



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

**S.B. Civil Second Appeal No. 72/2022**

Trehan Apna Ghar Buildwell Private Limited through its Director/  
Authorised Signatory

----Appellant

Versus

Munish Ranjan Sahay

----Respondent

**Connected with**

**S.B. Civil Second Appeal No. 68/2022**

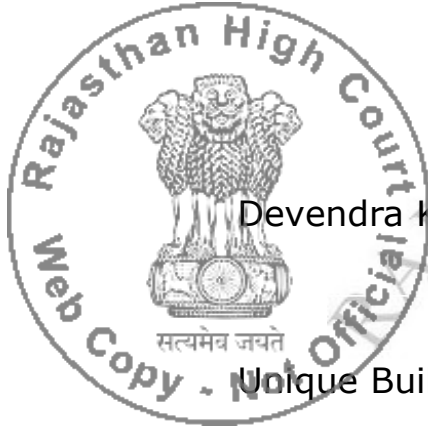
Devendra Kumar Indora S/o Mr. Bhanwar Lal Indora

----Appellant

Versus

Unique Builders Ganesh

----Respondent



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For Appellant(s)

: Mr. Pradeep Kumar Choudhary with  
Mr. Samkit Jain, Mr. Karan Audichya  
Mr. Mitesh Rathore, Ms. Shruti Rai  
and Ms. Saloni Dagur  
Mr. Yash Joshi  
Mr. Ridhvick Dosi

For Respondent(s)

: Mr. Rubal Tholia for  
Mr. Harshal Tholia

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**HON'BLE MR. JUSTICE SUDESH BANSAL**

**Order**

**06/04/2022**

1. Both these appeals have been filed under the provision of Section 58 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "RERA Act"). The registry has registered both appeals as second appeals and Court fees of Rs.1000/- in both appeals paid by appellants has been reported as sufficient.



2. Since Section 58 of the RERA Act, 2016 do not specifically provide the nature of appeal as to second appeal and further under the provision of RERA Act and Rajasthan Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the RERA Rules, 2017"), there is no provision for making valuation of dispute and for quantum of Court fees payable on appeal filed under Section 58 of the RERA Act, hence, two issues fall for consideration by this Court :-

"(1) The appeal filed under Section 58 of the RERA Act, 2016 be registered under which category of appeals before the High Court of Judicature for Rajasthan.

(2) How much Court fees is payable on appeal filed under Section 58 of the RERA Act, 2016 before the High Court?"

3. In order to adjudicate the issue No.1 regarding registration of category/ nature of appeal, it is necessary to look into the provision of Section 58 of the RERA Act.

4. Section 58 of the RERA Act, 2016 reads as under:-

**"58. Appeal to High Court.—**(1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

*Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.*

*Explanation.—The expression "High Court" means the High Court of a State or Union territory where the real estate project is situated.*



*(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties."*

5. From perusal of provision of Section 58 of the RERA Act, it stands clear that the appeal can be entertained by the High Court only on the ground as specified under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred as "the Act of 1908").

6. It has been canvassed before this Court that the High Court of Allahabad, High Court of Punjab and Haryana, High Court of Chhattisgarh, High Court of Karnataka, High Court of Bombay and High Court of Madhya Pradesh, in their states have directed to register appeals filed under Section 58 of the RERA Act in different categories like "RERA Appeal", "Civil Misc. Second Appeal", "Civil Second Appeal" or "Civil Misc. Appeal". However proposition of law is clear that although appeals may have been allowed to be registered in different categories, nevertheless, the High Courts are ad idem that according to provision of Section 58 of the RERA Act, the appeal can be maintained/entertained only on the grounds as specified under Section 100 of the Act of 1908, it means on involvement of any substantial question of law in the appeal.

7. Section 100 of the Act of 1908 prescribes second appeal from appellate decrees. Section 100 of the Act of 1908 envisages that an appeal shall lie to the High Court, from every decree passed in appeal by any Court, subordinate to the High Court, if High Court is satisfied that case involves a substantial question of law. From perusal of provision of Section 100 of the Act of 1908, the proposition of law clearly emerges that in order to file a second appeal before the High Court, the order/decision passed by the Appellate Court/Authority should follow two ingredients:-



"(i) The Appellate Court/Authority/Tribunal should be subordinate to the High Court.

(ii) The decision or order passed by the Appellate Court/Authority/Tribunal should be a decree."

8. The RERA Act, 2016 has been promulgated by legislatures to establish Real Estate Regulatory Authority for regulation in promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.

9. The Appellate Tribunal established under the RERA Act, 2016 is judicial form and creature of a special statute. It is well known principle of law that the Tribunal established under any special Act cannot be called a Court like Civil Court as there is a clear distinction between the Tribunal and the Court.

10. The term "decree" is not defined under the of the Act of 2016 and nor it is defined under any other statue including General Clauses Act, 1897 and for that the Court has to consider definition of decree as defined under Section 2(2) of the Act of 1908. As per Section 2(2) of the Act of 1908, the decree means a formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines rights of parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. Though, the definition also





includes rejection of plaint and order passed under Section 144 but here this Court is not concerned with that aspects of decree.

11. According to procedure prescribed under the RERA Act, provision of the Code of Civil Procedure, 1908 are not strictly applicable. Further proceedings under the RERA Act are initiated either suo moto or on complaint/ representation. Such proceedings under the RERA Act may not be treated in the nature of civil suit instituted before Civil Court by way of filing a plaint which ultimately after adjudication on merits culminates into passing a decree. Further it may be notices that adjudicating officer, the RERA Authority or the Appellate Tribunal may pass any order or decision on the dispute or appeal brought before them which may be either may be of an interim or final nature. Although under Section 58 of the RERA Act, the order or decision of Appellate Tribunal has not been termed as decree, however, by virtue of section 57 of the RERA Act, the order or decision passed under the RERA Act is executable and enforceable as a decree of Civil Court. Even if, it is assumed for a moment that final order or decision either passed by the adjudicating officer, RERA Authority or Appellate Tribunal under the RERA Act, if determines the rights of parties and partake a character of decree then also, the issue before this Court for consideration is about to consider the category and nature of appeal preferred before the High Court against the order or decision of Appellate Tribunal under the RERA Act, hence, a elaborate discussion about the aspect that the final order or decision under RERA Act falls within category of decree or not, is not required to be made, to decide the issue involved herein.



12. In order to determine as to what nature of appeal should be registered before the High Court of Judicature for Rajasthan, against the decision or order of Appellate Tribunal under the Act of 2016, other relevant status where statutory appeal is provided before the High Court are required to be examined.

13. Section 30 of Employees Compensation Act, 1923 (hereinafter referred as "the Act of 1923") also provides appeals before the High Court against orders of Commissioner as mentioned therein. Section 30 of the Act of 1923, provided that "No appeal shall lie against any order unless a substantial question of law is involved in the appeal, and in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in that appeal is not less than ten thousand rupees or such higher amount as the Central Government may, by notification in the Official Gazette, specify."

Thus, appeals instituted under Section 30 of the Act of 1923 can be entertained only on involvement of substantial question of law in appeal. It has been noticed by this Court that, in the High Court of Judicature for Rajasthan, appeals filed under Section 30 of the Act of 1923, assailing orders of Commissioner are registered as "Civil Misc. Appeal".

14. As per Section 260-A of the Income Tax Act, 1961, the appeal against the order passed by the Appellate Tribunal under the Income Tax Act also lie before the High Court, if the High Court is satisfied that the case involves substantial question of law. It has been noticed by this Court that, in the High Court of Judicature for Rajasthan, appeals filed under Section 260-A of the Income Tax, 1961, assailing orders of the Appellate Tribunal under the Income Tax are registered as "Civil Misc. Appeal".



15. Section 49 of the Prohibition of Benami Property Transaction Act, 1988 (hereinafter referred as "the Act of 1988) provides that appeal to High Court against a decision or order passed by either Appellate Tribunal under the Act of 1988. Sub-Section 3 of Section 49 of the Act of 1988 stipulates that where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and Sub-Section 4 of Section 49 says that appeal shall be heard only on the question so formulated, and the respondents shall, at the time of hearing of appeal, be allowed to argue that the case does not involve such question. It has been notices by this Court that appeals filed under Section 49 of the Act of 1988 before the High Court of Judicature for Rajasthan against the decision or order of the Appellate Tribunal, are registered as "Civil Misc. Appeal".

16. Although a question also arises as to whether the appeal under Section 58 of the RERA Act should be heard by the Single Bench or Division Bench, for that Rule 55 of the Rajasthan High Court Rules 1952 (hereinafater referred as "the Rules of 1952") can be relied upon which reads as under:-

**"55. Jurisdiction of a Single Judge.- Except as provided by these Rules or other law, the following cases shall ordinarily be admitted, heard and disposed of by a Judge sitting alone, namely;**

(i) a motion for the admission of a memorandum of appeal or cross-objection or an application for exparte interim order;

**(ii) a civil appeal;**

(iii) an execution appeal;

(iv) a civil revision;

(v) a suit for proceedings in the nature of a suit coming before the Court in the exercise of its original or extraordinary civil, testamentary or matrimonial jurisdiction including a proceedings under The India Trusts Act, 1882 (Act No.II of 1882), The Companies Act, 1956 (Act No.I of 1956), The Designs Act, 1911



(Act No.II of 1911) or The Patents Act, 1970 (Act No.39 of 1970);

(vi) a reference under Section 243 of the Rajasthan Tenancy Act, 1955 (Act No.III of 1955);

(vii) a case or proceedings under Section 30 of the Rajasthan High Court Ordinance, 1949 (Ordinance No.XV of 1949);

(viii) a criminal appeal, application or reference under the Code of Criminal Procedure, 1973 or any other law except an appeal, application or reference in a case in which a sentence of death or imprisonment for life has been passed and in criminal matters against acquittal arising out of offences punishable only with death or imprisonment for life;

(ix) a case coming before the Court in the exercise of its ordinary or extra-ordinary original criminal jurisdiction except the application for releasing the accused on parole in pending Division Bench appeals.

(x) an appeal or revision from an order passed under Sections 340, 341 and 343 of the Code of Criminal Procedure, 1973;

(xi) the writ petitions under Article 226 and 227 of the Constitution of India, except;

(a) the Writ Petitions challenging the vires of the provisions of any Act;

(b) writ petitions filed by Judicial Officers relating to their services;

(c) Civil writ Petitions arising out of and relating to Central Excise and Salt Act, 1944 and Customs Act, 1962;

(d) Challenging the decision of any Tribunal Constituted under Article 323-A and 323-B of the Constitution of India."

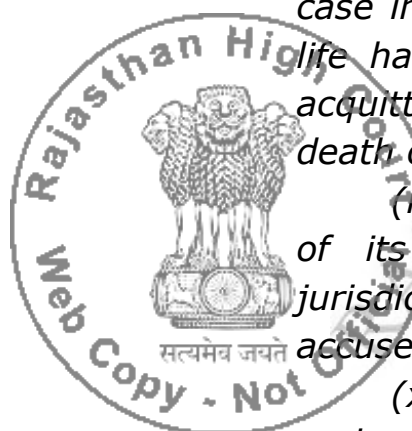
(xii) an application under Article 228 of the Constitution of India and the case withdrawn under the said Article:

**Provided that-**

**(a) the Chief Justice may, from time to time direct that any case or class of cases which may be heard by a Judge Sitting alone shall be heard by a Bench of two or more Judges;**

(b) a Judge may, if he thinks fit, refer a case which may be heard by a Judge sitting alone on any question or questions of law arising therein for decision to a Bench of two Judges; and

(c) a Judge before whom any proceedings under The India Trusts Act, 1882 (Act No.II of 1882), The Companies Act, 1956 (Act No.I of 1956), The Designs







*Act, 1911 (Act No.II of 1911) or the Patents Act, 1970 (Act No.39 of 1970) is pending, may with the sanction of the Chief Justice, obtain the assistance of one or more other Judges for the hearing and determination of such proceedings or of any question or questions arising therein."*

17. As per Rule 55 of the Rules of 1952, the appeal ordinarily be admitted, heard and disposed of by a Judge sitting alone, provided that Chief Justice may from time to time direct that any case or class of cases which may be heard by a Judge sitting alone shall be heard by a Bench of two or more Judges.

18. In the opinion of this Court, after the discussion made hereinabove and after consideration, that appeal arises against the decision or order of the Appellate Tribunal under the RERA Act, by virtue of Section 58 of the RERA Act, be registered before this Court as "Civil Misc. Appeal" to be heard by the Judge sitting alone.

19. Since in the High Court of Rajasthan, as per the High Court Rules, the category "Civil Misc. Appeal" is already available to register the appeals, this Court finds that instead of creating a separate category of Civil Misc. Appeals under the RERA Act, appeals arising under Section 58 of the RERA Act may be and should be registered in the category of broader head of "Civil Misc. Appeal".

20. On analysis and examination of relevant provision of the RERA Act and judgments mentioned hereinabove, this Court is of the opinion that against the decision or order passed by the Appellate Tribunal under the RERA Act, the appeal filed under Section 58 of the RERA Act can be maintained/entertained only on the grounds specified under Section 100 of the Act of 1908 i.e. on involvement/formulation of substantial question of law.



21. This Court finds support from the judgment passed by Allahabad High Court in case of *Supertech Ltd. Vs. Subrat Sen* [AIR 2019 All 19], which has been followed and affirmed by Madhya Pradesh High Court in case of *Khilla Colonizers Pvt. Ltd. Vs. Subhash Jain* [AIR 2021 MP 165].

22. The another issue No.2 regarding payment of Court fees on appeals filed under Section 58 of the RERA Act, 2016 is concerned, it is clear that under the provision of RERA Act or under the RERA Rules, 2017, there is no specific provision prescribing quantum of payment of Court fees for filing the appeal before the High Court under Section 58 of the RERA Act, 2016.

23. As per Rule 35(i) of the RERA Rules, 2017, a fixed Court fees of Rs.1000/- is payable to bring dispute before the RERA Authority.

24. As per Rule 36 of the RERA Rules, 2017, a fixed Court fees of Rs.1000/- is payable to bring dispute before adjudicating officer.

25. As per Rule 37 of the RERA Rules, 2017, a fixed Court fees of Rs.5000/- in the form of Demand Draft or Bankers Cheque is payable to file the appeal before the Appellate Tribunal.

26. In absence of any statutory provision for valuation of dispute of subject matter and payment of Court fees on appeals filed under Section 58 of the RERA Act, the High Court of Allahabad in case of *Supertech Ltd. (supra)* observed that provision of the Court Fees Act, 1870 may be made applicable on such appeals. In that judgment, the High Court Allahabad has placed reliance upon the provisions of Article 11 of Schedule II of the Court Fees Act and held that appeals under Section 58 of the RERA Act, can be filed on the payment of Rs.5.



27. This Court finds that where there is no specific provision available for payment of Court fees on appeals filed under Section 58 of the RERA Act, 2016 before the High Court, as a general principle of law, the Court fees of Rs.5000/- as required to be paid before the Appellate Tribunal under Rule 37 of the RERA Rules, 2017, be paid on appeal filed under Section 58 of the RERA Act, 2016 before the High Court.

28. Both issues have been answered accordingly.

29. Registry is directed to register these appeals in the manner as mentioned hereinabove and make a report about the payment of Court fees accordingly.

30. Registry is further directed to circulate this order to the Stamp Reporters to follow the same for registering the appeals filed under Section 58 of RERA Act, 2016 in future before the High Court of Judicature for Rajasthan.

**(SUDESH BANSAL),J**

NITIN /68 & 11

