

IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPLICATION NO. 30 OF 2016

IN

COMPANY APPLICATION NO. 13 OF 2013

M/S. CLASSIC ENTERPRISES, REP.
THR. ITS PARTNER SHRI WASEEM Z.
AHMED.

... Applicant

Versus
NATIONAL AUTO ACCESSORIES
LIMITED.,

... Respondent

Shri Ashwin D. Bhobe, Advocate for the Applicant.
Ms. Amira Razaq, Advocate for the Respondent.

Coram:- SMT. R. P. SONDURBALDOTA, J.

Date:- 23rd December, 2016

P.C.:

This application is filed seeking directions to the Official Liquidator appointed in respect of the respondent Company to execute the Deed of Rectification as per the draft appended to the application. The applicant had pursuant to publication of tender notice by the Official Liquidator on 15th May, 2003 submitted bid and purchased the property known as 'Molla de Careagally' admeasuring 63246 square meters and situated at survey no.73 sub-division 1 and 2 of Village Sao Jose de Areal, sub Taluka Salcete, South Goa for the total consideration of Rs.2,17,00,000/-. Thereafter, Sale Deed dated 11th February, 2005 was executed by the Official Liquidator in favour of the applicant thereby conveying the property. The said Sale Deed

was duly registered in the office of the Sub Registrar of Salcete on 15th March, 2005. The original Sale Deed however was not made available to the applicant immediately after completion of registration. The applicant had to approach this Court by way of Company Application No.13/2013 for that purpose and the original Sale Deed came to be handed over only pursuant to the orders passed by the Court in the year 2013. After receipt of the original Sale Deed, the applicant realised that the description of the property stated thereunder was not in accordance with Memorandum of Entry in respect of the mortgage recorded in IFCI on 15th November, 1989 or in accordance with the Sale Deed executed by the vendor of the respondent Company i.e. M/s. Hamir Kalyani Holding Pvt. Ltd. Therefore, it has filed the present application for a direction to the Official Liquidator to execute the Rectification Deed, for correcting the description.

2. Shri Bhobe, the learned Counsel for the applicant submits that all that the applicant desires is that the description of the property be corrected so as to conform the same along with the Memorandum of Entry for mortgage of the property recorded in IFCI on 15th November, 1989. Ms. Amira Razaq, the learned Advocate for the Official Liquidator however has an apprehension that with the long passage of time if there are either any encroachments or rights created in respect of the property the Official Liquidator would be unnecessarily embroiled in litigation, and he desires to be indemnified against that.

3. Affidavit in reply filed by the Official Liquidator does not dispute the error on the part of the Official Liquidator in the Sale Deed. In fact, at para 4 of the affidavit in reply it is stated that the Official Liquidator sold the property in public auction as per the boundary details available in the Memorandum of the year 2005. Since the applicant desires that the description should be in accordance with the Memorandum of Entry of the year 2005, there can be no apprehension in the mind of the Official Liquidator of being involved in any Court or other proceedings on execution of the Rectification Deed. In any case, the applicant has filed an additional affidavit dated 6th December, 2016 in which it is stated that the applicant is in exclusive possession of the property 'Molla de Careagally' admeasuring 63246 square metres and that the property is not subject to any dispute or is not involved in any litigation since 11th February, 2005 till date. In my opinion, this statement made on behalf of the applicant would be sufficient to overcome the fear in the mind of the Official Liquidator.

4. Hence, the application is allowed in terms of prayer clause (a). The Official Liquidator is directed to execute the Rectification Deed with one month from today.

SMT. R. P. SONDURBALDOTA, J.

NH