

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

O.S.A.No.480 of 2018
and

C.M.P.No.23024 of 2018

M/s.Moorthy and Associates,
Rep. by its Sole Proprietor, M.S.Moorthy,
501, Suruthi Blok, Chitra Avenue,
9 Choolaimedu High Road,
Chennai 600 094. Appellant/Appellant

Vs

The Official Liquidator,
High Court, Madras as the
Provisional Liquidator of
M/s.Vijaykumar Mills Limited
(in Provisional Liquidation) Respondent/Respondent

PRAYER : Appeal against the Judgment dated 15.11.2017 made in
C.A.No.1054 of 2016 in C.P.No.115 of 2004 of this Court.
Praying to direct the respondent official Liquidator to pay the
interest at 18% from 16.04.2014, when the amount was deposited
by the applicant as successful bidder in full as directed by the
Hon'ble Court.

For Appellant :Mr.V.P.Raju

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the successful bidder in
the auction conducted by the Official Liquidator to sell the
property of the company, which was ordered to be liquidated as
per the order dated 10.01.2010.

2.The facts of the case are as follows:

The company was wound up on 10.01.2010. Thereafter the
Official Liquidator has been appointed as a Provisional
Liquidator. An advertisement has been effected on 08.06.2013
for sale of lots of properties. The appellant was a successful
bidder. However, he could not pay the entire amount in time.
As per the order passed in Company Application No.1116 of 2013,
extension was granted on 26.11.2013. Again an application was

taken out by him for extension, which was dismissed on 19.03.2014. The appeal preferred by the appellant in O.S.A.Nos.84 to 86 of 2014 were allowed on 15.04.2014, granting extension of time for payment of balance consideration.

3. Thereafter, the appellant seems to have deposited entire amount on 16.04.2014 and he was handed over possession of the property except 21 quarters, which were under the occupation of the employees of the liquidated company on 03.05.2014. Subsequently, the sale deed was executed on 22.02.2017 and therefore, he seeks interest at the rate of 18% per annum from 16.04.2014, when the entire amount was deposited by the appellant as a successful bidder. The said application was dismissed by the learned single judge. Against the said dismissal only, the present appeal has been filed.

4. Heard Mr.V.P.Raju, learned counsel appearing for the appellant, who would submit that even though the appellant discharges his obligations by depositing the amount on 16.04.2014, the possession of the property was belatedly handed over only on 03.05.2014 and sale deed was executed on 22.02.2017. The delay is not due to the appellant. When the entire money was paid, the appellant should have been handed over possession of the entire property and therefore, he is entitled to interest.

5. At the out set as observed by the learned single Judge, the appellant has got no locus standi to file the present appeal as the property stands in the name of the nominee and the nominee has become the owner. As far as the appellant is concerned it is a third party. It is not as if the appellant deposited the amount as per the original schedule of the auction, he sought time by filing application No.1116 of 2013, the same was granted on 26.11.2013. Subsequently another application has been filed seeking further extension, which was dismissed on 19.03.2014. Only in the appeal before the Division Bench of this Court, further extension was granted in OSA.No.64 to 86 of 2014 on 15.04.2014. Therefore, the appellant himself is guilty of non payment of amount in time. It is pursuant to the direction given by the Division Bench of this Court only the appellant paid the entire amount on 03.05.2014.

6. The learned single Judge rightly pointed out that the possession of the property was handed over to the appellant in "As is where is condition" and the sale deed was executed on 22.02.2017. The handing over of the possession was made during 2014 itself. As already observed, on 03.05.2014, except few quarters, which were under the occupation of the employees of the company. The company agreed to purchase "As is whereis condition", therefore appellant cannot be allowed to pray for

18% interest for non delivery of possession of the some of the quarters, which were under the occupation of the company employees.

7. When a condition was agreed upon in the auction, the appellant cannot go beyond that. The appellant is not entitled to any interest as prayed for. As already observed, he has got no locus standi. Hence the appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The Sub Assistant Registrar,
Original Side, High Court, Madras.
2. The Official Liquidator,
High Court, Chennai 600 104.

O.S.A.No.480 of 2018

GJII (CO)
GMY (29/01/2019)

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