

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.20673 of 2012 and
M.P.No.1 of 2012

G.Krishnamurthy

.. Petitioner

V.

1.The Arbitrator/Registrar of Chits,
Chennai Chit Fund Cases (Central)
George Town, Chennai - 600 001.

2.Sri Gokulam Chits and Finance Co., Pvt. Ltd.,
Rep. by its Manager,
No.49, Arcot Road, Kodambakkam,
Chennai - 600 024.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the 1st respondent relating to the order dated 'Nil' passed in Petition dated 12.08.2010 filed U/S.65(3) of the Chit Funds Act by the 2nd respondent and quash the same.

Amended Prayer: Praying to quash the order dated 'NIL' passed in petition dated 13.08.2010 in consequently quash the proceedings in ARC 1350/2010 pending on the file of the first respondent.
(Prayer amended as per Memo filed by the petitioner on 21.02.2017)

For Petitioner

..Mr.P.C.Harikumar

For Mr.P.C.Harikumar & Associates

For 1st Respondent

..Mr.S.Navaneethan,

Government Advocate

For 2nd Respondent

..No appearance

ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the first respondent.

2. According to the petitioner, the second respondent filed a claim petition in A.R.C.No.1350 of 2010 before the first respondent as against him and one M/s.Ruchi Bhavan, represented by Proprietor P.Kumar, in the capacity of the surety for the alleged chit transaction in question.

3. The averment made in the claim petition filed before the first respondent, the second respondent submitted that one Ruchi Bhawan represented by Proprietor P.Kumar had joined a chit group J2H30, Ticket No.20, for a value of Rs.5 lakhs, payable amount of Rs.25,000/- per month for a period of 20 months. The said Ruchi Bhawan had participated in the auction held on 31.12.2003 and became successful bidder for which he had received a sum of Rs.3,75,000/-. Thereafter, the aforesaid person has committed default in payment of monthly instalment. Hence, the second respondent herein issued a legal notice on 07.06.2010 and subsequently, the second respondent filed the claim petition before the first respondent on 12.08.2010 along with the condone delay petition under Section 65(3) of the Chit Funds Act, 1982.

4. Further, the second respondent alleged in the claim petition that the chit was commenced on 03.06.2003 for a period of 20 months and it terminated on 03.01.2005 and the aforesaid Ruchi Bhawan committed default from the month of August 2004. As per Section 65(1)(b) of the Chit Funds Act, 1982, the second respondent has to prefer claim petition before the first respondent within a period of three years from the date of termination of the chit or from the date of default. But, admittedly, the second respondent has filed the claim petition under Section 65(3) of the Chit Funds Act before the first respondent on 12.08.2010, after a period of two years delay in filing the appeal. Under Section 65(3) of the Chit Funds Act, 1982, which reads as under:

"65(3). Period of Limitation.- (3) Notwithstanding anything contained in sub-sections (1) and (2), the Registrar may admit a dispute after the expiry of the period of limitation specified therein, if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period."

5. The first respondent, even without looking into the contents of the affidavit and without providing an opportunity to the petitioner as contemplated under the provisions of the law, on the very same day, condoned the delay and the main case was taken on file and number was assigned as A.R.C.1350/2010. Therefore, the first respondent allowed the condone delay

application and taken on file in the aforesaid A.R.C. proceedings is illegal and without following the procedures, as contemplated under the Act. Aggrieved by the said order, the petitioner has filed the present petition before this Court.

6. According to the petitioner, in similar circumstances, this Court, by Order dated 19.08.2011 in W.P.No.21711 of 2010, in the case of N.C.Ravindra Kumar V. The Registrar of Chits, Central, Chennai, wherein in paragraph 10, it is held as follows:

"10. It has to be held that if any order is to be passed under Section 65(3) of the Act, it cannot be done automatically and notice is required to be given to the opposite side. It is true that under Section 70 of the Act an appeal has been provided to the State Government against the decision of the Registrar or its nominee. As stated above the order itself is in violation of principles of natural justice. When this Court finds that the order has been passed mechanically without application of mind violating the principles of natural justice, availability of alternative remedy is not an absolute bar for maintaining the writ petition.

It has been held by the Apex Court in Harbanslal Sahana vs. India Oil Corporation Ltd. reported in (2003) 1 CTC 189 that availability of alternative remedy is not a bar for maintaining writ petition. If the order has been passed in violation of principles of natural justice, lack of jurisdiction, it is to be held that for violation of principles of natural justice and the alternative remedy available under Section 70 is not a bar for maintaining the writ petition. The Writ Petition is maintainable, the impugned order is set aside and the same is quashed. The Writ Petition is allowed. No costs. Consequently, the connected M.P.No.1 of 2010 is closed."

7. In the light of the above, the present case is also squarely covered by the order passed by this Court in W.P.No.21711 of 2010 dated 19.08.2011 and therefore, the petitioner prays for setting aside the order passed by the first respondent dated 12.08.2010.

8.The learned Additional Government Pleader appearing for the first respondent fairly submits that in the light of the decision of this Court passed in W.P.No.21711 of 2010 dated 19.08.2011, this Court may be passed an appropriate orders.

9.In view of the facts and circumstances, this Court set aside the impugned order of the first respondent dated 'Nil' passed in Petition dated 12.08.2010 filed under Section 65(3) of the Chit Funds Act in A.R.C.No.1350/2010 and also in view of the amended prayer sought for by the petitioner in the writ petition, this Court quashes the proceedings in A.R.C.No.1350/2010 and consequently, remits back the matter to the first respondent for consideration, liberty is granted to the first respondent to consider and pass orders in the condone delay petition on merits and in accordance with the provisions of law, after providing an opportunity to the parties concerned.

10.Accordingly, the Writ Petition is allowed. There is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Arbitrator/Registrar of Chits,
Chennai Chit Fund Cases (Central)
George Town, Chennai - 600 001.

+1cc to Mr.P.C.Harikumar, Advocate Sr.11054
+1cc to the Government Pleader Sr.11450

nr[co]
srg 28/03/2017