

HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2016

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE M.M.SUNDRESH

O.S.A.Nos.117 & 118 of 2016

J.R.Rao

.. Appellant in
both O.S.As.

Vs.

The Official Liquidator,
High Court of Madras,
As Liquidator of M/s SIV Industries (in Liquidation)

.. Respondent in
both O.S.As

Prayer: Original Side Appeals are filed under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of Letters Patent Act against the judgment and decree dated 11.08.2014 made in Company Application Nos.728 and 729 of 2014 on the file of this Court.

For appellant :: Mr.N.V.Srinivasan for
in both O.S.As. M/s N.V.S. And Associates

For Respondent :: Mr.S.R.S.Sundar
in both O.S.As. Official Liquidator

सत्यमेव जयते
COMMON JUDGMENT

(Judgment of the Court was made by M.M.Sundresh,J.)

Agreeing with the recommendation of the BIFR, the Official Liquidator attached to this Court, sought winding up of M/s South India Viscos Limited in C.P.No.17 of 2004. The request made was acceded to. Thereafter, the Official Liquidator brought the property for sale through public auction. The appellant was one of the participant in the auction sale. One of the condition of the auction is that "as is where is condition". The sale was confirmed by an order dated 01.09.2006 in C.A.No.366 of 2006 for a sum of Rs.1,55,00,000/- in favour of the appellant and 30 days time was granted to pay

50% of the sale consideration and another 50% within a further period of 30 days. As the appellant did not comply with the terms and conditions imposed qua the deposit of the amount, an application in C.A.No.1869 of 2006 was filed seeking extension of time. It was accordingly allowed giving further time by an order dated 31.10.2006. Thereafter, in pursuant to the order of this Court dated 24.04.2007, the appellant went before the competent authority under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, seeking exemption thereunder. By the order dated 11.12.2008, the Joint Commissioner of Land Reforms, Erode, exempted an extent of 84.27 acres, out of 139.38 acres, being the property purchased by the appellant. The appellant filed applications in C.A.No.728 and 729 of 2014 seeking a direction to the Official Liquidator to receive the balance sale consideration of Rs.16,21,500/- only for an extent of 84.27 acres of land and buildings and for execution of the registered conveyance for the extent of 84.27 acres. The applications filed were dismissed by the learned single Judge by an order dated 11.08.2014 stating that the issue is sought to be raised after a period of six years from the date of the order passed by the Joint Commissioner of Land Reforms, Erode. Though the appellant was aware of the issue of exemption, he had merely sought for extension of time on the earlier occasion for the payment of the sale consideration. The last date of the extension was upto 08.07.2009, by which time, the Joint Commissioner of Land Reforms, Erode, has come into existence. Accordingly, the applications filed were dismissed. Aggrieved over the same, the present Original Side Appeals are filed.

2. The learned counsel appearing for the appellant submitted that in view of the order passed by the Joint Commissioner of Land Reforms, Erode, the learned single Judge ought to have allowed the applications filed. The appellant has paid a sum of Rs.77,50,000/- towards the sale consideration. Therefore, the appeals have to be allowed.

3. Per contra, the learned counsel appearing for the Official Liquidator submitted that the claim has been made after a period of eight years, as rightly observed by the learned single Judge. As per Clause 19 of the terms and conditions of the sale, non payment of balance sale consideration would result in automatic forfeiture of Earnest Money Deposit. The terms and conditions also clearly state that the sale was on "as is where is condition". Thus, no interference is required.

4. The appellant was aware of the situation governing the property, which was confirmed in his favour. The sale was on "as is where is condition". Therefore, he cannot be allowed

to wriggle out of the said condition to contend to the contrary. After getting extension, the appellant has filed the present appeals. Obviously the appellant had not taken up the issue earlier. The very fact that the extension was granted after the order passed by the Joint Commissioner of Land Reforms on 11.12.2008 itself would non-suit the appellant from seeking the relief sought for. The submission made by the learned counsel for the appellant that now he is ready and willing to pay the remaining amount also cannot be sustained in view of the long number of years having passed in the interregnum. Obviously, the valuation of the property would have increased multifold.

5. Coming to the question of refund, the same also cannot be considered in the teeth of Clause 19 of the terms and conditions of the sale, which prohibits the defaulter from making any claim to the Earnest Money Deposit, as the same gets forfeited by its operation. Therefore, even the said request made also cannot be considered. Thus, we do not find any merit in these appeals.

6. Accordingly, the Original Side Appeals stand dismissed. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

raa

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The Sub.Asst.Registrar
Original Side
High Court
Madras.

2 ccs to Mrs.N.V.S. and Associates, Advocate, sr.27468 & 27469
2 ccs to Mr.S.R.Sundar, Advocate, sr.27838 & 27839

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lrs co
kra 10.05.2016