IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.34978 of 2003

V.Purushothaman ... Petitioner

vs.

1. The Secretary to Government,
   Commercial Tax Department,
   Fort St. George,
   Chennai 600 009.

2. The Chit Arbitrator of Coimbatore,
   Office of the District Registrar,
   Coimbatore.

3. M/s.Cheran Chit Funds (P) Ltd.,
   Cheran Towers,
   78, Government Arts College Road,
   Coimbatore - 641 018. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, calling for the records relating to the order of the 1st respondent, the Secretary to Government, Commercial Taxes Department, Fort St. George, Chennai in Reference Letter No.15772/G/2003-I, dated 03.11.2003 and quash the same.

For Petitioner : Mr.B.Gnana Vinothan
for Mr.V.Nicholas

For Respondents 1 & 2: Mr.Akhil Akbar Ali,
Government Advocate

For 3rd Respondent : Mr.R.Subramanian

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O R D E R

The petitioner has come up with this Writ Petition seeking to quash the order dated 03.11.2003 passed by the 1st respondent.

2. According to the petitioner, the 3rd respondent herein filed a case against him in Arbitration Case No.213 of 2002 before the Chit Arbitrator of Coimbatore, the 2nd respondent herein for recovery of Rs.47,710/-. It is the case of the 3rd

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respondent that the petitioner joined a chit for Rs.1,00,000/- on 25.06.1995, for a period of 40 months payable on a monthly subscription of Rs.2,500/-. On 24.03.1997, the petitioner became the successful bidder for Rs.89,000/- on the 21st month and that the petitioner executed a promissory note for Rs.47,500/- with interest at the rate of 36% per annum. According to the 3rd respondent, the petitioner paid the subscription for 37 months and committed default for three months, i.e. 38th to 40th months and the three months subscription amount was Rs.7,500/- and that the petitioner is liable to pay interest at 36% p.a. on Rs.7,500/- from 25.06.1995 to 25.01.2002, which comes to Rs.37,710/-, including expenses of Rs.2,500/-, thus, the total amount due according to the 3rd respondent was Rs.47,710/-.

3. It is the case of the petitioner that he entrusted his case with one Advocate viz., Sri.A.Anthony Ambrose of Kinathukadavu, Pollachi Taluk and was under the bonafide impression that the said Advocate would take care of his interest and conduct the case on his behalf. However, the petitioner received a notice from the District Munsif Court of Pollachi in the last week of April 2003 with regard to the hearing date on 10.06.2003 in E.P.No.58 of 2003 in A.C.No.213 of 2002. The petitioner then came to know that an exparte award was passed against him on 04.04.2002. But, his counsel did not inform him about the exparte award. Therefore, the petitioner applied for certified copy of the said exparte award on 07.05.2003. Then, he filed a petition to set aside the exparte award along with a petition to excuse the delay in filing the said petition, before the 2nd respondent. But, the 2nd respondent declined to receive the said petition, instead, directed the petitioner to file an appeal under Section 70 of the Chit Funds Act.

4. Since the petitioner was bed-ridden, he could not file an appeal immediately. However, he filed an appeal to the 1st respondent on 27.08.2003 along with a petition to excuse the delay in filing the said appeal. While forwarding the papers to the 1st respondent, the petitioner specifically prayed for an opportunity to represent his case by fixing an hearing date. However, without providing him an opportunity, the 1st respondent passed an order dated 03.11.2003 stating that the petitioner has not adduced any valid reasons or produced documentary evidence for the delay in filing the appeal and that there is no provision in the Chit Funds Act to condone the delay. Resultantly, the petitioner's appeal was rejected as belated. Hence, having no other alternative, the petitioner is before this Court.

5. Heard the learned counsel on either side and perused the materials available on record.

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6. It is seen that the order refusing to entertain the appeal may not be correct, more particularly, under Section 65 of the Limitation Act, which is extracted below:

> Section 65 (2): The period of limitation in the case of any dispute other than those referred to in the sub-section (1) which are required to be referred to the Registrar under Section 64 shall be regulated by the provisions of the Limitation Act, 1963 (36 of 1963), as if the dispute were a suit, and the registrar, a civil court.
>
> (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.
>
> Section 70: Appeal against the decision of the Registrar or the nominee. Any part aggrieved by any order passed by the Registrar or the nominee or the award of the Registrar or the nominee under Section 69, may, within two months from the date of the order or award, appeal to the State Government.

7. As per the provisions of the Limitation Act, incorporated above, the authority can go into the question of condonation of delay, as it has been mentioned that the party concerned, viz. the Registrar will have to decide the dispute, as if the dispute were a suit, and he, being a Civil Court. Though Section 65(3) of the Limitation Act states that the Registrar has powers to reject/refuse/entertain a dispute, if there is no sufficient cause, the reason given by the authority that there are no reasons mentioned in the petition and that there is no provision under the Chit Funds Act to condone the delay, may not be correct.

8. Hence, this Court sets aside the order and remits the matter to the 1st respondent, who shall number the appeal, decide the same on merits and pass orders in accordance with law, within a period of one month from the date of receipt of a copy of this order. The 1st respondent/authority is directed to fix a date for hearing of appeal and on such date, if the petitioner fails to appear, his absence may be recorded and necessary orders shall be passed on merits and the petitioner cannot be allowed to take a stand that he is not given an opportunity of being heard.

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The Writ Petition is allowed with the above direction and observation. No costs. Consequently, connected W.P.M.P.No.42520 of 2003 is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To:

1. The Secretary to Government,
Commercial Tax Department,
Fort St. George,
Chennai 600 009.

2. The Chit Arbitrator of Coimbatore,
Office of the District Registrar,
Coimbatore.

+1cc to Mr.V.Nicholas,Advocate sr.51885

+1cc to Mr.R.Subramaniam,Advocate sr.52165

+1cc to Government Pleader sr.53291

Order in
W.P.No.34978 of 2003

ss(5/9/2017)

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