

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 221 OF 2026

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Hubtown Ltd.

..Appellant

Versus

Smitesh Shivaji Patil

...Respondent

WITH
INTERIM APPLICATION NO. 3411 OF 2026
IN
SECOND APPEAL NO. 221 OF 2026

Mr. Rubin Vakil, a/w Mr. Sriraj Menon, Mr. Shubham Hundia,
Mr. Sandesh Panchal i/b Satyaki Law Associates, for the
Appellant.

CORAM : N. J. JAMADAR, J.

DATE : 22nd July 2026

ORDER :

1. Heard the learned Counsel for the parties.
2. This appeal is directed against an order dated 05th March, 2026 passed by the Maharashtra Real Estate Appellate Tribunal ("Appellate Tribunal"), whereby an application filed by the Respondent – Allottee for condonation of delay in filing an application for restoration of Miscellaneous Application No.472/2024 for condonation of delay in filing the appeal, came to be allowed and, consequently, the application for restoration of the Miscellaneous Application also came to be allowed.

3. The Respondent – Allottee had filed a complaint before the Maha RERA seeking relief under Section 18 of the Real Estate Regulatory Authority Act, 2016 (“RERA, 2016”). By an order dated 23rd April, 2024, Maha RERA dismissed the complaint.

4. Being aggrieved, the Respondent – Allottee preferred an appeal before the Appellate Tribunal alongwith an application, being Miscellaneous Application No.472/2024, seeking condonation of 25 days delay in filing the appeal. As the respondent did not appear before the Appellate Tribunal, by an order dated 03rd July, 2025, the Appellate Tribunal rejected the said application for want of prosecution and, consequently, the appeal also stood disposed.

5. The Respondent filed an application for restoration of the delay condonation application and the appeal, being Miscellaneous Application No.1108/2025, alongwith an application for condonation of delay in filing the restoration application being Miscellaneous Application No.1109/2025.

6. After hearing the parties, the Appellate Tribunal was persuaded to allow the applications observing that, under Regulation 25 of the Maharashtra Real Estate Appellate Tribunal Regulations, 2019 (“Regulations, 2019”), the Appellate Tribunal has inherent powers to pass such orders as may be

necessary for meeting the ends of justice. In the opinion of the Appellate Tribunal, the Respondent had ascribed a sufficient cause for the condonation of delay.

7. Being aggrieved, the appellant – promoter is in Second Appeal.

8. Mr. Vakil, the learned Counsel for the appellant, submitted that, the Appellate Tribunal has committed a jurisdictional error in restoring the application for condonation of delay as the Tribunal has no power to restore the proceedings dismissed in default. It was submitted that, under Section 53(4) of the RERA, 2016, the Appellate Tribunal has been vested with the powers of the Civil Court in respect of the specified matters. Though the Appellate Tribunal is empowered to dismiss an application for default or proceed *ex parte*, yet the Appellate Tribunal has not been conferred with the power to restore a proceeding dismissed in default.

9. Reliance on the Regulation 25 by the appellate Tribunal was, according to Mr. Vakil, inapposite as the Tribunal can adopt a procedure only in conformity with the provisions of the RERA, 2016 or the Rules framed thereunder. In substance, the Appellate Tribunal cannot act in derogation of the provisions of RERA, 2016, Rules and Regulations framed thereunder.

10. Mr. Vakil further submitted that, the Appellate Tribunal being a creature of a statute with limited jurisdiction, cannot assume inherent powers like a Civil Court. Secondly, Mr. Vakil would urge, the exercise of discretion to condone the delay was also not in conformity with the settled position in law. The Respondent had failed to ascribe a justifiable cause. On this count as well, according to Mr. Vakil, a substantial question of law arises for consideration.

11. I have given anxious consideration to the submissions canvassed by Mr. Vakil, especially on the aspect of the jurisdictional competence of the Appellate Tribunal to restore a proceeding dismissed in default.

12. At the outset, it is necessary to note that, the Appellate Tribunal is unshackled by the strictness of the procedure prescribed under the Code of Civil Procedure, 1908 ("the Code, 1908"). Section 53(1) thus declares that, the Appellate Tribunal shall not be bound by the procedure laid down by the Court but shall be guided by the principles of natural justice.

13. The conferment of the powers of the Civil Court under sub-section (4) of Section 53 of RERA, 2016 in specified matters, cannot be construed to restrict the generality of the provisions contained in Section 53(1) of the RERA, 2016. It cannot be urged

that, the Appellate Tribunal can exercise only those powers that are specified under Section 53(4) of the RERA, 2016. Had that been the intent of the Parliament, Section 53(1) would not have declared in no uncertain terms that the Appellate Tribunal shall be guided by the principles of natural justice in its determination. Moreover, sub-section (2) of Section 53 of the RERA, 2016 empowers the Appellate Tribunal to regulate its own procedure; of course subject to the provisions of that Act. I am, therefore, not inclined to accede to the submission of Mr. Vakil, premised on the constricted reading of Section 53(4) of the RERA, 2016.

14. The broad proposition canvassed by Mr. Vakil that, the Appellate Tribunal has no power to restore the proceeding dismissed in default, cannot be readily acceded to for a more fundamental reason. Undoubtedly, the Appellate Tribunal is a creature of a statute. However, the Appellate Tribunal cannot be stripped of the powers which are necessary, ancillary and concomitant for the discharge of its functions to achieve the object of RERA, 2016. To confine the powers of the Appellate Tribunal within the limited sphere of the specified matters under Section 53(4) of the RERA, 2016, would amount to

denuding the Appellate Tribunal of the authority to adjudicate the matters effectively and in a just manner.

15. In a sense, the power to restore a proceeding dismissed in default is a necessary corollary of the power to dismiss the proceeding, in the first place. The power of restoration is implicit in the power of dismissal unless specifically proscribed. When the Appellate Tribunal is to be guided by the principles of natural justice in its determination, it cannot be urged with authority that, the Appellate Tribunal cannot restore a proceeding dismissed in default, where it finds that, the cause of justice and equity would be better subserved by restoring the proceeding dismissed in default.

16. A useful reference, in this context, can be made to a judgment of the Supreme Court in the case of *New India Assurance Co. Ltd. Vs. R. Srinivasan*¹, wherein the question of maintainability of the second complaint, when the first was dismissed in default and an application for restoration thereof was also rejected, arose for consideration. The Supreme Court, after extracting to the dictum of Mahmood, J., in his dissenting judgment in the Full Bench case of *Narsingh Das v. Mangal Dubey*², enunciated the law as under :-

1 (2000) 3 SCC 242

2 ILR(1883) 5 ALL 163

“17. But that is not the end of the matter. Mahmood J. in his dissenting judgment in the Full bench case of Narsingh Das v. Mangal Dubey observed:

“[The courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle, prohibitions cannot be presumed, and in the present case, therefore, it rests upon the defendants to show that the suit in the form in which it has been brought is prohibited by the rules of procedure applicable to the courts of justice in India.”

18. We only intend to invoke the spirit of the principle behind the above dictum in support of our view that every court or judicial body or authority, which has a duty to decide a lis between two parties, inherently possesses the power to dismiss a case in default. Where a case is called up for hearing and the party is not present, the court or the judicial or quasi-judicial body is under no obligation to keep the matter pending before it or to pursue the matter on behalf of the complainant who had instituted the proceedings. That is not the function of the court or, for that matter of a judicial or quasi-judicial body. In the absence of the complainant, therefore, the court will be well within its jurisdiction to dismiss the complaint for non-prosecution. So also, it would have the inherent power and jurisdiction to restore the complaint on good cause being shown for the non-appearance of the complainant.”

(emphasis supplied)

17. The Supreme Court has, thus, enunciated in clear and explicit terms that, in the absence of the complainant, the Court/Tribunal would be within its jurisdiction to dismiss the complaint for want of prosecution and it would also have the inherent power and jurisdiction to restore the complaint on good cause being shown for the non-appearance of the complainant.

18. Mr. Vakil's further submission premised on the principle that, Appellate Tribunal, being a creature of a statute with limited jurisdiction, cannot restore the proceeding dismissed for want of prosecution, also does not carry much substance. As noted above, the principle of the Appellate Tribunal being a quasi judicial body with limited jurisdiction cannot be stretched too far to the point of absurdity. Necessary and concomitant powers to discharge the functions for the advancement of the object of the statute, under which such Tribunal is created, must be conceded to the Tribunal.

19. This principle was expounded by the Supreme Court in the case of *Union of India & anr. Vs. Paras Laminates (P) Ltd.*³, wherein the Supreme Court exposted that the powers of the Tribunal created under the Customs Act, 1962 were no doubt limited. Its area of jurisdiction was clearly defined, but within

3 (1990) 4 SCC 453

the bounds of its jurisdiction, the Tribunal has all the powers expressly and impliedly granted. The implied grant is, of course, limited by the express grant and, therefore, it can only be such powers as are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective. As stated in *Maxwell on Interpretation of Statutes* (11th edn.) “where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution.”

20. Lastly, a profitable reference, in this context, can be made to the judgment of the Supreme Court in the case of ***Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal & ors.***⁴, wherein the Supreme Court held that, the Industrial Tribunal was competent to set aside its *ex parte* award if it was satisfied that the aggrieved party was prevented from appearing before the Tribunal by a sufficient cause. The observations of the Supreme Court in Paragraph No.6 are instructive and, hence, extracted below :-

“6. We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no

4 1980 (Supp) SCC 420

express provision in the Act or the rules framed thereunder giving the Tribunal jurisdictional to do so. But it is a well known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary.”

(emphasis supplied)

21. Aforesaid being the position in law, *de hors* the powers conferred under Regulation 25 of the Regulations 2019, in the considered view of this Court, the Appellate Tribunal has the inherent power to restore the proceeding dismissed in default as such power is essentially necessary for the discharge of its functions for the purpose of advancing the object of the RERA 2016. I am, therefore, not persuaded to agree with the submission of Mr. Vakil that, the question of jurisdictional competence of the Appellate Tribunal, merits consideration as a substantial question of law, within the meaning of Section 100 of the Code, 1908.

22. On the aspect of the exercise of discretion to condone the delay, suffice to note, the Appellate Tribunal, upon appraisal of the averments in the application and the documents in support thereof, has exercised the positive discretion to condone the delay. It is trite, once the Court of first instance exercises a positive discretion to condone the delay, the Appellate Court or the Court exercising supervisory jurisdiction ought not to lightly interfere with such exercise of positive discretion unless the order can be said to be perverse or the delay has been condoned sans any reason. **[N. Balakrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123]**. Thus, on this count, no question of law, much less a substantial question of law, arises for consideration.

23. Resultantly, the appeal deserves to be dismissed.

24. Hence, the following order :-

:: O R D E R ::

- i) The Second Appeal stands dismissed.
- ii) In view of the dismissal of the Second Appeal, the Interim Application also stands disposed.

[N. J. JAMADAR, J.]