

**COMPANY APPLICATION NO.49 OF 2015
IN
C.P.NO.115 OF 2011**

R. MAHADEVAN, J.

This application has been filed to direct the respondent to execute the sale deed in respect of the schedule mentioned property in favour of the applicant or his nominees.

Facts-in-brief:-

2. The company in liquidation was ordered to be wound up on 10.1.2010 and the Provisional Liquidator was appointed in the above company petition. The applicant had purchased the Lot-A property by giving a price bid of Rs.13,00,00,000/-. The said Lot-A property consisting of land, buildings, plant & machinery situated at Chinnakalayamputhur Post, Palani Taluk, Dindugal District.

3. After the payment of the entire bid amount, the possession of the property was handed over to the applicant. Thereafter, the applicant had requested the Official Liquidator for getting the vacant possession of the property, free from all encumbrances along with all the original documents of title and building and also prepare the sale deed for the lot 'A' property consisting of land and building and other civil structures

including Plant and Machinery and other moveables including the vacant land located at the rear side of the factory premises comprised in Survey Nos.110/2, 112/2, 111, 113 and 114 respectively, totally measuring an extent of 43.20 acres in Chennai, Chinnakalayamputhur Post, Palani Taluk, Dindigul District. However, no steps have been taken by the Official Liquidator in that regard.

4. Hence, the applicant had filed C.A.Nos.708 to 710 of 2014 in the above company petition.

5. On 5.11.2014, this Court had directed the respondent to hand over all the original documents of title pertaining to the said property and arrange for the delivery of the vacant possession of the remaining property.

6. Due to the delay in handing over the original documents and the non eviction of Ex-workers from the quarters, the applicant has been put to financial strain and he is unable to realise any amount and hence, he decided to transfer his interest in the said property in favour of the third parties and unless this Court directs the respondent to execute the sale deed in respect of the said property in favour of the applicant or his nominee/s, he will be put to further financial strain, since the prospective purchasers are not willing to part with any amount, as there is no nominee

clause.

7. Apart from that, the applicant is unable to avail any loan from the Banks/Financial Institutions on the security of the immovable property purchased by the applicant, as the respondent has not produced the copies of the title deeds and other documents and the possession of the property.

8. Hence, the present application for the relief as afore stated.

9. Heard both sides.

10. The learned counsel for the applicant has contended that when the applicant had paid the entire bid amount, the respondent shall execute the sale deed either in favour of the applicant or his nominee. However, the respondent is not ready to execute the sale deed in favour of the nominee of the applicant on the ground that there is no direction from the Court to execute the sale deed in favour of the nominee of the applicant.

11. The learned counsel has further contended that since the applicant has been put to financial strain and is unable to realise any amount, he decided to transfer his interest in the said property in favour of

third parties and therefore, applicant wanted to execute the sale deed in favour of his nominee.

12. He has submitted that in so many matters this Court has directed the Official Liquidator to execute the sale deed either in favour of the applicant or his nominee/s and therefore, citing the various following orders, the learned counsel urged this Court the Official Liquidator may be directed to execute the sale deed in favour of his nominee.

a. In W.P.M.P.No.44800 of 2004 in W.P.No.12437 of 1997, this Court by order, dated 5.1.2009, in the case of Administrator for M/s. Maxima Investment and Finance, had directed the Administrator as under:-

" On such payment, sale deed will be executed in favour of Mr.S. Durai, 170 Cooperative Colony, Mohanur Road, Namakkal or his nominee."

b. In Com. Appln. No.147 of 2009 in Comp.Petition No.75 of 2001, in the case of B.I.F.R. vs. M/s. Papanasam Paper Mills Limited, this Court, on 4.2.2009, had passed the following order:-

" Accordingly, this company applicant is allowed directing the Official Liquidator to execute the sale deed in favour of the purchaser or his nominee."

c. By order, dated 4.3.2009, this Court, in Comp. Appln.

No.662 of 2007 in Comp. Petition No.5 of 1994, in the case of M/s. Tata Keltron Limited, has passed the following order:-

"On payment of the above said sum by the successful purchaser, the Official Liquidator is directed to hand over possession and documents pertaining to the property and execute necessary conveyance/sale deed jointly with the Department of Industries and Commerce, Government of Tamil Nadu in favour of the purchaser or her nominee."

d. In Dhanalakshmi vs. Government of Tamil Nadu, Department of Industries and Commerce represented by its Commissioner and Director (Review Application No.133 and 134 of 2009), the Division Bench of this Court had passed the following order, dated 6.4.2010:-

" On such deposit being made, the Official Liquidator and the Department of Industries and Commerce could join together and execute a sale deed in respect of the property in question in favour of the auction purchaser or her nominee or nominees within a period of one month there from."

e. The learned Single Judge of this Court, in Comp. Appln. No.177 of 2010 in Comp. Petn. No.230 of 2004 in the case of G.Krishnan vs. M/s. RBF Nidhi Limited, on 22.12.2010, has passed the following order:-

" In respect of Lot-D property, sale deed to be executed by the

Official Liquidator in favour of the purchaser or his nominee/s."

f. In Comp.Appln. No.1858 of 2006 in Comp.Petn.Nos.329 of 1197 and 124 of 2002, in the case of Capital Financial Services Ltd. vs. Neo Intex Mills Ltd., this Court, on 10.3.2011, has passed the following order:-

" It shall be open to M/s.Sabare Towels, Coimbatore either to get the sale deed executed in its name or in the name of its nominee after paying the entire sale consideration."

13. On the other hand, the learned Official Liquidator has submitted that as per the Division Bench order, dated 15.4.2014 in O.S.A.Nos.84, 85, and 86 of 2014, the Official Liquidator was directed to execute the sale deed in favour of the appellant, i.e., the purchaser of the property, and no order was passed to execute otherwise. Further, there is no such clause in the terms and conditions to execute the sale deed in favour of his nominee and therefore, without any order of this Court, no sale deed can be executed in favour of the nominee of the applicant.

14. In support of his contention, the Official Liquidator, has relied on the following decisions:-

a. In W.P.No.13891 of 2012, in the case of Hemalatha Ranganathan vs. The Authorised Officer, the Division Bench of this Court

has passed the following order, on 13.8.2012:-

"41. We make the position clear that the Authorised Officer has no authority to accept the request from the highest bidder to issue the Sale Certificate in favour of a third party. The sale should be confirmed in the name of the highest bidder and not in the name of his nominee. The privity of contract would only be between the successful bidder and the Bank. The sale certificate should be issued only in the name of the successful bidder in whose favour the letter of confirmation was issued. The question of further sale of the property would arise only after registration of the sale certificate by the Bank in the name of the successful bidder. The purchaser from the successful bidder cum sale certificate holder must necessarily pay stamp duty for registration. In short, the Authorised Officer has no authority to recognize a person as the nominee of the successful bidder."

b. The Jaipur Bench of the Rajasthan High Court, in **Megha Enterprises Pvt. Ltd., vs. Official Liquidator (Rathi Alloys and Steel Ltd., in liquidation)** (AIR 2008 Raj 138), has referred the decision of the Supreme Court in **Hans Raj Bafna v. Ram Chandra Agarwal (MANU/SC/0339/2005)**, wherein, their Lordships of the Supreme Court reiterated the view expressed in **Bishan Paul vs. Mothu Ram (MANU/SC/0382/1965)**, which is as under:-

"The view taken by the High Court is against the law laid down by this Court in Bishan Paul vs. Mothu Ram MANU/SC/0382/1965: AIR 1965 SC1994 and also against the principles of jurisprudence as it is an established fact that a valid sale confirmed by the authorities confers title as well as ownership rights in the purchaser. Valid sale of property and ownership are inseparable and the moment the price is paid and sale is confirmed the purchaser becomes the owner"

c. In **IFCI Venture Capital Funds Ltd., vs. Bhiwani Denim**

and Apparel Ltd., (in Liquidation) and others (MANU/PH/1470/2009), the Division Bench of Punjab and Haryana High Court has held that there was no privity of contract between the official liquidator and IIDL and it was neither conceivable in law nor in tune with the policy of the law to confirm a sale in favour of a company other than the one which participated in auction.

15. I have considered the aforesaid submissions and perused the materials available on record.

16. It is the case of the applicant that he had purchased the Lot-A property by giving a price bid of Rs.13,00,00,000/-. The said Lot-A property consisting of land, buildings, plant & machinery situated at Chinnakalayamputhur Post, Palani Taluk, Dindugal District.

17. It is also the case of the applicant that since he has been put to financial strain and is unable to realise any amount, he decided to transfer his interest in the said property in favour of third parties and therefore, the applicant wanted to execute the sale deed in favour of his nominee.

18. It is the further case of the applicant that though he had

paid entire bid amount, the Official Liquidator has not come forward to execute the sale deed in favour of his nominee.

19. On the other hand, the case of the Official Liquidator is that since this Court has passed the order, dated 15.4.2014 in O.S.A.Nos.84, 85, and 86 of 2014, only to execute the sale deed in favour of the appellant, i.e., the purchaser of the property, and no order was passed to execute otherwise and there is no such clause in the terms and conditions to execute the sale deed in favour of his nominee and therefore, he could not execute the sale deed in favour of the nominee of the applicant.

20. A perusal of the records shows that a reply letter was addressed by the Official Liquidator on 19.12.2014 to the applicant, wherein, it is stated as under:-

"With reference to your letter dated 18.12.2014, I am to state that the Hon'ble High Court, Madras vide its order, dated 5.11.2014 in Company Application Nos.708 to 710 in C.A.No.807 of 2014 in C.P.No.115 of 2004 has directed the Official Liquidator to execute the sale deed within a period of two weeks time on receipt of the order. But there is no specific order to execute the sale deed in favour of your nominee. Hence, your request to execute in favour of nominee cannot be considered.

You are therefore requested to submit your draft sale deed in favour of the purchaser in respect of the subject matter for approval for further course of action at an early date."

21. From the above contention and the letter addressed by the Official Liquidator, it is clear that the official liquidator wanted a direction from the court to execute the sale deed in favour of the nominee of the applicant and nothing else.

22. It is also not the case of the official liquidator that if the sale deed is executed in favour of the nominee of the applicant would amount to violation of the any of the provisions of the Act.

23. Further, it is not the case of the official liquidator that in the past, since the sale deed had been executed in favour of the nominee/s, following the directions of this Court in the aforesaid orders, the office of the Official Liquidator had faced certain problems or consequences.

24. When the entire bid amount is paid and the sale is confirmed in favour of the applicant and the original documents of title have been handed over to the applicant, the choice of the execution of sale deed is left with the applicant, that either the sale deed can be executed in his name or his nominee/s name. Considering this aspect, this Court, invariably, in all matters, without any request or relief from the applicant, has directed the official liquidator or Administrator, in the above said cases relied on by the applicant, to execute the sale deed either in favour of the

applicant or his nominee.

25. Further, this Court does not find any legal bar in executing the sale deed in favour of the nominee of the applicant at his written request.

26. In the case on hand, the applicant has stated the reasons for the execution of the sale deed in the name of his nominee. At his own risk, the applicant had requested the Official Liquidator to execute the sale deed in favour of his nominee. Even, if the official liquidator feels that the execution of the sale deed in favour of the nominee of the applicant would create certain problems or consequences, then the Official Liquidator is at liberty to execute the sale deed on certain terms and conditions.

27. In view of the above, the decisions cited by the Official Liquidator are not relevant to the facts of the case on hand.

28. In the light of the above, the Official Liquidator is directed to execute the sale deed either in favour of the applicant or his nominee/s in respect of the said property. In the event of execution of the sale deed in favour of the nominee/s of the applicant, the same could be done on certain terms and conditions, if so required.

With the above directions, the application is allowed.

20.3.2015

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R. MAHADEVAN, J.

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DATE: 20.3.2015