



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 04th DAY OF JANUARY 2022

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

C.S.No.297 of 2020

(Comm.Suit)

and

Application Nos.2547 & 2548 of 2021

Vivriti Capital Private Limited,
Having registered office at
12th Floor, Prestige Polygon, No.471
Annasalai, Nandanam,
Chennai - 600 035
Rep by its Authorised Signatory
Vamshi Vasudevan

...Plaintiff

-VS-

1. Sambandh Finserve Private Limited,
Unit No. DCB-820 / 821 / 822, 8th Floor,
DLF Cyber City, Chandaka Industrial Estate,
CS Pur Bhubaneswar, Khordha,
Odisha - 751 024

Having Coporate Office at
"O"-4/9, AREA - 7 & 8, Civil Township,
Panposh Road, Sundargarh District,
Rourkela, Odisha 769 004

2. Mr. Deepak Kindo
Jubilee Villa, 1st Floor, Plot No.7,
Sindhi Colony, Mission Hata,
Rajgangpur, Odisha - 770 017.

...Defendants



Civil Suit praying that this Hon'ble Court be pleased to pass a

judgment and decree as follows:-

a) Directing the Defendants 1 and 2 to jointly and severally pay the plaintiff a sum of Rs.9,60,68,603.83/-

Directing the Defendants 1 and 2 to jointly and severally pay the plaintiff interest on the sum of Rs.9,60,68,603.83/- at the rate of 20% p.a. on Rs. 9,58,58,503/- from date of plaint to date of payment in full.

b) For costs of the present suit.

A.No.2547 of 2021 & 2548 of 2021:-

SMALL INDUSTRIES DEVELOPMENT

BANK OF INDIA (SIDBI),

A statutory body, having its office at

MSME Development Centre, C-11, G-Block

Bandra Kurla Complex, Bandra (E), Mumbai - 400 051

Rep by its Authorised Signatory

Mr.S.Anandhakrishnan,

In the representative capacity

On behalf of the lenders of

M/s. Sambandh Finserve Private Ltd

...Applicant / Proposed
Defendant - 3

-VS-

1. VIVRITI CAPITAL PRIVATE LIMITED,

Having its registered office at 12th Floor,

Prestige Polygon, No.471, Annasalai,

Nandanam, Chennai - 600 035

Rep. by its Authorised Signatory,

Mr. Vamshi Vasudevan

...1st Respondent / Plaintiff

2. SAMBANDH FINSERVE PRIVATE LIMITED,

Unit No. DCB-820 / 821 / 822, 8th Floor,

DLF Cyber City, Chandaka Industrial Estate,

CS Pur Bhubaneswar, Khordha,



Odisha - 751 024.

Having Corporate Office at
"O"-4/9, AREA - 7 & 8, Civil Township,
Panposh Road, Sundargarh District,
Rourkela, Odisha 769 004.

...2nd Respondent /
1st Defendant

3. Mr. DEEPAK KINDO,
Jubilee Villa, 1st Floor, Plot No.7,
Sindhi Colony, Mission Hata,
Rajgangpur, Odisha - 770 017.

...3rd Respondent /
2nd Defendant

A.No.2547 of 2021:-

Application praying that this Hon'ble Court be pleased to permit the Applicant to defend the above suit in C.S.(Com.) No. 297 of 2020 in a representative capacity on behalf of the joint Lender forum of the 2nd Respondent / 1st Defendant in the suit.

A.No.2548 of 2021:-

Application praying that this Hon'ble Court be pleased to implead the applicant as a proposed 3rd defendant in the above suit in C.S.(Com.) No. 297 of 2020 on the file of Hon'ble High Court of Madras.

This suit alongwith these applications coming on this day before this Court for hearing in the presence of Mr.P.S.Raman, Senior Counsel for Mr.

P.Giridharan, Mr. Siddarth Bhandari, Mr. Vivek Shetty, Advocates for the plaintiff in C.S.No.297 of 2020 and for the 1st respondent in A.Nos.2547



and 2548 of 2021 and Mr. Rahul M.Shankar, Advocate for the 1st defendant in C.S.No.297 of 2020 and for the 2nd respondent in A.Nos.2547 and 2548 of 2021 and Mr.Prasanth Rajagopal, Advocate for the 2nd defendant in C.S.No.297 of 2020 and for the 3rd respondent in A.Nos.2547 & 2548 of 2021 and Mr.E.Om prakash, Senior Counsel for M/s. A.Ilangovan, Advocates for the Applicant in A.Nos.2547 & 2548 of 2021, and upon reading the plaint filed in C.S.No.297 of 2020 and the judge's summons and the affidavit of S.Anantha Krishnan filed in A.Nos.2547 and 2548 of 2021 and the counter affidavit of Vanshi Vasudevan filed in A.No.2547 of 2021 and this Court having observed that the applicant is not a necessary or proper party in the suit, there is no scope for granting any leave to the applicant to defend the suit in their representative capacity on the joint lender forum , **it is ordered and decreed as follows:-**

That the defendants herein, do pay to the plaintiff herein, a sum of Rs.10,62,97,936/- (Rupees Ten Crores Sixty Two Lakhs Ninety seven Thousand Nine Hundred and Thirty Six Only) with further interest at the rate 9% per annum on the sum of Rs.9,60,68,603.83/- (Rupees Nine Crores Sixty Lakhs Sixty Eight Thousand Six Hundred and Three and Eighty Three Paise Only) from this date till the date of payment.



plaintiff herein, a sum of Rs.25,00,000/-(Rupees Twenty Five Lakhs Only)

as exemplary costs, which is determined by taking into account the Court Fees and expenses that has been incurred by the plaintiff and the Conduct of the defendants in dragging on with the proceedings even without complying with the condition imposed by this Court while allowing the application filed by the defendants seeking for leave of Court to defend the suit.

3) That the A.Nos.2547 & 2548 of 2021, be and are hereby dismissed.

4) That there shall be no order as to costs of these applications.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 04th DAY OF JANUARY 2022.

Sd/-

ASSISTANT REGISTRAR (Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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ARS

09.02.2022

10.02.2022

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C.S.No.297 of 2020
(Comm.Suit)
and
Application Nos.2547 & 2548 of 2021

DECREE

DATED : 04.01.2022

THE HON'BLE MR. JUSTICE
N.ANAND VENKATESH

FOR APPROVAL : 23.02.2022

APPROVED ON : 25.02.2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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Dated : 04.01.2022**Coram:****THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH****Civil Suit No.297 of 2020**
(Comm.Suit)

Vivriti Capital Private Limited
Represented by its Authorized Signatory
Mr.Vamshi Vasudevan
Having registered office at
12th Floor, Prestige Polygon. No.471,
Anna Salai, Nandanam,
Chennai 600 035.

.. Plaintiff

.vs.

1.Sambandh Finserve Private Limited,
Unit No.DCB-820, 821, 822, 8th Floor,
DLF Cyber City, Chandaka Industrial Estate,
CS Pur Bhubaneswar, Khordha,
Odisha-751 024.
Having Corporate Office at
“O”-4/9, AREA-7 & 8, Civil Township,
Panposh Road, Sundargarh District,
Rourkela, Odisha 769 004.

2.Mr.Deepak Kindo
Jubilee Vila, 1 st Floor, Plot No.7,
Sindhi Colony, Mission Hata,
Rajgangpur, Odisha 770 017.

..Defendants



Prayer: Civil Suit has been filed under Order VII Rule 1 O.S.Rules r/w Order XXXVII Rule 2 of the Code of Civil Procedure 1908, as amended by the Commercial Courts Act, pleaded to pass a judgment and decree as follows:-

a) Directing the defendants 1 and 2 to jointly and severally pay the plaintiff a sum of Rs.9,60,68,603.83/-.

Directing the defendants 1 and 2 to jointly and severally pay the plaintiff interest on the sum of Rs.9,60,68,603.83/- at the rate of 20% p.a., Rs.9,58,58,503/- from date of plaint to date of payment in full.

b) For costs of the present suit.

c) For such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.



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For Plaintiff : Mr.P.S.Raman
Sr.Counsel
for Mr.P.Giridharan
Mr.Siddarth Bhandari
Mr.Vivek Shetty

For Defendants : Mr.Rahul M.Shankar
for D 1

Mr.Prasanth Rajagopal
for D 2

J U D G M E N T

The defendants filed Application Nos.43 and 332 of 2021, seeking for the leave of the Court to defend the suit. This Court allowed the applications by an order dated 20.04.2021, by imposing a condition that the defendants must deposit a sum of Rs.10,00,00,000/- (Rupees ten crores only) to the credit of the suit within a period of four weeks from the date of



the said amount, they shall forfeit the right to defend the case.

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2.It is brought to the notice of this Court that the defendants failed to comply with the order passed by this Court on 20.04.2021 and as a result, their right to defend their case stands forfeited.

3.In view of the above, the legal consequence has to follow and in line with Order XXXVII Rule (3)(6) (b) of CPC., r/w Form No.13-B of Appendix 2 of the Madras High Court Original Side Rules, 1956, the defendants are deemed to have admitted the claim of the defendants and accordingly, the plaintiff is entitled for a judgment and a decree for the recovery of a sum of Rs.9,60,68,603.83/- with interest at the rate of 9% p.a., from the date of filing of the suit till the date of payment made by the defendants.

4.The defendants are directed to pay exemplary cost of Rs.25,00,000/- to the plaintiff. This exemplary cost is determined by taking into account the court fees and expenses that has been incurred by the plaintiff and the conduct of the defendants in dragging on with the proceedings even without complying with the condition imposed by this Court while allowing



the applications filed by the defendants seeking for leave of the court to defend the suit.

5.The suit is decreed in the above terms.

Sd./-N.A.V.J.

04.01.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

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THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

Application Nos.2547 & 2548 of 2021
in C.S.No.297 of 2020
(Comm.Suit)

Vivriti Capital Private Limited,
Having registered office at
12th Floor, Prestige Polygon, No.471
Annasalai, Nandanam,
Chennai - 600 035
Rep by its Authorised Signatory
Vamshi Vasudevan

...Plaintiff

-VS-

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Jubilee Villa, 1st Floor, Plot No.7,
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...Defendants



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A.No.2547 of 2021 & 2548 of 2021:-

SMALL INDUSTRIES DEVELOPMENT
BANK OF INDIA (SIDBI),

A statutory body, having its office at
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Bandra Kurla Complex, Bandra (E), Mumbai - 400 051

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Mr.S.Anandhkrishnan,

In the representative capacity

On behalf of the lenders of

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Defendant - 3

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Having its registered office at 12th Floor,

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Rep. by its Authorised Signatory,

Mr. Vamshi Vasudevan

...1st Respondent / Plaintiff

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DLF Cyber City, Chandaka Industrial Estate,

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Having Corporate Office at

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1st Defendant

3. Mr. DEEPAK KINDO,

Jubilee Villa, 1st Floor, Plot No.7,

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Raigangpur, Odisha - 770 017.

...3rd Respondent /
2nd Defendant



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A.No.2547 of 2021:-

Application praying that this Hon'ble Court be pleased to permit the Applicant to defend the above suit in C.S.(Com.) No. 297 of 2020 in a representative capacity on behalf of the joint Lender forum of the 2nd Respondent / 1st Defendant in the suit.

A.No.2548 of 2021:-

Application praying that this Hon'ble Court be pleased to implead the applicant as a proposed 3rd defendant in the above suit in C.S.(Com.) No. 297 of 2020 on the file of Hon'ble High Court of Madras.

These applications coming on this day before this Court for hearing,

the Court made the following order:-

These applications have been filed by Small Industries Development Bank of India (SIDBI) to implead themselves as proposed 3rd defendant in the suit and to grant them leave to defend the suit in a representative capacity on behalf of the joint lender forum.



2. Heard Mr.E.Omprakash, learned Senior Counsel for applicant, Mr.P.S.Raman, learned Senior Counsel for R 1, Mr.Raghul M.Shankar, learned counsel for R 2 and Mr.Prashant Rajagopal, learned counsel for R 3.

3. The 1st respondent/plaintiff filed a suit against the 2nd and 3rd respondents/1st and 2nd defendants for recovery of a sum of Rs.9,60,68,603.83/- with interest. The suit was filed as a summary suit under Order XXXVII of CPC r/w the relevant rules of the Original Side Rules of the Madras High Court. The defendants filed applications in A.Nos.43 and 332 of 2021, seeking leave to defend the suit. These applications were taken up for hearing and after hearing both sides, this Court passed a detailed order on 20.04.2021. The operative portion of the said order is extracted hereunder:

24. On applying the above principle laid by the Hon'ble Apex Court to the instant case, this Court is of the view that the defendants in this case fall under last category. The defence is illusory and practically moonshine, but to enable the first defendant to try to prove the defence, leave is granted on condition. The defendants jointly or severally shall deposit a sum of Rs.10,00,00,000/- (Rupees ten crores



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only) to the credit of the suit account in C.S.(Comm.)No.297 of 2020 within 4 weeks from the today. On such deposit, the written statement shall be taken on file for further consideration. In case the defendants fail to deposit the said amount, they shall forfeit the right to defend the case. The suit shall proceed to the next stage.

4.It is brought to the notice of this Court that the defendants failed to deposit the sum of Rs.10,00,00,000/- (Rupees ten crores only) as directed by this Court and hence both the defendants will forfeit their right to defend the case. The legal consequence of the order would be that the suit itself should be decreed in favour of the plaintiff as prayed for.

5.After the orders were passed in the applications, the applicant in the present applications viz., (SIDBI) filed O.S.A.(CAD).Nos.21 and 22 of 2022. The appeals were disposed of by the Hon'ble First bench by an order dated 06.07.2021. The relevant portions in the order are extracted hereunder:

“5.Though leave was granted to the appellant to

prefer the appeal on the prima facie view taken that the



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appellant may have been a person aggrieved by the order impugned directing the second defendant to furnish security in favour of the plaintiff, it does not appear that there is either any law or any agreement obliging the plaintiff to confine its attempt to recover its dues only by way of a joint action with the other creditors of the first defendant company. Accordingly, since it was open to the plaintiff to take appropriate steps in accordance with law to realize its dues and the plaintiff has sought to do so by instituting the present suit in this Court, the institution of the suit or any orders obtained in such suit cannot be said to be matters by which the appellant can be aggrieved or any cognizance of the appellant's objection in such regard need to be taken.

6. The judgment and order impugned dated April 20, 2021 does not call for any interference at the behest of the appellant. However, the appellant says that the appellant may apply for leave to intervene in the suit or to be added as a defendant therein. It will be open to the appellant to make such application and the same may be considered by the trial Court in accordance with law and uninfluenced by any observation contained in the present order.



7. In view of the above, the issue as to whether the appeal itself is maintainable under Section 13 of the Commercial Courts Act, 2015 is not specifically addressed.

6. Pursuant to the above order, the present applications have been filed by SIDBI, seeking for impleading themselves as the 3rd defendant in the suit and to permit them to defend the suit in a representative capacity on behalf of the joint lender forum.

7. The case of the applicant is that they are the lead Bank representing the financial creditors of the 1st defendant Company. According to the applicant, there were few members of the consortium of lenders, who had given their express consent to act in terms of the resolution of the joint lenders forum that was formed to jointly make their claim against the 1st defendant Company and to recover the amounts due and payable to them. The further case of the applicant is that the plaintiff in the present suit has individually proceeded further to make their claim against the defendants and recover the money and thereby deprive the other creditors of their rightful dues that are payable by the 1st defendant Company. It is stated that apart from the applicant, there are other lenders who have a specific charge



charge and it was resolved in the joint lender forum to receive the amount and put it in an Escrow account for an equitable distribution among the creditors. The further case of the applicant is that the Reserve Bank of India had issued certain guidelines in this regard in the year 2016 and subsequently it was withdrawn.

8.The main purport of the argument by the learned Senior Counsel appearing on behalf of the applicant is that there must be some mechanism to ensure that one creditor does not knock off the entire receivables and thereby deprive the rightful claims of other creditors who have a charge on those receivables. The learned Senior Counsel submitted that the Court even while deciding the suit, must direct the plaintiff to state as to whether there is any pre-existing charge and in which case, the court at the time of passing the decree can make it clear that the recovery of amount by the plaintiff in execution of the decree will be subject to such pre-existing charge on the receivables that has been created in favour of the other financial institutions.

9.In the considered view of this Court, the plaintiff has an independent claim over the defendants and this Court while passing orders in A.Nos.43 and 332 of 2021, has categorically found a *prima case* in favour of the plaintiff and also found that the defendants were attempting to



raise an illusory and moonshine defense. That is the reason why the defendants were directed to deposit a sum of Rs.10,00,000.00/- (Rupees ten crores only) in order to give them an opportunity to defend the case. Once the defendants failed to comply with this condition, the consequence will be that their right to defend the case will stand forfeited and the suit will have to be decreed in favour of the plaintiff. At this stage, the grounds that have been raised by the applicant in the present applications will go beyond the scope of the relief sought for in the suit. Admittedly, the plaintiff is not a member of consortium of lenders and therefore, the plaintiff is not bound to make all the other lenders as a party in the present suit. It is enough if the plaintiff works out their right for the recovery of money that is due and payable by the defendants. The plaintiff is not bound by any agreement nor is the plaintiff bound by any law to bring in the other lenders as a party to the proceedings. In any case, while deciding the claim made by the plaintiff, the claim of the other creditors against the 1st defendant, is not a relevant factor to be considered in the present suit. The plaintiff also cannot be compelled to add anyone as a party to the suit since the plaintiff is the *dominus litus*.

10. The priority of charge on the receivables is not an issue that can be

gone into in the present suit. In the present suit, the plaintiff has merely



sought for recovery of money from the defendants. If at the time of execution of the decree, if any one has any priority of charge, that may be an issue to be considered by the Execution Court at that point of time. That exercise need not be undertaken at this stage in the present suit.

11. In the considered view of this Court, the applicant is neither a necessary party nor a proper party in the suit and hence, there is no ground made out for adding the applicant as the proposed 3rd defendant in the suit. In view of the fact that the applicant is not a necessary or proper party in the suit, there is no scope for granting any leave to the applicant to defend the suit in their representative capacity on behalf of the joint lender forum.

12. This Court does not find any merits in these applications and accordingly, both the applications stand dismissed. Considering the facts and circumstances of the case, there shall be no orders as to costs.

Sd./-N.A.V.J.

04.01.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)