

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 27TH DAY OF JANUARY 2022

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

C.S. No.556 of 2019

(Commercial Suit)

and

A.No.2277 of 2021

and

A.Nos.3004 to 3008 of 2021

C.S. No.556 of 2019

(Commercial Suit)

and A.Nos.3004 to 3008 of 2021:-

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. ...Plaintiffs/Applicants

vs

M/s. Vivriti Capital Pvt. Ltd.,

Represented by it's Managing Director/Principal Officer,

Floor 12, Prestige Polygon,

Anna Salai, Teynampet,

Chennai -600 035.

...Defendant/Respondent

Civil Suit praying that this Hon'ble Court be pleased to pass a judgment and decree:

(i) Declaring the termination of the Facility Agreement dated 17.08.2019 by the 1st Plaintiff Company as valid and binding on the Defendant Company;

(ii) directing the Defendant Company and its officers to pay the sum of Rs.5,00,00,000/- (Rupees Five Crores only) as compensation to the 1st Plaintiff Company for the severe business damage and loss caused to the 1st Plaintiff Company due to the acts of breach by the Defendant and for other incidental losses due to sharing of data and sensitive information pertaining to the 1st Plaintiff Company;

(iii) Granting an order of permanent injunction restraining the Defendant Company and its men, administrators, agents, assigns and any persons claiming through them from using/encashing/enforcing the various instruments of security including Demand Promissory Note dated 15.05.2019, Personal Guarantee dated 15.05.2019 issued by 2nd and 3rd plaintiffs and NACH Mandate issues by the 1st Plaintiff Company.

(iv) Granting an order of permanent injunction restraining the Defendant Company and its men, administrators, agents, assigns and

persons claiming through them from engaging in any act including negative intimation to credit rating agencies, withdrawing default notice to credit rating agency and cibil and other CIC from spreading information and reporting to CIBIL or any such CIC agencies regarding the 1st Plaintiff Company and including creation of any charge on the 1st Plaintiff Company with the concerned Registrar of Companies;

(v) directing the defendant to pay the cost of the suit; and

A.No.3004 of 2021:-

Application praying that this Hon'ble Court be pleased to direct the Respondent to forthwith file an Affidavit disclosing the details of the cash and bank balance available in all the account(s) of the Respondent including their unencumbered deposit(s) as on 15.05.2019, 16.05.2019, 20.05.2019, 31.05.2019, 10.06.2019, 15.06.2019, 20.06.2019, 30.06.2019, 10.07.2019, 15.07.2019, 20.07.2019, 31.07.2019, 03.08.2019, 06.08.2019, 30.09.2019 along with copies of necessary and relevant bank statements in support of the Affidavit of the Respondent.

A.No.3005 of 2021:-

Application praying that this Hon'ble Court be pleased to direct the

Respondent to forthwith furnish on Affidavit the information pertaining to

(i) the total number of sanctions with amount of sanction and borrower wise details, as issued / committed by the Respondent herein from 31.03.2019, onwards till date;

(ii) the particulars of disbursement made with dates therein for each such sanction, sanction wise and

(iii) how much amount has been disbursed by the Respondent as compared to and as against the amount of each such corresponding drawdown request made by all concerned borrowers of sanctions, as issued by the Respondent from 31.3.2019 onwards.

A.No.3006 of 2021:-

Application praying that this Hon'ble Court be pleased to direct the Respondent to forthwith furnish on Affidavit the information and details pertaining to

(i) the disclosure made by Respondent in its Audited Balance sheet dated 31/03/2019 under commitments page No. 45 - Undrawn committed sanctions to borrowers

(ii) in respect of the said commitments of the Respondent the details of borrower-wise sanctions that has been issued by the Respondent

(iii) details of the amount of disbursement that has been done by the

sanction wise and

(iv) the details of the amount of ROC charge that has been created by such sanctioned borrowers in favour of Respondent along with the details of last date when the Respondent had to disburse the total sanctioned amount as per agreed terms of the sanction so issued by the Respondent.

A.No.3007 of 2021:-

Application praying that this Hon'ble Court be pleased to direct the Respondent to forthwith furnish on affidavit information pertaining the date wise ROC charge created on various borrowers and against such Charge creation how much amount has been actually disbursed, date-wise and amount-wise along with the last date of disbursement in relation to each such charge registered on ROC.

A.No.3008 of 2021:-

Application praying that this Hon'ble Court be pleased to Direct the Respondent to forthwith furnish on Affidavit the details of grievances received by the Respondent from its various other borrowers complaining non disbursement of drawn down request, whether in full or in part, in relation to the loans sanctioned by the Respondent.

A.No.2277 of 2021:-

M/s.Vivriti Capital Private Ltd.,
 Floor 12, Prestige Polygon,
 Anna Salai, Teynampet,
 Chennai -600 035.

Represented by Ms. Vamshi Vasudevan.

...Applicant/Defendant

-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,
 Nariman Point, Mumbai - 400 021.

...Respondents/Plaintiffs

Application praying that this Hon'ble Court be pleased to pass a
 Summary Judgment under Order XIII A of the Code of Civil Procedure (as
 amended) and dismiss the suit against Applicant / Defendant.

This civil suit alongwith these applications having been heard on
 21.01.2022 in the presence of Mr.P.V.Balasubramaniam for

and for the applicants in A.Nos.3004 to 3008 of 2021 and for the respondents in A.No.2277 of 2021 and Mr.P.Giridharan, Advocate for the defendant in C.S.No.556 of 2019 and for the respondent in A.Nos.3004 to 3008 of 2021 and for the applicant in A.No.2277 of 2021 and upon reading the plaint filed in C.S.No.556 of 2019 and the judge's summons and the affidavit of Chirag Rathod filed in A.Nos.3004 to 3008 of 2021 and the judge's summons and the affidavit of Vamshi Vasudevan filed in A.No.2277 of 2021 and the order dated dated 22.09.2021 made in O.A.No.1011 of 2019, A.Nos.8513 to 8515 and 9671 of 2019 and A.Nos.2092 to 2094 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 said advocates for the parties hereto and this Court having observed that there is no real prospect for the defendants to succeed in their claim made in C.S.No.556 of 2019, and there is no compelling reasons for this Court to direct the parties to let in oral evidence to pass a final judgment in the suit, and the facts of the present case do not warrant a full trial for the just disposal of the case. The defence raised by the defendants and the grounds put forth by them in the suit filed by them is moonshine and fanciful. The contention raised by the learned counsel for the defendants to consider passing a conditional order under Rule 7 of Order XIII-A, C.P.C. is also not sustainable, since this Court finds that the facts of the present case do not

lie in the grey area between a possibility and a probability and therefore, does not warrant passing a conditional order under Rule 7, it is ordered as follows:-

That the suit in C.S.No.556 of 2019, be and is hereby dismissed.

2) That the plaintiff herein, be and are hereby directed to pay cost of a sum of Rs.1,00,000/- (Rupees One Lakhs Only) to the defendant herein.

3) That the A.No.2077 of 2021 and A.Nos.3004 to 3008 of 2021 do stand closed.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 27TH 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.)

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

ARS
02.03.2022

C.S. No.556 of 2019
(Commercial Suit)
and
A.No.2277 of 2021
and
A.Nos.3004 to 3008 of 2021

ORDER

DATED : 27.01.2022

THE HON'BLE MR. JUSTICE
N.ANAND VENKATESH

FOR APPROVAL: 17.03.2022

APPROVED ON : 22.03.2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 21.01.2022

PRONOUNCING ORDERS ON : 27.01.2022

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.S. No.556 of 2019

(Commercial Suit)

&

A.Nos.3004, 3005, 3006, 3007 & 3008 of 2021

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

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

...Plaintiffs

.Vs.

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

... Defendant

Plaint filed under Order IV, Rule 1 of the O.S. Rules, r/w Order VII, Rule 1 of C.P.C., praying for:

- i. Declaring the termination of the Facility Agreement dated 17.08.2019 by the 1st Plaintiff Company as valid and binding on the Defendant Company;
- ii. directing the Defendant Company and its officers to pay the sum of Rs.5,00,00,000/- (Rupees Five Crores only) as compensation to the 1st Plaintiff Company for the severe business damage and loss caused to the 1st Plaintiff Company due to the acts of breach by the Defendant and for other incidental losses due to sharing of data and sensitive information pertaining to the 1st Plaintiff Company;
- iii. Granting an order of permanent injunction restraining the Defendant Company and its men, administrators, agents, assigns and any persons claiming through them from using/encashing/enforcing the various instruments of security including Demand Promissory Note dated 15.05.2019, Personal Guarantee dated 15.05.2019 issued by 2nd and 3rd plaintiffs and NACH Mandate issues by the 1st Plaintiff Company.
- iv. Granting an order of permanent injunction restraining the Defendant Company and its men, administrators, agents, assigns and persons

claiming through them from engaging in any act including negative intimation to credit rating agencies, withdrawing default notice to credit rating agencies, withdrawing default notice to credit rating agency and CIBIL and other CIC from spreading information and reporting to CIBIL or any such CIC agencies regarding the 1st Plaintiff Company and including creation of any charge on th 1st Plaintiff Company with the concerned Registrar of Companies;

- v. directing the defendant to pay the cost of the suit; and
- vi. granting such further or other orders as deemed fit by this Court in facts and circumstance of the case and thus render justice.

For Plaintiffs : Mr.P.V.Balasubramaniam for
M/s.P.Rajkumar Jhabak

For Defendant : Mr.P.Giridharan

J U D G M E N T

In view of the orders passed in Application No.2277 of 2021, dated 27.01.2022, the suit is dismissed. Considering the facts and circumstances of the case, the plaintiffs are directed to pay cost of a sum of Rs.1,00,000/-

(Rupees One Lakh only) to the defendant. Consequently, connected applications are closed.

Sd/-N.A.V.J.

27.01.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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

List of Witnesses examined on the side of the Plaintiff : NIL

List of Exhibits marked on the side of the Plaintiff : NIL

List of Witnesses examined on the side of the Defendants: NIL

List of Exhibits marked on the side of the Defendants: NIL