

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL EXECUTION APPLICATION NO. 66 OF 2023
IN
TRANSFERRED DECREE DATED 27.01.2022
IN
CIVIL (COMMERCIAL) SUIT NO. 650 OF 2019
BEFORE
THE HON'BLE HIGH COURT OF JUDICATURE AT MADRAS**

Vivriti Capital Ltd. Applicant / Decree Holder
V/s.
Bell Finvest India Ltd.
& Ors. Respondents / Judgment Debtors

Ms. Benedicta Lobo, i/b. M/s. Katariya & Associates, Advocate for Applicant.

Ms. Krinjal Ahuja i/b. Mr. Vinit J. Mehta, Advocate for Respondent No. 2 (V.P. not filed).

Before : Mrs. Shonali K. Dighe
Commissioner for Taking Accounts
Date : 14th October, 2024

CALLED FOR DIRECTIONS :

- Sr.no.4
1. Heard, Ld. Advocate appearing on-behalf of Applicant as well as Respondent No. 2.
 2. Ld. Advocate for Applicant has

.... 2

submitted Affidavit dated 11th October, 2024 giving details of the property in Column - J of the Execution Application and Affidavit of Service of the Notice dated 25th September, 2024 upon the society. Both the Affidavits are taken on record.

3. In the Affidavit dated 11th October, 2024 authorized Representative of the Applicant has produced documents giving the details of the title of the property mentioned in Warrant of Sale.

4. Ld. Advocate for Applicant submits that, Applicant has already submitted documents mentioned herein below along with their Affidavit dated 04th September, 2023 in Execution Application No. 66 of 2023 :

i) Title Verification, Search Report and Non-encumbrance Certificate dated 29th June, 2023.

ii) Deed of confirmation dated 03rd June, 2009 registered with the office of the Sub-Registrar, Mumbai City – 3 on 05th June, 2009 under book number 1 Mumbai – 3 Sr.no. 4695 / 2009.

5. Ld. Advocate for Applicant further submits that, Applicant have also obtained a fresh search Report dated 30th September, 2024 for the period form 01st January, 2019 to 30th September, 2024

of the immovable property in question by carrying out on-line search and verification of the revenue records maintained on the web-site of the Sub-Registrar of assurances at Mumbai.

6. I have perused all the documents filed along with Affidavit by the Applicant. It appears that, on page no. 19 of the said Affidavit, Paragraph No. 9 is certificate given by Advocate who has done Title Verification, Search Report and Non-encumbrance Certificate.

Para – 9 reads as under :

CERTIFICATE : I certify that on the basis of above documents, seen and certified, of Mr. Bhupeshkumar M. Rathod also of Mumbai, Indian Inhabitant, a Director of M/s Bell Maral Tele Systems Ltd. now known as M/s. Bell Finvest (India) Ltd a Company Registered under the Companies Act Vide Conformation Deed Dated 03-06-2009 which has been registered in Book no. 1 at Serial No. 4615 with sub registrar Office Mumbai 3 on 05-06-2009, are having clear marketable and unencumbered title.

7. Ld. Advocate has further pointed out schedule of the said Affidavit. It appears that, on page No. 23 of the Affidavit it is

clearly stated that, 50% share of Respondent No. 2 is mentioned in office premises bearing No. 1107, ad-measuring about 500 sq.ft. built up, situate on the 11th floor of the building constructed on Plot of land bearing C.S. No. 1962 together with the Parking lot No. 34, at Maker Chamber V, 221, Nariman Point, Mumbai 400 021.

8. Ld. Advocate appearing on-behalf of Respondent No. 2 has requested for some time to file their Vakalatnama. Ld. Advocate further submits that, before proceeding with issuance of Proclamation she may be heard and time may be given to represent Respondent No. 2. She further applies for grant of sufficient time to apply for certified copies of the proceedings of execution as Advocate for Applicant has not served any of the document or Affidavit upon Respondent No. 2.

9. Ld. Advocate for Applicant vehemently opposed the said request made by Advocate for Respondent No. 2. Ld. Advocate for Applicant submits that, on the last occasion Advocate for Respondent No. 2 was orally directed by this forum to file their Vakalatnama whereas, till date they have not filed the same nor they have taken any steps in the matter and therefore request for adjournment to be rejected. Ld. Advocate for Respondent No. 2 submits

that due to some technical difficulties their Vakalatnama was not accepted by the Registry.

10. It is contention of the Advocate for Applicant that the immovable property mentioned in Warrant of Sale is already attached by way of Warrant of Attachment dated 11th January, 2024 through Sheriff's Office. Whereas till date Respondent No. 2 have not taken any steps to remove the said attachment nor any stay order is passed by the Hon'ble Court for the said property.

11. As Advocate for Applicant has already submitted all the documents proving title of the immovable property mentioned in Warrant of Sale, I am of the view that, Proclamation can be issued as prayed against 50% share of Respondent No. 2 in Right title and interests in the ownership of office premises bearing No. 1107 ad-measuring of built-up area 500 sq.ft. On the 11th floor of the building known as "MAKER CHAMBERS V" together with open parking lot No. 34, at 221, Nariman Point, Mumbai 400 021 situated at Plot CS No. 1962.

12. In view of above, request made by Respondent No. 2 to adjourn the matter is rejected. Advocate for Applicant is directed to submit draft of Proclamation of Sale

along with its soft copy on / or before next date.

13. Matter is adjourned to 11th November, 2024. Office to list the matter under caption for Settlement of Proclamation of Sale.

14.10.2024

**Commissioner for Taking
Accounts**