IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.36018 of 2003

P.Ramasamy ... Petitioner

vs.

1. The Government of Tamil Nadu,
rep. by its Secretary,
Commercial Tax Department,
Fort St. George,
Chennai 600 009.

2. The Joint Registrar of Chits,
Nagapattinam.

3. M/s.Nagapattinam Sivasakthi Chit
Funds (P) Ltd.,
20, Neela South Street,
Nagapattinam -611 001. ... 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 in G.O.(D) No.82, dated 26.03.2003, Commercial Taxes Department and quash the same.

For Petitioner : Mr.K.Selvaraj

For Respondents 1 & 2: Mr.K.Venkatesh,
Government Advocate

For 3rd Respondent : Mr.Srinath Sridevan

O R D E R

Seeking to quash the order of the 1st respondent in G.O.(D) No.82, dated 26.03.2003, Commercial Taxes Department, the petitioner has come up with this Writ Petition.

2. According to the petitioner, he is a subscriber of the 3rd respondent-M/s.Nagapattinam Sivasakthi Chit Funds (P) Limited and on 30.03.1998, he joined the registered Chit No.20/1998 in Chit Group No.FR for a sum of Rs.3,00,000/-

payable in 40 monthly instalments. It is his case that in respect of the said chit transaction, the 3rd respondent filed an Arbitration case against him before the 2nd respondent-Joint Registrar of Chits, Nagapattinam and in that regard, he engaged a counsel on 17.11.2000 to defend his case. His Counsel's Clerk submitted a counter statement to the counsel for the 3rd respondent in the presence of the 2nd respondent. Since his counsel was held up in District Munsif Court, Nagapattinam, the 3rd respondent's counsel refused to receive a copy of the counter statement. The 2nd respondent also refused to receive a copy of the same in the absence of the petitioner's counsel and passed an exparte award on the same day, i.e. on 17.11.2000 itself.

3. Thereafter, the petitioner filed a petition to set aside the exparte award before the 2nd respondent after giving notice to the counsel for the 3rd respondent under Section 69 of the Chit Fund Act, 1972. However, the 2nd respondent, by an order dated 22.11.2000, returned the said petition stating that the petitioner should file an appeal before the 1st respondent. Hence, the petitioner was constrained to file an appeal before the 1st respondent herein on 12.01.2000 along with a stay petition. Though the 1st respondent, vide letter dated 20.07.2001 informed the petitioner's counsel that the appeal would be decided on merits, he rejected the appeal by an order dated 26.03.2003, without following the principles of natural justice. Hence, aggrieved by the same, the petitioner filed W.P.No.3399 of 2003 and this Court granted an order of interim stay in that matter. Pending the said Writ Petition, the petitioner has filed the present Writ Petition challenging the order of the 1st respondent.

4. A counter affidavit has been filed on behalf of respondents 1 and 2, denying the allegations of the petitioner. According to respondents 1 and 2, the petitioner participated in the auction conducted by the 3rd respondent on 07.05.1998 and became the prized subscriber for a prize amount of Rs.2,10,000/- at a discount of 30% and he received the said amount by cheque on 25.05.1998. The petitioner remitted upto 16 instalments and had defaulted from 17th monthly instalment. Hence, the 3rd respondent issued a notice dated 08.08.2000 to the petitioner. As there was no response from the petitioner, the 3rd respondent initiated Chit Arbitration proceedings before the 2nd respondent on 23.08.2000 in ARC.No.249/2000 against the petitioner. Summons were issued for hearing on 12.09.2000 and the petitioner filed Vakalatnama on 12.09.2000 and had sought time for filing written statement. The case was adjourned to 10.10.2000, 03.11.2000 and 17.11.2000. Since the petitioner did not appear even on 17.11.2000, the 2nd respondent set the petitioner exparte and passed an Award for Rs.1,80,000/- with interest at the rate of 12% from the date of petition till the date of Award

and at 6% from the date of Award till the date of realization with costs of Rs.50,966.50.

5. Thereafter, on 08.01.2001, the petitioner filed an appeal before the 1st respondent. Taking note of the fact that the petitioner did not appear before the Arbitrator for the hearings on 10.10.2000, 03.11.2000 and 17.11.2000, the 1st respondent rejected the appeal, based on the materials available on record. According to respondents 1 and 2, since there is no provision to set aside the Award passed by the 2nd respondent, the petition filed by the petitioner had been returned on 22.11.2000, advising him to file a statutory appeal before the 1st respondent and that there is no violation of any principles of natural justice.

6. Mr.K.Selvaraj, learned counsel for the petitioner submitted that a Civil Suit as also a Civil Revision Petition connected to the case on hand are pending and that the present issue has got a bearing on the same. He further submitted that the 3rd respondent-Company and the Company in the pending Civil Suit, viz. "Nagapattinam Sivasakthi Benefit Fund Private Limited" are sister Concerns and that the petitioner has paid the entire amount due to the 3rd respondent-Company. It is his contention that the Appellate Authority, without even hearing the petitioner, has passed the impugned order, which is ex facie illegal.

7. Per contra, Mr.Srinath Sridevan, learned counsel appearing for the 3rd respondent - Company submitted that the 3rd respondent is not a party either in the Civil Suit or in the Civil Revision Petition pending before this Court. He denied that the 3rd respondent-Company and "Nagapattinam Sivasakthi Benefit Fund Private Limited" are sister Concerns and submitted that they are separate entities. According to him, despite several opportunities being given, the petitioner did not utilize the same by appearing before the Arbitrator and hence, he suffered an exparte award. Denying the averment of the petitioner that the entire amount due to the 3rd respondent-Company has been paid, learned counsel for the 3rd respondent contended that the amount due by the petitioner to the 3rd respondent is more than Rs.2,00,000/- and having paid 16 instalments and refusing to pay the balance amount, i.e. from the 17th instalment to 40th instalment to the Chit Fund Company is with a malafide intention.

8. In reply, learned counsel for the petitioner submitted that pursuant to the orders of the Civil Court, an Audit Report was produced by the petitioner stating that the entire loan amount has been paid to the 3rd respondent/Company. He further submitted that the petitioner has got materials to establish his

stand that no amount is due to the 3rd respondent-Company and prayed that the matter may be remanded to the Appellate Authority.

9. On the other hand, learned counsel appearing for the 3rd respondent submitted that no amount has been paid by the petitioner to the 3rd respondent-Company and that the 3rd respondent-Company has filed a petition to strike off the Audit Report, insofar as the amount said to have been paid by the petitioner.

10. Heard the learned counsel counsel on either side and perused the material documents available on record.

11. The fact that the petitioner became the successful bidder and received a sum of Rs.2,10,000/- as prize amount and that he has agreed to pay the amount due to the 3rd respondent-Company in 40 instalments and that he has paid 16 instalments and has not paid the subsequent instalments, is not in dispute. It is also not in dispute that the petitioner did not appear before the Arbitrator on the date of hearing and that the Appellate Authority rejected the request of the petitioner to interfere with the Arbitration Award passed under the Chit Fund Act.

12. The contention of the petitioner that the 3rd respondent is the sister concern of "Nagapattinam Sivasakthi Benefit Fund Private Limited" and that both the Companies are one and the same or sister Concerns, has not been established before this Court, by producing necessary records.

13. Taking note of the fact that the Writ Petition is of the year 2003 and that a Civil Suit in O.S.No.9 of 2004 is pending before the District Court, Nagapattinam, this Court refrains from passing orders on merits. It is seen that the order of the Appellate Authority has been passed even without a notice to the petitioner and there is no mention in the order passed by the Appellate Authority as to the payment of the due amount by the petitioner either to the 3rd respondent Company or to Nagapattinam Sivasakthi Benefit Fund Private Limited. The said issue can be looked into only by the Appellate Authority, after affording an opportunity of hearing to the petitioner.

14. In view of the above, this Court remits matter to the Appellate Authority to pass orders on merits within a period of 15 days from the date of appearance of the petitioner. The petitioner is directed to appear before the Appellate Authority on 07.11.2017 and produce necessary records in connection with this case. If the petitioner fails to appear on 07.11.2017 with necessary records, the Appellate Authority is empowered to pass appropriate orders, after recording the absence of the party/parties.

15. Since the petitioner failed to appear before the 2nd respondent/Original Authority for more than three hearings, which made the latter pass an exparte order and that 15 years have passed from the date of passing such an order, the petitioner is directed to deposit a sum of Rs.75,000/- (Rupees Seventy Five Thousand only), as agreed by him, before the 1st respondent/Appellate Authority on or before 06.11.2017. It is made clear that if no amount is deposited by the petitioner within the time stipulated, there is no need for the Appellate Authority to hear the matter and the impugned order shall stand confirmed.

The Writ Petition is disposed of with the above direction and observation. No costs. Consequently, connected W.P.M.P.No.43731 of 2003 and W.V.M.P.No.20 of 2011 are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

(aeb)

To:
1. The Secretary,
Government of Tamil Nadu,
Commercial Tax Department,
Fort St. George,
Chennai 600 009.

2. The Joint Registrar of Chits,
Nagapattinam.

+1cc to Mr.Srinath Sridevan, Advocate sr.74093

Order in
W.P.No.36018 of 2003

mn(co)
ss(20/10/2017)