



WEB COPY

1

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.1011 of 2019
and
A.Nos.8513 to 8515 of 2019
and
A.No.9671 of 2019 in A.No.8514 of 2019
and
A.No.559 of 2020 in A.No.8513 of 2019
and
2092 to 2094 of 2020 in A.No.559 of 2020
in
C.S.No.650 of 2019

M/s Vivriti Capital Private Limited,
Floor 12, Prestige Polygon,
Anna Salai,
Teynampet,
Chennai – 600 035.
Represented by its:
Head – Legal and Compliance/Authorised Signatory
Mr.Nihal Singh Pabadee. : Applicant/Plaintiff

Vs

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,
Guarantor/Director,
Son of Mr.Mohanlal,



No.1107, Maker Chamber V,
Nariman Point,
Mumbai – 400 021.

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

:Respondents/Defendants

O.A.1011 of 2019:-

Original Application praying that this Hon'ble Court be pleased to pass an order of Interim Injunction, restraining th 2nd and 3rd Respondent either through themselves or through their servants, assigns, agents, representatives, officers, trustees, beneficiaries, administrators or any other person claiming through or under them or under any instrument, whatsoever from in any manner selling, alienating, transferring, parting with the possession of dealing with disposing of inducting anyone into or developing or creating any third party right or interest of whatsoever nature and in any manner whatsoever in respect of the shares held by them in the 1st Respondent Company.

A.No.8513 of 2019:-

Application praying that this Hon'ble Court be pleased to pass an order that pending the hearing and final disposal of the instant proceeding



Honble court may be pleased to appoint a receiver for receiving the amounts due and payable under the book debts specifically charged/disclosed by the Respondents vide their email dated 03.08.2019, maintain accounts and deposit the same in this Honble Court.

A.No.8514 of 2019:-

Application praying that this Hon'ble Court be pleased to direct the Respondents to forthwith file an Affidavit disclosing the details of all the movable and immovable properties belonging to them with the details of the encumbrance if any as on the date of recall of the Facility availed by the 1st Respondent, including but not limited to their book debts, Bank Accounts, fixed deposits, bank lockers maintained by them and balance/bullion available therein as on the date of loan recall.

A.No.8515 of 2019:-

Application praying that this Hon'ble Court be pleased to direct the Respondents to jointly and severally furnish security to the tune of Rs.6,19,65,257.93 (Rupees Six Crores Nineteen Lakhs Sixty Five Thousand Two Hundred and Fifty Seven and Ninety Three Paise Only) being the balance loan amount together with interest cost, charges and expenses;



A.No.9671 of 2019:

WEB COPY

Application praying that this Hon'ble Court be pleased to initiate appropriate action against the Respondents for committing perjury.

A.No.559 of 2020:-

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

... Applicant/1st Respondent/Defendant

Vs

1.M/s Vivriti Capital Private Limited,
Rep. by its Managing Director/Principal Officer,
Floor 12, Prestige Polygon,
Anna Salai, Teynampet,
Chennai 600 035,
Rep by Head & Legal Compliance/ Authorised Signatory
Mr.Nithal Singh Pabdee.

...1st Respondent/Applicant/Plaintiff

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

... 2nd Respondent/2nd Respondent/
2nd Respondent

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

... 3rd Respondent/3rd Respondent/
3rd Respondent



order of this Hon'ble court, dated 21.01.2020, in A.No.8513 of 2019 in C.S.No.650 of 2019 to state that the Receiver shall administer the affairs and maintain accounts of book debts pertaining to the amount equivalent to the amount disclosed by the Applicant herein in the email dated 3rd August 2019 and as separately identified by the 1st Applicant in its Account Statement as on 21st February, 2020.

A.No.2092 to 2094 of 2020:-

M/s Vivriti Capital Private Limited,
Rep by its Managing Director/Principal Officer,
Floor 12, Prestige Polygon,
Anna Salai,
Teynampet,
Chennai – 600 035. : Applicant/Respondent/Applicant/Plaintiff

Vs

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,
Mumbai – 400 021.

: Respondents/Applicants/Respondents/Defendants

**A.No.2092 of 2020:-**

Application praying that this Hon'ble Court be pleased to direct the Advocate Receiver to take charge of the Financial affairs of the 1st Respondent as directed by this Hon'ble court vide its orders dated 21.01.2020 and 21.02.2020 in A.No.8513 of 2019 and Application.No.559 of 2020.

A.No.2093 of 2020:-

Application praying that this Hon'ble Court be pleased to punish the Respondents for contempt of court for non-compliance of the (1) Order dated 16.12.2019 in O.A.No.1011 of 2019 and Appl.Nos.8513 to 8515 of 2019 (2) Order dated 16.12.2019 passed by this Hon'ble court in C.S.No.556 and 650 of 2019 and Application No.8513 to 8515 & 9671 of 2019 & A.No.1011 & 867 of 2019 (3) Order dated 21.01.2020 passed by this Hon'ble Court in Application No.8513 of 2019 and (4) Order dated 21.02.2020 passed by this Hon'ble Court in Application No.559 of 2020.

A.No.2094 of 2020:-

Application praying that this Hon'ble Court be pleased to initiate appropriate action against the Respondents for committing perjury.

These applications having been heard on 03.09.2021 in the presence of Mr.P.Giridharan and Mr.Dominic S.David, advocates for the applicant in O.A.No.1011 of 2019 and A.Nos.8513 to 8515 and 9671 of 2019 and 2092



to 2094 of 2020 and for the 1st respondent in A.No.559 of 2020 and Mr.P.V.Balasubramaniam for Mr.P.Rajkumar Jhabakh, advocates for the respondents in O.A.No.1011 of 2019 and A.Nos.8513 to 8515 and 9671 of 2019 and 2092 to 2094 of 2020 and for the applicant in A.No.559 of 2020 and upon reading the Judge's Summons and the affidavit of Nihal Singh Pabadee filed in A.Nos.2092 to 2094 of 2020 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 the order dated 21.01.2020 made in A.No.8513 of 2019 and the order dated 21.02.2020 made in A.No.559 of 2020 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 the learned counsel appearing for the defendants having submitted that the accounts of the first defendant's company has been freezed by the National Company Law Tribunal (in short NCLT) and they are not in a position to comply with the orders of this Court regarding payment of instalments, the Advocate Receiver, when visited the office of the defendants, was properly explained about the difficulty, but she did not make correct assets of the receivables produced to her for scrutiny, the Advocate Receiver from Chennai is unable to move to various places at Mumbai where the accounts of the defendants are maintained, and as far as



that due to the order passed by the NCLT, they were not able to pay the EMI arrears and the reason for not complying with the order is bonafide and it is not a wilful default, further, the learned counsel would also state that they are ready to allow the plaintiff to retain the shares of the first defendant company furnished as security to them towards the advance of loan and also the receivables, however, the personal property of the defendants 2 and 3 as well as pro-notes should not be proceeded or enforced, and this court having observing that by order dated 12.11.2019, the respondents/defendants were directed to file an affidavit disclosing the list of assets and receivables, thereafter, having failed to file the list of receivable, this Court appointed an Advocate Receiver on 21.01.2020 as prayed in A.No.8513 of 2019, at the request of the defendants to receive alternate receivables substituting the earlier receivables, this Court by order dated 21.02.2020 permitted the defendants to furnish viable alternate receivables, pursuant to the modification sought by the defendants in A.No.559 of 2020 in C.S.No.650 of 2019, thereafter, without any progress, the defendants have approached the Division Bench of this Court in O.S.A.No.234 of 2020, and on perusing the averments in this application, though this Court finds element of prejury for taking necessary action, considering the other attending circumstances and facts if the defendants



note about the averments made in the application for perjury action, **It is ordered as follows:-**

That 1) Bhupesh Rathod and 2) Chirag Rathod, the respondents 2 and 3 in O.A.No.1011 of 2019, be and are hereby restrained by an order of interim injunction from creating charge or alienating or transferring the shares held by the defendants 2 and 3 in the 1st defendant/respondent Company.

2. That the respondents/defendants in A.No.8514 of 2019 be and are hereby directed to disclose the movables and immovable properties as on the date of recall of the facility availed by the first respondent.

3. That the respondents/defendants in A.No.8515 of 2019 be and are hereby directed jointly and severally to furnish the security to the tune of Rs.6,19,65,257.93 being the balance loan amount together with interest cost charges and expenses, since the security sofar furnished appears to be inadequate.

4. That the interim order granted in pursuance of the order dated 21.01.2020 made in A.No.8513 of 2019 shall continue and Ms.C.N.G.Niraimathi, the Advocate Receiver appointed therein be and is hereby directed to file a consolidated report to the court on or before 08.10.2021.

5. That these A.Nos.9671 of 2019, 2093 and 2094 of 2020 do stand



closed for the present.

WEB COPY

6. That there shall be no order as to costs.

7. That these A.Nos.8513 of 2019, 559 and 2092 of 2020 be posted on 08.10.2021.

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 (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



WEB COPY

MU

05.10.2021

11

O.A.No.1011 of 2019
and
A.Nos.8513 to 8515 of 2019
and
A.No.9671 of 2019 in A.No.8514 of 2019
and
A.No.559 of 2020 in A.No.8513 of 2019
and
2092 to 2094 of 2020 in A.No.559 of 2020
in
C.S.No.650 of 2019

ORDER:

DATED: 22.09.2021

THE HON'BLE DR.JUSTICE

G.JAYACHANDRAN

FOR APPROVAL: 06.10.2021

APPROVED ON: 06.10.2021

Copy to:-

Ms.C.N.G.Niraimathi,
(M.S.986/1990),
having office at No.307,
New Additional Law Chamber,
High Court Building,
Chennai – 600 104.
Mobile No.98404 28905



IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on :03.09.2021

Pronounced on :22.09.2021

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

O.A.No.1011/ 2019, A.Nos.8513, 8514, 8515 and 9671 of 2019 &
A.Nos.559 of 2020 and 2092 to 2094 of 2020

in
C.S.No.650 of 2019

O.A.No.1011 of 2019:

M/s Vivriti Capital Private Limited,

Floor 12, Prestige Polygon,

Anna Salai,

Teynampet,

Chennai 600 035,

Represented by its:

Head-Legal and Compliance/Authorised Signatory,

Mr.Nihal Singh Pabadee

.. Applicant/Plaintiff

/versus/

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,

Guarantor/Director,

Son of Mr.Mohanlal,

No.1107, Maker Chamber V,

Nariman Point,

Mumbai-400 021.



Son of Mr.Bhupesh Rathod,
No.1107, Maker Chamber V,
Mumbai-400 021.

..Respondents/Defendants

Prayer: Original Application has been filed under Order XIV, Rule 8 of the Madras High Court Original Side Rules, 1996 read with Order 39, Rule 1 and 2 of the Code of Civil Procedure, 1908, praying to pass an order of interim injunction restraining the 2nd and 3rd respondents either through themselves or through their servants, assigns, agents, representatives, officers, trustees, beneficiaries, administrator/s or any other person claiming through or under them or under any instrument, whatsoever, from in any manner selling, alienating, transferring, parting with the possession of, dealing with, disposing of, inducting anyone into or developing or creating any third party right or interest of whatsoever nature and in any manner whatsoever in respect of the shares held by them in the 1st respondent company.

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

For Respondent :Mr.P.V.Balasubramniam

A.No.8513 of 2019:

M/s Vivriti Capital Private Limited,
Floor 12, Prestige Polygon,
Anna Salai,
Teynampet,
Chennai 600 035,
Represented by its:

Head-Legal and Compliance/Authorised Signatory,
Mr.Nihal Singh Pabadee

..Applicant/Plaintiff



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,
Gurantor/Director,
Son of Mr.Mohanlal,
No.1107, Maker Chamber V,
Nariman Point,
Mumbai-400 021.

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

..Respondents/Defendants

Prayer: Original Application has been filed under Order XIV, Rule 8 of the Original Side Rules, r/w Section 151 of the Code of Civil Procedure, 1908, praying to pass an order that pending the hearing and final disposal of the instant proceeding between the parties and execution of the order that may be passed, the Hon'ble Court may be pleased to appoint a receiver for receiving the amounts due and payable under the book debts specifically charged/disclosed by the respondents vide their email dated 03.08.2019, maintain accounts and deposit the same in this Court.

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

For Respondent :Mr.P.V.Balasubramniam



balance/bullion available therein as on the date of loan recall.

WEB COPY

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

For Respondent :Mr.P.V.Balasubramniam

A.No.8515 of 2019:

M/s Vivriti Capital Private Limited,
Floor 12, Prestige Polygon,
Anna Salai,
Teynampet,
Chennai-600 035,
Represented by its:
Head-Legal and Compliance/Authorised Signatory,
Mr.Nihal Singh Pabadee ..Applicant/Plaintiff

/versus/

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,
Guarantor/Director,
Son of Mr.Mohanlal,
No.1107, Maker Chamber V,
Nariman Point,
Mumbai-400 021.

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

..Respondents/Defendants



Prayer: Original Application has been filed under Order XIV, Rule 8 of the Original Side Rules r/w under Order XXXVIII, Rule 5 of the Code of Civil Procedure 1908, praying to direct the respondents to jointly and severly furnish security to the tune of Rs.6,19,65,257.93 (Rupees Six Crores Nineteen Lakhs Sixty Five Thousand Two Hundred and Fifty Seven and Ninety Three paise only) being the balance loan amount together with interest, cost, charges and expense.

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

For Respondents :Mr.P.V.Balasubramniam

A.No.9671 of 2019:

M/s Vivriti Capital Private Limited,
Floor 12, Prestige Polygon,
Anna Salai, Teynampet,
Chennai 600 035,
Represented by its:
Head-Legal and Compliance/Authorised Signatory,
Mr.Nihal Singh Pabadee ..Applicant/Applicant/Plaintiff

/versus/

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,
Guarantor/Director,
Son of Mr.Mohanlal,
No.1107, Maker Chamber V,
Nariman Point,
Mumbai-400 021.



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

..Respondents/Respondents/Defendants

Prayer: Original Application has been filed under Order XIV, Rule 8 of the Original Side Rules read with Section 151 of the Code of Civil Procedure, 1908 praying to initiate appropriate action against the respondents for committing prejury.

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

For Respondents :Mr.P.V.Balasubramniam

A.No.559 of 2020:

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

..Applicant/
1st Respondent/defendant

/versus/

1.M/s Vivriti Capital Private Limited,
Rep.by its Managing Director/Principal Officer,
Floor 12, Prestige Polygon,
Anna Salai, Teynampet,
Chennai-600 035,
Rep.by Head-Legal and Compliance/Authorised Signatory,
Mr.Nihal Singh Pabdee ..1st Respondent/Applicant/Plaintiff

2.Bhupesh Rathod, M/54,
Guarantor/Director,



Son of Mr.Mohanlal,
No.1107, Maker Chamber V,
Nariman Point, Mumbai 400 021.

..2nd Respondent/2nd Respondent/
2nd Defendant

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

..3rd Respondents/3rd Respondent/
3rd Defendant

Prayer: Original Application has been filed under Order XIV, Rule 8 of the Original Side Rules read with Section 151 of the Code of Civil Procedure, 1908 praying to modify the order of this Hon'ble Court, dated 21.01.2020 in A.No.8513 of 2019, in C.S.No.650 of 2019 to state that the Receiver shall administer the affairs and maintain accounts of book debts pertaining to the amount equivalent to the amount disclosed by the applicant herein in the e-mail dated 3rd August 2019 and as separately identified by the 1st applicant its Account Statement as on 21st February, 2020.

For Applicant :Mr.P.V.Balasubramaniam
for Mr.P.Rajkumar Jhabakh

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

A.Nos.2092 to 2094 of 2020:

M/s Vivriti Capital Private Limited,
Rep.by its Managing Director/Principal Officer,
Floor 12, Prestige Polygon,
Anna Salai, Teynampet,
Chennai 600 035. ..Applicant/Respondent/Applicant/Plaintiff



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,
Mumbai-400 021. ..Respondents/Applicants/Respondents/Defendants

Prayer in A.No.2092 of 2020: Original Application has been filed under Order XIV, Rule 8 read with Section 151 of the Code of Civil Procedure, 1908 praying to direct the Advocate Receiver to take charge of the financial affairs of the 1st respondent as directed by this Hon'ble Court vide its orders dated 21.01.2020 and 21.02.2020 in Application Nos.8513 of 2019 and Application No.559 of 2020.

Prayer in A.No.2093 of 2020: Original Application has been filed under Order XIV, Rule 8 read with Section 12 of Contempt of Courts Act, 1971 read with Section 151 of the Code of Civil Procedure, 1908 praying to punish the respondents for contempt of Court for non-compliance of the (1) order dated 16.12.2019 in OA.No.1011 of 2019 & Appl.Nos.8513 to 8515 of 2019, (2) Order dated 16.12.2019 passed by this Hon'ble Court in C.S.No.556 & 650 of 2019 and Application No.8513 to 8515 & 9671 of 2019 & A.No.1101 & 867 of 2019; (3) Order dated 21.01.2020 passed by



this Hon'ble Court in Application No.8513 of 2019 and (4) Order dated 21.02.2020 passed by this Hon'ble Court in Application No.559 of 2020.

Prayer in A.No.2094 of 2020: Original Application has been filed under Order XIV, Rule 8 read with Section 151 of the Code of Civil Procedure, 1908, praying to initiate appropriate action against the respondents for committing perjury.

A.Nos.2092 to 2094 of 2020:

For Applicant :Mr.P.Giridharan and
Mr.Dominic S.David
For Respondents :Mr.P.V.Balasubramaniam

=====

COMMON ORDER

(This case has been heard through Vedio Conferencing)

This suit is filed for recovery of money. The plaintiff, which is a Non Banking Financial Company (NBFC), is a Middle Level Financier and the first defendant, which is also a Non Banking Financial Company (NBFC) is a Micro Level Financier. They both entered into a loan Facility Agreement on 15.05.2019 wherein the plaintiff agreed to advance a sum of Rs.20 crores to the defendants within a span of three months period subject to certain conditions. Particularly, the 1st defendant was supposed to provide security to the tune of Rs.22 crores (1.10 times) and also create charge over the shares of the first defendant company, the second and third defendants to execute pronote as well as create charge over their assets. Alleging that



by them were not genuine, the plaintiff, after advancing Rs.6 crores, stopped advancing further loan, citing the defendants not able to furnish adequate and satisfactory security. Whereas the defendants alleging that there is a breach of agreement, terminated the loan facility agreement and filed the suit in C.S.No.556 of 2019 to declare their termination of Facility Agreement as valid and to restrain the plaintiff herein from realizing the money from the security furnished. In such circumstances, the plaintiff herein has filed the instant suit for recovery of money with interest.

2.In the instant suit, an application in O.A.No.1101 of 2019 was filed seeking injunction restraining respondents 2 and 3 from transferring, alienating, selling, parting with the possession of, developing or creating any third party right or interest whatsoever in respect of the shares held by them in the first respondent company and also filed an application in A.No.8513 of 2019 for appointment of Receiver to take over the administration of the financial affairs of the 1st defendant's company and maintain the accounts.

3.This Court, on considering the various applications filed by the parties in both the suits, on 16.12.2019 passed the following orders:-

“Suit and counter suit with multiple

<https://hcservices.ecourts.gov.in/hcservices/> applications for various interim relief have been filed.

2.Heard the learned counsels for the respective



WEB COPY

parties.

3.After hearing the learned counsels for some time, this Court is of the opinion that the following interim order is necessary in the light of the facts and circumstances.

4.The defendants in C.S.No.650 of 2019 have borrowed loan of Rs.6 crores from the plaintiff. Defendant stopped paying EMI from the month of September 2019. However, for the reasons stated in their counter suit [C.S.No.556/2019] claim damages against the plaintiff in C.S.No.650/2019. Therefore, as a interim measure the defendant in C.S.No.650 of 2019 is directed to deposit EMI arrears in a separate account on or before 20.01.2020. The respondents 2 and 3 shall file their affidavit of undertaking that they will not sell the shares which they hold in the 1st defendant's company.

4.Call the matter on 21.01.2020.”

4.Thereafter, in A.No.8513 of 2019 in C.S.No.650 of 2019 filed for appointment of Advocate Receiver, this Court, on 21.01.2020, passed the following further order:-

2.After hearing both the parties, this Court on 16.12.2019 has passed the following conditional order:-

“2.Heard the learned counsels for the respective parties.

3.After hearing the learned counsels for some time, this Court is of the opinion that the following interim order is necessary in the light of the facts and circumstances.

4.The defendants in C.S.No.650 of 2019 have borrowed loan of Rs.6 crores from the plaintiff. Defendant stopped paying EMI from the month of September 2019. However, for the reasons stated in their counter suit [C.S.No.556/2019] claim damages against the plaintiff in



WEB COPY

C.S.No.650/2019. Therefore, as a interim measure the defendant in C.S.No.650 of 2019 is directed to deposit EMI arrears in a separate account on or before 20.01.2020. The respondents 2 and 3 shall file their affidavit of undertaking that they will not sell the shares which they hold in the 1st defendant's company.”

3.Today, it is reported that the above conditional order is not complied by the respondents/defendants. It is also stated by the learned counsel on record appearing for the respondents, Mr.Krishna Ravindran, that he has given consent for change of counsel.

4.Mr.Raj Jhabak, learned counsel represents that he has been instructed to file vakalat on behalf of the respondents.

5.The conduct of the respondents clearly indicates that there is no intention of complying the above conditional order, but to change counsel and drag. Therefore, this Court is of the view that unless and until the rights of the applicant/plaintiff is protected by way of interim order, it is impossible for him to realise the suit claim. Hence. Ms.C.N.G.Niraimathi, (M.S.986/1990),having office at No.307, New Additional Law Changer, High Court Buildings, Chennai-104 (Mobile No.98404 28905) is appointed as a Receiver to administer the official affairs of the 1st respondent's company and maintain the accounts. The Receiver shall be entitled to receive the amounts due and payable under the book debts specifically charged disclosed by the respondents, vide their email dated 03.08.2019, maintain accounts and deposit the same in the suit account in C.S.No.650 of 2019. Accordingly, this application is ordered.

5.The learned counsel reports that the above conditional order not complied till date.

6.The 1st defendant has filed an application in A.No.559 of 2020



21.01.2020 needs modification, since the receivable already furnished are not available and therefore, want to substitute new list of receivables for the same value. This court permitted the defendants to furnish alternate security as receivables for the loan so far received. The defendants herein had not shown true interest in furnishing genuine receivables to the Advocate Receiver, inspite of permitting them to do so in application No.559 of 2020, vide order dated 21.02.2020. Nonetheless, this Court has shown enough indulgence to the defendants, granting time for the defendants to comply with the order of furnishing genuine and valid receivables as security and also to co-operate with the Advocate Receiver.

7. Aggrieved by the above said conditional order, the defendants have preferred Intra Court Appeal in O.S.A.No.234 of 2020, wherein the Division Bench of this Court has passed the following order on 28.10.2020:-

“We have elaborately heard Mr.R.Parthasarathy, learned counsel appearing on behalf of the appellants and Mr.AR.L.Sundaresan, learned Senior Counsel appearing on behalf of the learned counsel on record for the sole respondent/caveator.

2. In our prima facie view, we find that there are no good grounds to interfere with the interim directions issued by the learned Single Judge appointing a Receiver to administer the affairs of the appellants. In fact, the Receiver had already visited the business premises of the appellants twice at Mumbai and submitted certain reports. We also find from the order dated 07.07.2020, the parties were directed to go for



WEB COPY

trial. This was followed by further directions issued on 20.07.2020, 07.08.2020 and 03.09.2020, which directions/observations we find to be more appropriate and reasonable considering the nature of dispute between the parties.

3. We have made our prima facie observation that the equated monthly instalments payable on a loan availed cannot be put on hold at the instance of the appellants on the facts and circumstances pleaded in this appeal. It is no doubt true that the appellants filed a separate suit to declare the action initiated by them vide letter dated 17.08.2019 terminating the facility agreement as valid and for consequential damages, which is also pending and certain interim observations were made in the applications filed in the said suit. De hors all these issues, the larger question would be as to whether these proceedings can impact the payment of equated monthly instalments. Prima facie, in our view, this cannot stall the payment of equated monthly instalments, which needs to be honoured by the appellants.

4. The learned counsel for the appellants seeks time to get necessary instructions in the matter. Office to list the matter under the caption “for admission” on 06.11.2020.

28.10.2020”

8. On further hearing of the learned counsels, on 10.11.2020, the

Division Bench passed the following order:-

“We have heard Mr. Sathish Parasaran, learned Senior Counsel appearing for Mr. Raj Kumar Jhabak, learned counsel for the appellant and Mr. A.R.L. Sundaresan, learned Senior counsel for the respondent.

2. On 28.10.2020, we heard Mr. R. Parthasarathy, learned counsel appearing on behalf of Mr. Raj Kumar Jhabak and learned Senior Counsel for the respondent for a considerable length of time and passed the following order.

““We have elaborately heard Mr. R. Parthasarathy, learned counsel appearing on behalf of the appellants and Mr. A.R.L. Sundaresan, learned Senior Counsel appearing on behalf of the learned counsel on record for the sole respondent/caveator.

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

2. In our prima facie view, we find that there are no



WEB COPY

good grounds to interfere with the interim directions issued by the learned Single Judge appointing a Receiver to administer the affairs of the appellants. In fact, the Receiver had already visited the business premises of the appellants twice at Mumbai and submitted certain reports. We also find from the order dated 07.07.2020, the parties were directed to go for trial. This was followed by further directions issued on 20.07.2020, 07.08.2020 and 03.09.2020, which directions/observations we find to be more appropriate and reasonable considering the nature of dispute between the parties.

3. We have made our prima facie observation that the equated monthly instalments payable on a loan availed cannot be put on hold at the instance of the appellants on the facts and circumstances pleaded in this appeal. It is no doubt true that the appellants filed a separate suit to declare the action initiated by them vide letter dated 17.08.2019 terminating the facility agreement as valid and for consequential damages, which is also pending and certain interim observations were made in the applications filed in the said suit. De hors all these issues, the larger question would be as to whether these proceedings can impact the payment of equated monthly instalments. Prima facie, in our view, this cannot stall the payment of equated monthly instalments, which needs to be honoured by the appellants.

4. The learned counsel for the appellants seeks time to get necessary instructions in the matter. Office to list the matter under the caption "for admission" on 06.11.2020."

3. Today, we have heard Mr. Sathish Parasaran, learned Senior counsel, who submitted that his endeavour is not to re-argue the matter, but to demonstrate before this Court that the securities of the appellant are in the form of books debts and immovable properties are also available.

4. Further more, the learned Senior counsel submitted that the Receiver has commenced her work and more than three reports have been submitted and such position may not be disturbed, but the appellant should be in a position to recover the outstandings and also service the loan. However, there is an interim order granted by the Debt Recovery Tribunal, freezing the appellant's account. As observed by us on 28.10.2020, we are not satisfied that the appellant had made out a prima facie case for entertaining the appeal. However, the learned



WEB COPY

Senior counsel wishes to place some records certain additional facts.

5.As observed supra, we are not inclined to interfere with the impugned order at this juncture and we will hear the learned Senior Counsel for the appellant on a later date. List this matter after three weeks.

(TSSJ) (VBSJ)
10.11.2020”

9.Then again, when the matter was listed on subsequent dates, the parties took adjournments and did not proceed. Hence, on 17.03.2021, the Division Bench has observed as below:-

“5.Thereafter, the matter has been adjourned from time to time at the instance of the learned counsel appearing for the appellant. We make it clear that the pendency of this appeal will not be a hindrance for the learned Single Bench to proceed with the matter.

6.List the matter on 21.04.2021.

(TSSJ) (RNMJ)
17.03.2021”

10.In the mean time, the applicant/plaintiff herein has filed applications

- i) Appln.No. 2092 of 2020, for direction to the Advocate Receiver to take charge of the financial affairs of the 1st respondent company as directed by this Court, vide order dated 21.01.2020 and 21.02.2020 in A.No.8513 of 2019 and A.No.559 of 2020;
- ii) Application No.2093 of 2020 for breach of interim orders; and
- iii) Application No.2094 of 2020 to take appropriate action against the respondents for committing prejury.



11.The learned counsel appearing for the plaintiff/applicant submitted that the defendants herein, having received Rs.6 crores as finance facility, have not provided adequate security by way of receivables. When the receivables furnished were found to be faulted and fabricated, the plaintiff stopped advancing further loan and demanded valid security. Instead of furnishing valid security, the defendants want to substitute new list of receivables, which were not proportionate to the loan advanced. Soon thereafter, the defendants rushed to the Court by way of filing C.S.No.556 of 2019 with frivolous pleadings to pre-empt the plaintiff from proceeding with the recovery.

12.Considering the merit in Application No.8513/2019, Advocate Receiver was appointed and when the advocate commissioner visited the 1st defendant's office, the defendants did not provide necessary information and the same was brought to the notice of the Division Bench in O.S.A.No.234 of 2020. In spite of a specific injunction restraining them dealing with the company property and the personal property from alienating or transferring the property, the defendants continue to commit breach of the restraint order.

13.Per contra, the learned counsel appearing for the defendants would submit that the accounts of the first defendant's company has been frozen by the National Company Law Tribunal (in short NCLT) and they



are not in a position to comply with the orders of this Court regarding payment of instalments. The Advocate Receiver, when visited the office of the defendants, was properly explained about the difficulty, but she did not make correct assets of the receivables produced to her for scrutiny. The Advocate Receiver from Chennai is unable to move to various places at Mumbai where the accounts of the defendants are maintained.

14. As far as the breach of interim order, the learned counsel for the defendants submitted that due to the order passed by the NCLT, they were not able to pay the EMI arrears and the reason for not complying with the order is bonafide and it is not a wilful default. Further, the learned counsel would also state that they are ready to allow the plaintiff to retain the shares of the first defendant company furnished as security to them towards the advance of loan and also the receivables. However, the personal property of the defendants 2 and 3 as well as pro-notes should not be proceeded or enforced.

15. Considering the rival submissions and pleadings, this Court finds that the defendants herein have no merit to defend the applications filed by the applicant/plaintiff. The appointment of Receiver vide order dated 21.01.2020 shall continue. The Advocate Receiver

Ms.C.N.G.Niraimathi, (M.S.986/1990) having office at No.307, New



No.98404 28905) is directed to file a consolidated report to the Court on or before 08.10.2021.

16.By order dated 12.11.2019, the respondents/defendants were directed to file an affidavit disclosing the list of assets and receivables. Thereafter, having failed to file the list of receivable, this Court appointed an Advocate Receiver on 21.01.2020 as prayed in A.No.8513 of 2019. At the request of the defendants to receive alternate receivables subsituting the earlier receivables, this Court by order dated 21.02.2020 permitted the defendants to furnish viable alternate receivables, pursuant to the modification sought by the defendants in A.No.559 of 2020 in C.S.No.650 of 2019. Thereafter, without any progress, the defendants have approached the Division Bench of this Court in O.S.A.No.234 of 2020. In the said circumstances, this Court passes the following orders in the respective applications.

O.A.No.1011 of 2019: The defendants 2 and 3 are restrained from creating charge or alienating or transferring the shares held by the defendants 2 and 3 in the 1st defendant/respondent company.

A.No.8514 of 2019: The respondents/defendants are directed to disclose the movables and immovable properties as on the date of recall of the facility



availed by the first respondent.

WEB COPY

A.No.8515 of 2019: The respondents/defendants are directed jointly and severally to furnish the security to the tune of Rs.6,19,65,257.93 being the balance loan amount together with interest cost charges and expenses, since the security sofar furnished appears to be inadequate.

A.No.9671 of 2019 isfiled by the respondents to take appropriate action against the respondents for perjury. On perusing the averments in this application, though this Court finds element of perjury for taking necessary action, considering the other attending circumstances and facts if the defendants honestly comply the orders passed today, the Court will not take serious note about the averments made in the application for perjury action. Accordingly, this application is closed for the present.

The reasons stated above is applicable to **A.Nos.2093 and 2094 of 2020** filed to take action against the defendants for contempt and to initiate proceedings for perjury. Therefore, these two applications are also closed for the present.

In the result,

1.O.A.No.1011 of 2019 is allowed. No order as to costs.

2.A.No.8514 of 2019 is allowed. No order as to costs.



WEB COPY

3.A.No.8515 of 2019 is allowed. No order as to costs.

4.A.No.9671 of 2019 is closed for the present. No order as to costs.

5.A.Nos.2093 and 2094 of 2020 are closed for the present. No order as to costs.

6.A.No.8513 of 2019 and A.No.2092 of 2020 and A.No.559 of 2020 are adjourned to 08.10.2021. Advocate Receiver is directed to file consolidated report by then.

Sd./-G.J.J.

22.09.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.