
(2021) 12 OHC CK 0049
In the Orissa High Court
Case No : Writ Petition (C) No. 30932 Of 2021

M/s. Citicon Engineers Limited And Another	APPELLANT
Vs	
Umakanta Pahi And Another	RESPONDENT

Date of Decision : 08-12-2021

Acts Referred:

Real Estate (Regulation and Development) Act, 2016 — Section 43(5)

Citation : (2021) 12 OHC CK 0049

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : B.P.Satapathy

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. Mr. Satapathy, learned advocate appears on behalf of petitioners. He submits, his client is promoter and aggrieved by order dated 21st November, 2019 made by Odisha Real Estate Regulatory Authority. His client wants to prefer appeal. Sub-section (5) in section 43 of Real Estate (Regulation and Development) Act, 2016 requires 30% of the penalty to be deposited for the appeal to be entertained. His client, on filing the appeal and making part deposit had applied for being allowed to deposit balance amount aggregating Rs.8,39,726/- (30% of the amount directed). The appellate authority by order dated 27th August, 2021 directed deposit of entire amount of Rs.27,99,088/-.

2. Opposite party no.1 is respondent in the appeal while opposite party no.2 is the appellate authority. It does not appear from impugned order dated 27th August, 2021 that opposite party no.1 had appeared before the appellate authority. This is because the appeal has not yet been entertained. In the circumstances, Court is not inclined to issue notice upon the appellate authority.

3. Proviso under sub-section (5) in section 43 requires at least 30% of the penalty to be deposited or such higher percentage as may be determined by the

Appellate Tribunal or the total amount before said appeal is heard. By impugned order, the appellate authority said that no penalty had been imposed in the direction of payment for Rs.27,99,088/-, while directing deposit of entire amount.

4. As a prerequisite for entertaining the appeal and before it is heard, the legislative mandate is deposit of at least 30% of the penalty. Here, according to the appellate authority, no penalty was imposed by the order petitioner is aggrieved by and wants to appeal against. However, on behalf of petitioner it has also been submitted that petitioner is willing to deposit 30% of the amount directed.

5. It is not necessary to adjudicate whether deposit is required against direction for payment, which is not a penalty since petitioner is willing to pay 30% of the amount.

6. Opposite party no.2 will allow petitioner to put in balance amount of Rs.5,08,396/- to make aggregate deposit of Rs.8,39,726/-and thereupon forthwith proceed to deal with petitioner's appeal.

7. The writ petition is disposed of.

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