMBER(A)


(SUMANT KOLHE)
MEMBER(J)