IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.408 OF 2025
WITH
INTERIM APPLICATION NO.9498 OF 2025
IN
SECOND APPEAL NO.408 OF 2025

Keyana Estate LLP ...Appellant

V/s.

Ashok D. Karwa and Anr. ...Respondents

Mr. Aniket Deshmukh *with Mr. Sumeet Tyagi and Ms. Rajvi Choksi for the Appellant.*

Mr. Nilesh Gala *with Mr. Manish Gala, Mr. Minil Shah i/b. Mr. Nilesh Gala for the Respondents.*

CORAM: SANDEEP V. MARNE, J.

DATED: 21 OCTOBER 2026.

Oral Judgment:

1) The Appeal challenges order dated 19 March 2025 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai, directing that the Appellate Tribunal would proceed to decide merits of the appeal instead of remanding the proceedings to the Regulatory Authority for adjudication.

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2) After briefly hearing the Appeal, the same is admitted on following substantial question of law:-

> When the regulatory authority makes an order holding that the Complaint is not maintainable without deciding the Complaint on merits and when the Appellate Tribunal disagrees with the decision of the Regulatory Authority, whether Appellate Tribunal can itself proceed to decide merits of the Complaint or whether it is necessary to remand the Complaint for adjudication on merits to the Regulatory Authority?

With the consent of the learned counsel appearing for the parties, the Appeal is taken up for final hearing. Accordingly, both the learned counsel have been heard extensively on the above substantial question of law framed.

3) In the present case, Maharashtra Real Estate Regulatory Authority (MahaRERA) proceeded to dismiss the Complaint filed by the Respondent-allottees only on the ground that there is an arbitration clause in the agreement. The Complaint was thus dismissed on the ground of maintainability. The allottee has filed Appeal No. AT00600000214962 of 2024 before the Appellate Tribunal challenging MahaRERA's order dated 2 April 2024. After being satisfied that the Complaint is maintainable in law, the Appellate Tribunal has directed that it would decide the appeal on merits rather than remanding the compliant for adjudication on merits there of by the MahaRERA.

4) Ordinarily, when the Suit is dismissed on a preliminary point without going into the merits of the dispute and if the Appellate Court

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does not agree with the decision of the Trial Court, the Suit/proceedings deserve to be remanded for decision on merits by the Trial Court. The Appellate Court cannot itself proceed to decide merits of the case or else one remedy of the aggrieved party of filing appeal on merits of the decision gets curtailed. To illustrate, if in a suit Defendant files an application seeking rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908, and the Trial Court rejects the complaint resulting into a decree. The Plaintiff files appeal before the Apex Court challenging the decree of the Trial Court and the Appellate Court does not agree with decision of rejection of plaint by the Trial Court and holds that the Suit is maintainable before the Trial Court. In such situation can the Appellate Court proceed ahead to decide merits of the suit? The answer, to my mind, appears to be in the emphatic negative. In such a situation the only course of action left for the Appellate Court is to remand the Suit for decision on merits before the Trial Court. Once the Appellate Court decides the issue of maintainability of proceedings, it cannot itself adjudicate merits of the dispute when merits are not adjudicated by the Trial Court. If the Appellate Court itself adjudicates merits of the case, party aggrieved by decision of the Appellate Court would lose right of filing one appeal and will have to directly file a second appeal before the High Court.

5) Appeal is a statutory remedy which cannot be curtailed by the Appellate Court/Tribunal by undertaking decision on merits of the case for the first time. Merits of the case need to be adjudicated by the Court of first instance and the Appellant Court can only sit in appeal over such adjudication. Therefore any decision by the Appellate Court/Tribunal on

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merits, in absence of adjudication thereon by the Trial Court, would vitiate the decision of the Appellate Court/Tribunal. Convenience of parties or their advanced ages cannot be a factor for the Appellate Court/Tribunal to usurp the power of adjudication by the Trail Court. The supervisory and corrective jurisdiction of Appellate Court does not permit it to act as if it is an originating Court. The higher Court cannot bypass the entire layer of judicial machinery by deciding the question for the first time in appeal.

6) In the present case, the MahaRERA did not adjudicate the complaint on merits and proceeded to dismiss the same only on the issue of maintainability. The Appellate Tribunal has disagreed with the decision of the MahaRERA and has held that Complaint filed by allottees is maintainable notwithstanding incorporation of arbitration clause in the agreement. Once the Complaint is held to be maintainable, the Appellate Tribunal ought to have remitted the Complaint to MahaRERA for its decision on merits. It appears that similar course of action has in fact been adopted by the Appellate Tribunal in ***Smt. Sunita Singh and Anr. V/s. Keyana Estate LLP*** [1]***.*** However just because the complainants are senior citizen, the Appellate Tribunal has directed that it would decide the merits of the complaint.

7) Mr. Gala, the learned counsel appearing for the Respondent-promoter has relied on judgment of the Apex Court in ***Nadakerappa Since Deceased by LRs and Ors. Vs. Pillamma since deceased by LRs and***

1 Appeal No.AT00600000000214983 of 2024 decided on 24 March 2025.

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Ors. [2] in which the Apex Court held in paragraph 25 of the judgment as under:-

> 25) The Division Bench, without assigning any cogent reasons, has set aside the order of the learned Single Judge and has remanded the matter to the Land Tribunal. It is settled law that the order of remand cannot be passed as a matter of course. An order of remand cannot also be passed for the mere purpose of remanding a proceeding to the lower court or the Tribunal. An endeavour has to be made by the Appellate Court to dispose of the case on merits. Where both the sides have led oral and documentary evidence, the Appellate Court has to decide the appeal on merits instead of remanding the case to the lower court or the Tribunal. We are of the view that, in the instant case, the Division Bench has remanded the matter without any justification.

8) In my view, the ratio of the judgment of the Apex Court in ***Nadakerappa*** (supra) has no application to the issue involved in the present Appeal. ***Nadakerappa*** (supra) is an authority on the principle that once the Trial Court decides the suit on merits, the Appellate court cannot make a routine order of remand for fresh adjudication of the Suit when it is already seized of entire evidence/ material on record. The judgment in ***Nadakerappa*** (supra) would not apply in a situation where the suit is dismissed by the Trial Court on preliminary point without adjudication on merits. It is well settled principle of law that judgment is an authority for what it decides and not what can be logically deduced therefrom. Therefore, judgment in ***Nadakerappa*** (supra) cannot be interpreted to mean that even in case where the Trial Court dismisses the Suit, on preliminary point without deciding the merits of the Suit, the Appellate court is still prohibited from remanding the suit for adjudication on merits. On the contrary the law requires the Appellate

2 Civil Appeal Nos.7657 of 2017 decided on 31 March 2022

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Court to remand the proceedings to the Trial Court and not to venture into merits of the dispute.

9) In view of the above discussion, the question of law is answered by holding that since MahaRERA dismissed the Complaint on the issue of maintainability, the only course of action open for Appellate Tribunal was to remand the Complaint for adjudication on merits after holding that decision of MahaRERA about maintainability of the Complaint was erroneous. In is not open for the Appellate Tribunal to itself undertake adjudication of the Complaint on merits.

10) Second Appeal accordingly succeeds and I proceed to pass the following order.

(i) Order dated dated 19 March 2025 passed by the Maharashtra Real Estate Appellate Tribunal in Appeal No. AT00600000214962 of 2024 is set aside.

(ii) Complaint No.CC0600000094344 is remanded before the MahaRERA for adjudication thereof on merits.

(iii) MahaRERA shall decide the remanded Complaint as expeditiously as possible, preferably within a period of six weeks without seeking any extension, particularly in view of the fact that the Complainants are senior citizens.

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(iv) Parties shall appear before the MahaRERA on 23 October 2026 alongwith copy of this order downloaded from website of this Court and shall apply for fixation of dates of hearing for decision of remanded complaint.

(v) All contentions of the parties on merits are expressly kept upon.

11) Second appeal is accordingly allowed and **disposed of**. There shall be no order as to costs.

12) In view of disposal of the Second Appeal, Interim Application does not survive and hence stands disposed of.

[SANDEEP V. MARNE, J.]

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