

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 5.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

O.S.A. No. 149 of 2014
and O.S.A. No. 150 of 2014

1. Gopalan Nair
Director, Kings International
Atria Apartments, 1st Floor,
(Formerly known as Fortune Square)
Perumanoor, Cochin 682 015
 2. Shaji Baby John
Director of M/s Kings Properties
and Housing Limited, Atria Apartments, 1st Floor,
(Formerly known as Fortune Square)
Perumanoor, Cochin 682 015
 3. K. Mohanan
Director, Kings International
Atria Apartments, 1st Floor,
(Formerly known as Fortune Square)
Perumanoor, Cochin 682 015
- ...Appellants
in both appeals

The Official Liquidator
High Court of Madras,
As liquidator of
M/s Fidelity Finance Limited
(In Liquidation)
in

... Sole Respondent
O.S.A. No. 149/2014,
1st respondent in
O.S.A No. 150/2014

The Official Liquidator
High Court of Madras,
As liquidator of
M/s Fidelity Industries Limited
(In Liquidation)

... 2nd Respondent in
O.S.A No. 150/2014

Prayer: Appeals under Order XXXVI Rule 9 of O.S. Rules and Clause 15 of Letters Patent against common order dated 22.4.2014 made in Company Application Nos. 1257 of 2013 and 443 of 2014 in C.P. No. 65 of 2002.

This Company Application No.1257 of 2013 praying this Court,

- a) To take this report on record.
- b) To determine if any amount is liable to be paid to the Respondent in respect of Flat No.1A to 1F of "Atria Apartments" formerly known as "Fortune Square" situated at Survey No.1036/1 of Ernakulam Village within the Corporation Limit of Cochin.
- c) To restrain the respondents, their servants or any person acting on their instructions from alienating or selling, creating any third party rights in respect of Flat No.1A to 1F of "Atria Apartments" formerly known as "Fortune Square" situated at Survey 1036/1 of Ernakulam village within the Corporation limit of Cochin.
- d) The Respondent be directed to handover peaceful vacant possession of Flat No.1A to 1F of "Atria Apartments" formerly known as "Fortune Square" situated at Survey No.1036/1 of Ernakulam Village within the Corporation limit of Cochin.

This C.A.No.443/14 praying this Court,

- a) To take this report on record.
- b) That the present application be treated as part and parcel of the C.A.No.1257 of 2013 pending before this Court.
- c) That directions be given to the respondents to hand over peaceful vacant possession of the Flats No.1A to 1F of "Atria Apartments" formerly known as "Fortune Square" situated at Survey 1036/1 of Ernakulam Village within the Corporation Limit of Cochin.
- d) That directions be given executing the sale deed in favour of the Second Applicant which is fifty party in the MOV on in favour of any person whom the applications identify.

For Appellants : M/s.Rathina Asohan

For Respondents : Mr. S.R. Sundar for R2

COMMON JUDGMENT

(Delivered by M.M.SUNDRESH, J.)

These appeals have been preferred by the appellants being aggrieved over the order of the learned Single Judge by which the flats were directed to be handed over, while correspondingly fixing the onus on the Official Liquidator to pay the agreed amount of Rs.16,15,318.60/- with interest.

2. Now it appears that, flats have been handed over in favour of the Official Liquidator and the amount of Rs. 16,15,318.60/- as ordered by the learned Single Judge is also received by the appellants.

3. The learned counsel appearing for the appellants submitted that vehicles have been seized and sold contrary to the Memorandum of Understanding entered into and the amount realized and the vehicles actually belong to the appellants, but the same has not been directed to be paid to the appellants.

4. We are not inclined to go into the said issue. The appellants have not filed any claim to that effect. On a query, the learned counsel would submit that the appellants may be permitted to make a claim.

5. Considering the above said submissions made, we are inclined to permit the appellants to make a claim for the amount which has been realized by the Official Liquidator after effecting sale of the vehicles. The appellants are granted four weeks time to file an application and as and when such application is filed, the same will have to be decided notwithstanding any of the observations made by the learned Single Judge which is the subject matter of this appeal.

6. In view of the above, the appeals stand disposed of. No Costs. Consequently, M.P. Nos. 1 of 2014 (2 Petitions) are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssm

To

The Sub Assistant Registrar
Original Side
High Court, Madras.

+2 cc to Mr.S.R.Sundar, Advocate Sr.No.83480&83481

+2 cc to M/s.Rathina Asohan, Advocate Sr.No.83868,83869

O.S.A. No. 149 of 2014
and
O.S.A. No. 150 of 2014

CSL/02.01.2019



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