

HON'BLE SRI JUSTICE S.V. BHATT

COMPANY APPLICATION No.375 OF 2017

ORDER:

Heard Mr.A.V.V.SN.Murthy for applicant and Mr.Anil Kumar for respondent.

The circumstances relevant for disposing of the instant application are that the applicant is the auction purchaser of property measuring Acs.6-08 gts. in Survey Nos.384/A/1 and 384/A/2 at Shivareddygudem, Indriyal Village, Boodhan Pochampally Mandal, Nalgonda District for a sum of Rs.20,20,000/-. The sale has been confirmed and the amount is also deposited. The applicant filed Application No.1133 of 2009 for a direction to respondent herein to register property in favour of applicant and also deliver vacant possession to applicant. On 03.11.2009, the application was dismissed for default. The present application is filed substantially for the same relief of registration of sale deed in favour of applicant and also deliver vacant possession of the property sold and confirmed in favour of applicant.

The respondent filed report. The objections are two fold, namely, that the application for possession or execution of sale deed is beyond the period of limitation and secondly, the present application is not maintainable in view of the dismissal of Company Application No.1133 of 2009 for default.

The objection is on the question of limitation. Either for determining the period of limitation or the period within which person has to either obtain sale deed or possession of the property,

the period of limitation should be spelt out by the statute. In the case on hand, the respondent has to show to the Court the applicable period of limitation and how the present application is not maintainable. The respondent could not satisfy the Court the applicable Section or Rule under which the application now filed is beyond the period of limitation.

On the ground that the respondent could not satisfy the Court on the period of limitation, the objection is overruled accordingly. The next objection of Mr. Anil Kumar is that the applicant ought to have taken steps for restoring Application No.1133 of 2009 to file and prosecute the same but the instant application is not maintainable. This objection is merely noted to be rejected. There is no bar in the Company (Court) Rules for filing application by a party whose application for similar prayer was dismissed for default on earlier occasion. On the other hand, by drawing the analogy of Order 9 Rule 4 of CPC, where a fresh suit is maintainable in respect of the subject matter of suit dismissed for default. Therefore, this Court is of the view that accordingly present application is maintainable and the applicant cannot be compelled to take steps for restoring Application No.1133 of 2009.

I am satisfied that since the applicant has completed or discharged the conditions of auction, the applicant ought not to be denied either possession of subject matter of sale and also getting transfer of title through execution of a sale deed. The application is allowed as prayed for. The Official Liquidator completes the formalities of executing sale deed and delivering

possession to applicant within two months from the date of receipt of a copy of this order. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date: 01.02.2018

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