

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA No.201/2016**

% **2nd August, 2016**

S. S. BHUTANI Appellant

Through: None.

versus

M/S PANJA SAHIB CHIT FUNDS PVT LTD AND ANR.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No.27569/2016 (Exemption)

1. Exemption allowed subject to just exceptions.

CM stands disposed of.

CM No. 27570/2016 (Delay of 7 days in re-filing)

2. For the reasons stated in the application delay in re-filing is

condoned. CM stands disposed of.

**CM No.27568/2016 (delay of 858 days in filing the appeal) & RSA
No.201/2016**

3. This Regular Second Appeal filed under Section 100 of the

Code of Civil Procedure, 1908 (CPC) impugns the concurrent judgments of the courts below whereby the suit filed by the plaintiff, a subscriber of a chit of a chit fund company, has been dismissed as against the Registrar of Chit Funds/defendant no.2/respondent no.2, and against which defendant no.2 directions were sought for winding up the two chits bearing no.PB/VIII and PS/XVII of the Chit Fund Company which was the defendant no.1 in the suit/respondent no.1 herein.

4. This is an application in this RSA for condonation of delay of 858 days in filing of this second appeal. The only facts averred for seeking for condonation of delay are contained in paras 3 and 4 of the application and which paras read as under:-

“3. That the file of the case was misplaced and could not be traced despite efforts of the office of the counsel for the applicant/appellant and now the file has been traced out. The file was tagged with a decided file.

4. That there is delay of 858 days in filing the said appeal due to the reason mentioned above which is bona-fide and neither deliberate nor intentional. It is submitted that if condonation of delay in filing of accompanying appeal is not allowed the appellant/applicant shall suffer irreparable loss and deprived of his legal right but the respondents shall not be prejudiced.”

5. In my opinion, totally vague averments as contained in paras 3 and 4 of the application for condonation of delay reproduced above do not constitute a sufficient cause for condonation of delay.

6. Independently of the fact that delay should not be condoned, I have even examined the merits of the matter and it is found that though not so held by the courts below, it is seen that proviso to Section 38 of the Madras Chit Funds Act, 1961 as applicable to Delhi provides that where a winding up has to be ordered of a chit fund organization which is a company then such winding up of such chit fund company cannot be by a civil court but can only be by the concerned company court having jurisdiction. The provision of Section 38 of the Act reads as under:-

“Section 38- When chit may be wound up- A chit may be wound up by the District Court:

- (a) If the chit has terminated under clause (c) of Section 31, or
- (b) If the foreman fails to give the security specified in section 12 or if he commits any such act in respect thereto as are calculated to impair materially the nature of the security or the value thereof, or
- (c) If he fails to deposit the chit moneys in accordance with the provisions of this Act, or
- (d) If it is provided to the satisfaction of the court that the foreman is unable to pay the amount due to the subscribers, or
- (e) If execution other process issued on a decree or order of any court in favour any subscriber in respect of amount due to him from the chit is returned unsatisfied in whole or in part; or
- (f) If it is proved that there has been fraud or collusion on the part of the foreman in the matter of taking securities from prize subscribers, or
- (g) If the foreman has appropriated the prize amount in his capacity as a subscriber without furnishing sufficient security for future subscriptions, or
- (h) If it is just and equitable that the chit should be wound up.

Explanation: For the purposes of clause (d) in determining whether the

foreman reasonable to pay the amounts due to the subscribers, the court shall take into account contingent and prospective liabilities in respect of the chit:

Provided that a chit conducted by a company within the meaning of the Companies Act, 1956 (Central Act 1 of 1956), shall be wound up only by the court having jurisdiction under that Act.” (underlining added)

7. Therefore, independent of any finding and conclusion of the courts below, that a Civil Judge did not have jurisdiction and only the District Judge had, however in view of the proviso to Section 38 of the Madras Chit Funds Act, 1961, it is held that the subject suit so far as the same is against the Registrar of Chit Funds/defendant no.2, the suit was rightly not maintainable wherein the reliefs are sought against the Registrar for winding up of defendant no.1/respondent no.1 Chit Fund Company. I am entitled to give this additional reasoning, not given by courts below, in view of the provision of Order XLI Rule 24 CPC and the ratio of the recent Supreme Court judgment in the case of *Lisamma Antony and Another Vs. Karthiyayani and Another (2015) 11 SCC 782* as per which once the record of a suit is complete, a High Court in second appeal should not remand the matter but should itself decide the matter on merits. The relevant paras of the judgment in the case of *Lisamma Antony (supra)* read as under:-

“14. Rule 23 of Order 41 of Code of Civil Procedure, 1908, (for short "the Code") provides that where the court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order

remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject all just exceptions, be evidence during the trial after remand.

15. Rule 23A of Order 41 of the Code provides that where the court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the appellate court shall have the same powers as it has under Rule 23.

16. Rule 24 of Order 41 of the Code further provides that where evidence on record is sufficient, appellate court may determine case finally, instead of remanding the same to the lower court.

17. Needless to say, in the present case, the suit was not disposed of on any preliminary issue by the trial court. The second appellate court should have restrained itself from remanding a case to the trial court. Remanding a case for re-appreciation of evidence and fresh decision in the matter like the present one is nothing but harassment of the litigant. The unnecessary delay in final disposal of a lis, shakes the faith of litigants in the court.”

8. In view of the above, no substantial question of law arises.

Dismissed.

AUGUST 02, 2016

ib

VALMIKI J. MEHTA, J