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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 22nd DAY OF SEPTEMBER 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

O.A.No.867 of 2019

in

C.S.No.556 of 2019

BETWEEN

1.M/s Bell Finvest India Ltd.,
Rep by its Managing Director,
Mr.Bhupesh Rathod,
No.1107, Maker Chamber V,
Nariman Point, Mumbai – 400 021.

2.Bhupesh Rathod, M/54,
Son of Mr.Mohanlal,
No.1107, Maker Chamber V,
Nariman Point, Mumbai – 400 021.

3.Chirag Rathod, M/30,
Son of Mr.Bhupesh Rathod,
No.1107, Maker Chamber V,
Nariman Point, Mumbai – 400 021.

...Applicants/ Plaintiffs

-Versus-

M/s Vivriti Capital Pvt. Ltd.,
Rep by it's Managing Director/
Principal Officer,
Floor 12, Prestige Polygon,
Anna Salai, Teynampet,
Chennai – 600 035.

... Respondent/ Defendant

**O.A.No.867 of 2019:-**

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Application praying that this Hon'ble Court be pleased to grant an ad-interim injunction restraining the Respondent/Defendant or its men, agents or assigns from in any manner using/encashing/enforcing the various security documents including Demand Promissory Note dated 15.05.2019, Personal Guarantee dated 15.05.2019 issued by 2nd and 3rd Applicant/Plaintiffs and NACH Mandate issued by the 1st Applicant/ 1st Plaintiff company in favour of the Defendant and from taking any coercive steps with regard to the credit facility between the parties pending disposal of the present suit.

This original application having been heard on 03.09.2021 through video conferencing in the presence of Mr.P.V.Balasubramaniam for Mr.P.Rajkumar Jhabakh, advocates for the applicants herein and Mr.P.Giridharan and Mr.Dominic S.David, advocates for the respondent herein and upon reading the order herein dated 23.09.2019 and the order dated 16.12.2019 made in C.S.Nos.556 and 650 of 2019 and O.A.Nos.1011 and 867 of 2019 and A.Nos.8513 to 8515 and 9671 of 2019 and having stood over for consideration till this date and coming on this day before this court for orders in the presence of the said advocates for the parties hereto and this Court is of the view that the plaintiffs have filed the suit as well as



recovering the money, this Court, for the past two years, without realising their malicious intention, had been accommodating all their request and trying to strike a balance between the claim of the plaintiffs and the defendant, and based on the earlier orders passed by the Single Judge and Division Bench, time to time for the past two years and the conduct of the plaintiffs herein, from the various pleadings and interim report of the Advocate Commissioner submitted before the Division Bench of this Court in the connected application, this Court is of the view that the plaintiffs attempt to prevent the defendant from enforcing the security furnished for the loan advanced, the prayer in the Original Application No.867 of 2019 is de-void of merits, it is ordered as follows:-

That the O.A.No.867 of 2019 be and is hereby dismissed.

2. That the applicants/plaintiffs herein do pay a sum of Rs.10,000/- (Rupees Ten Thousand only) as costs to the respondent/defendant herein.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID,
THIS THE 22nd DAY OF SEPTEMBER 2021.

Sd/-

ASSISTANT REGISTRAR (COMM.CASES)
//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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05.10.2021

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O.A.No.867 of 2019
in
C.S.No.556 of 2019

ORDER

DATED : 22.09.2021

THE HON'BLE DR.JUSTICE
G.JAYACHANDRAN

FOR APPROVAL: 06.10.2021

APPROVED ON: 06.10.2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on :03.09.2021

Pronounced on 22.09.2021

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

O.A.No.867 of 2019inC.S.No.556 of 2019

1.M/s Bell Finvest India Ltd.,
Rep.by its Managing Director,
Mr.Bhupesh Rathod
No.1107, Maker Chamber V,
Nariman Point, Mumbai 400 021.

2.Bhupesh Rathod, M/54,
son of Mr.Mohanlal,
No.1107, maker Chamber V,
Nariman Point, Mumbai 400 021.

3.Chirag Rathod, M/30,
Son of Mr.Bhupesh Rathod,
No.1107, Maker Chamber V,
Nariman Point, Mumbai 400 021.

.. Applicants/Plaintiffs

/versus/

M/s Vivriti Capital Pvt.Ltd.,
Rep.by its Managing Director/Principal Officer,
Floor 12, Presitge Polygon,
Anna Salai, Teynampet,
Chennai 600 035.

.. Respondent/Defendant

Prayer: Original Application has been filed under Order XIV, Rule 8 of
O.S. Rules read with Order 39, Rule 1 of Civil Procedure Code praying to



grant an ad-interim injunction restraining the respondent/defendant or its men agents or assigns from in any manner using/encashing/enforcing the various security documents including Demand Promissory Note dated 15.05.2019, Personal Guarantee dated 15.05.2019 issued by 2nd and 3rd applicant/plaintiffs and NACH Mandate issued by the 1st applicant/1st plaintiff company in favour of the defendant and from taking any coercive steps with regard to the credit facility between the parties pending disposal of the present suit.

For Applicants :Mr.P.V.Balasubramniam for
Mr.P.Rajkumar Jhabakh

For Respondent :Mr.P.Giridharan and
Mr.Dominic S.David

ORDER

(This case has been heard through Video Conferencing)

The suit is filed to declare the termination of the Facility Agreement dated 17.08.2019 by the first plaintiff company, as valid and binding on the defendant company and to pay compensation of Rs.5,00,00,000/-; and permanent injunction restraining defendant company from enforcing the security furnished by the plaintiffs and also restraining the defendant company from spreading information and reporting to CIBIL or any such CIC agencies regarding the first plaintiff company.

2.The plaintiffs in the suit are the Non-Banking Finance Company by

<https://hcservices.ecourts.gov.in/hcservices/>

name, M/s Bell Finvest India Limited and its two Directors. Alleging that



they entered into a Finance Arrangement with the defendant company to the tune of Rs.20,00,00,000/- in the name of Credit Facility Agreement on 15.05.2019. It was agreed by both the parties that, the said amount will be disbursed within a period of three months, which should be repaid within a period of 48 months. As against the advancement of loan, the plaintiffs have to create disclosure charge by way of hypothecation on the plaintiff's Company receivables to the tune of Rs.22 crores (1.10 times). In addition, a demand promissory note for Rs.20 crores and a letter of continuity Facility Agreement, personal guarantees of 2nd and 3rd plaintiffs as security for the loan were obtained.

3.It is the case of the plaintiffs that, after execution of all the documents and formalities as demanded by the defendant, the defendant had not kept the schedule of payment of loan amount. After much pressure, on 17.05.2019 the defendant paid Rs.1 crore and on 20.05.2019 another Rs.1 crore. Likewise, in piecemeal, only a sum of Rs.6 crores was paid by the defendant. Due to breach of promise and non-payment of the agreed amount in time, the plaintiffs were put to inconvenience. Instead of disbursing the balance sum of Rs.14 crores as agreed, in gross violation of the terms of contract in an arbitrary manner, the defendant insisted and pressurised the plaintiffs to create charge for the entire Rs.20 crores with ROC in their



defendant demanded disclosure of the plaintiff's business account, valuable data and information.

4. In order to cover up its inability to advance the full amount of Rs.20 crores as agreed, the defendant started raising invalid and irrelevant point. By 15.08.2019 the defendant was supposed to complete the disbursement of Rs.20 crores. However, by that time, they disbursed only Rs.6 crores. Therefore, by its letter dated 17.08.2019, the plaintiffs had validly terminated the said facility agreement, all loan documents and NACH mandate etc., on 15.08.2019. The plaintiffs are further entitled for compensation towards damages and the loss due to the breach of contract.

5. With the above said averment in the plaint, Application No.867 of 2019 for injunction restraining the respondent/defendant from in any manner using/encashing/enforcing the various security documents including promissory note dated 15.05.2019, personal guarantee dated 15.05.2019 issued by the 2nd and 3rd applicants/plaintiffs and NACH issued by the 1st applicant/1st plaintiff company was sought.

6. On 23.09.2019, this Court, with an intention of granting protection to the plaintiffs, ordered Status Quo. Thereafter, the defendant instituted a counter suit against these plaintiffs in C.S.No.650 of 2019 (herein referred as "junior suit") wherein, they sought for recovery of money advanced along



7. In the junior suit filed by the defendant herein, the injunction against alienation of shares, appointment of receiver, disclosing of asset and furnishing security was sought. The Junior suit filed by the defendant against the plaintiffs herein and the applications filed in the suit in C.S.No.650 of 2019 are dealt separately, though the facts are intertwined with each other.

8. Against the interim order of Status Quo granted vide order dated 23.09.2019, the defendant filed counter and this Court had an occasion to consider the rival submissions made by the parties. The parties thereafter filed few more applications in these two suits. On considering the relief sought in the interlocutory applications filed in the senior suit and the junior counter suit for various interim relief, this Court, on consolidation of facts and relief, directed the plaintiffs herein to deposit EMI arrears on or before 20.01.2020 and on such deposit, the defendants should file affidavit of undertaking that they will not sell the shares in the defendant company which they hold as security. This order was passed on 16.12.2019 considering the merit and balance of convenience in both the suits and the applications filed therein. Till date the plaintiffs herein have not complied with the said order.

9. The learned counsel appearing for the plaintiffs/applicants would submit that the respondent/defendant has committed breach of contract and



having breached the contract, they are not entitled for recovery of any money from the plaintiffs. Therefore, the injunction sought in A.No.867 of 2019 to be granted.

10. Heard the learned counsels at length.

11. The multiple applications filed in both the suits and also orders passed by this Court from 23.09.2019 till 17.03.2021, would clearly show that, the plaintiffs have no intention of repaying Rs.6 crores advanced by the defendant. Even if there was any breach on the part of the defendant, the applicants cannot be enriched unjustly. In fact, this Court has not even directed them to pay EMI arrears to the defendant, but only directed them to deposit to show their bona fide. Having failed to show their bona fide, the plaintiffs are not entitled for relief on equity.

12. This Court is of the view that the plaintiffs have filed the suit as well as the present application only to pre-empt the defendant herein from recovering the money. This Court, for the past two years, without realising their malicious intention, had been accommodating all their request and trying to strike a balance between the claim of the plaintiffs and the defendant. How it is clear that it is only a cat and mouse game played by the plaintiffs to deny the money which the defendant advanced as loan.

13. The above view has been crystallised, based on the earlier orders passed by the Single Judge and Division Bench, time to time for the past



two years and the conduct of the plaintiffs herein. From the various pleadings and interim report of the Advocate Commissioner submitted before the Division Bench of this Court in the connected application, this Court is of the view that the plaintiffs attempt to prevent the defendant from enforcing the security furnished for the loan advanced. The prayer in the Original Application No.867 of 2019 is de-void of merits.

14. Hence, ***this Original Application is dismissed with costs of Rs.10,000/- payable to the defendant.***

Sd./-G.J.J.
22.09.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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