

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Company Application No.1303 of 2015

Date: 21.09.2015

Between:

M/s.Commercial Agro Products Pvt. Ltd., (in liqn.)

rep. by the Official Liquidator

..... Applicant

Counsel for the applicant: Sri M.Anil Kumar, Counsel for OL

The Court made the following:

O r d e r :

This Company Application is filed under Sections 38 to 40 read with Order XXI Rules 5 & 6 of the Code of Civil Procedure, 1908 (for short 'the CPC') and Rule 9 of the Companies (Court) Rules, 1959, for directing the Registry of this Court to send the decree, dated 26-11-2013, in OSA.No.36 of 2013 and connected orders, dated 20-01-2012 and 25-06-2002, passed in Company Application 11 of 2012 in C.A.No.293 of 2005 in C.A.No.129 of 2000 and C.A.No.129 of 2000 in C.P.No.86 of 1997 respectively for execution along with the Certificate of Transfer in accordance with Order XXI

Rules 5 & 6 CPC to the Court of the learned Principal District Judge, Krishnagiri (Additional District Judge at Hosur) in Tamilnadu State; (ii) to accord permission to engage the services of an Advocate at Hosur in Tamilnadu State for filing Execution Petition and to pursue the case on behalf of the Official Liquidator; (iii) to permit the Official Liquidator to pay a sum of Rs.2,000/- towards the initial expenses for filing Execution Petition; and (iv) to fix the Advocate's fees towards the entire case subject to condition that the fees shall be paid upon realization of the decretal amount only.

I have heard Mr.M.Anil Kumar, learned Counsel for the Official Liquidator.

The Official Liquidator has identified M/s.PISA Builders & Developers Private Limited, Bull Temple Road, K.G.Nagar, Bangalore, as one of the borrowers and filed Company Application No.129 of 2000 in C.P.No.83 of 1997 for a direction to the said borrower to pay the sum of Rs.1,03,97,915/- with interest @ 18% p.a., from the date of borrowing till the date of payment. By Order, dated 25.06.2002, this Court has allowed the said application. The said order was subsequently modified *vide* Order, dated 25.03.2005, in Company Application No.293 of 2005, by extending the order and decree, dated 25-06-2002, against respondent No.2- Sri S.K.Basha, Managing Director of M/s.Titus Constructions Private Limited, and respondent No.3- M/s.Titus Constructions Private Limited. Feeling aggrieved by the said order, the borrower has filed OSA.No.36 of 2013. A Division Bench of this Court by judgment, dated 26.11.2013, partly allowed the appeal by reducing the rate of interest from 18% p.a., to 12% p.a., from 25-03-2005 till the date of payment subject to the condition that the entire amount is paid within four months from the date of judgment and in default, the rate of interest shall remain 18% p.a., for the

entire amount.

The Official Liquidator, in his affidavit, stated that the judgment debtor has filed Company Application No.1 of 2015 for extension of time for making the payment; that the said Application was dismissed and that since then, there is no response from the judgment debtor and no payment has been made by it.

At the hearing, Mr.M.Anil Kumar, learned Counsel for the Official Liquidator, submitted that the Managing Director of M/s.Titus Constructions Private Limited has given an undertaking before this Court to the effect that 150 plots situated at Kadirepalli Village, Hosur Taluq, Dharmapuri District in Tamilnadu State, can be proceeded against by the Official Liquidator and that the said undertaking was placed on record by this Court in its Order, dated 25-03-2005, in Company Application No.293 of 2005. He has requested the Court to transfer the decree in OSA.No.36 of 2013 as well as the modified Order, dated 25-03-2005, in Company Application No.293 of 2005 to the Court of the learned Principal District Judge at Hosur, within whose jurisdiction the said plots are situated, for execution of the decree.

Under Section 635 of the Companies Act, 1956, where any Order is required to be enforced by another Court, a certified copy of the Order shall be produced to the proper Officer of the Court required to enforce the Order. Under Sub-Section 3 thereof, upon production of certified copy, the Court shall take requisite steps for enforcing the order, in the same manner as it had been made by itself.

Under Section 39 of the CPC, the Court, which passes the decree on the application of the decree holder, may send it for execution to another Court of competent jurisdiction, if the person against whom the decree is passed actually or voluntarily resides or carries on personal works for pay.

In the light of the above statutory provisions, the Registry is directed to send the certified copies of decree, dated 26.11.2013, in OSA.No.36 of 2013, and the connected Orders, dated 20-01-2012 and 25-06-2002, passed in Company Application 11 of 2012 in C.A.No.293 of 2005 in C.A.No.129 of 2000 and C.A.No.129 of 2000 in C.P.No.86 of 1997 respectively to the Court of the learned Principal District Judge, Krishnagiri (Additional District Judge at Hosur) in Tamilnadu State, for execution.

As regards the request for engaging an Advocate, the Official Liquidator has furnished the names of three Advocates. He is accorded permission to entrust the case to one of the three Advocates. A sum of Rs.2,000/- towards initial expenses for filing execution petition is also sanctioned.

With regard to fixation of Advocate's fees, this Court feels that, for the time being, payment of Rs.15,000/- towards part fee of the Advocate is reasonable. Accordingly, the Official Liquidator is permitted to pay the said amount to the Advocate towards part fees pending fixation of final fees depending upon the services to be rendered by him in the Execution Petition. It is also further ordered that the costs of this Application do come out of the Assets of the Company in Liquidation.

The Company Application is ordered accordingly.

(C.V.Nagarjuna Reddy, J)

Dt: 21st September, 2015

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