

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

C.R.P. No.4109 of 2017

ORDER:

This Civil Revision Petition is filed by petitioner/JDR No.2 challenging the proceedings in E.P.No.62 of 2017 in DRK No.100 of 2014 on the file of Additional Senior Civil Judge, Kadapa.

2) The principal grounds of the challenge are that:

a) Firstly, the 1st respondent/DHR while filing Execution Petition, has not adhered to the procedure contemplated under Rule 55 of Andhra Pradesh Chit Fund Rules, 2008 (for short “the Rules”).

b) Secondly, it is contended that the 1st respondent obtained Award passed by the Chit Funds Registrar under Section 69 of Chit Funds Act, 1982. Section 71 of the Act discloses the recovery proceedings. The Award passed by the Registrar is nothing but an Award passed under Arbitration and Conciliation Act, 1996 and therefore, the 1st respondent has to execute the same under Section 36 of the said Act. The proper Court for execution of the said Award is the Principal Civil Court i.e, the Principal District Court and the said Court alone has the jurisdiction to entertain the E.P. but not the Senior Civil Judge, Kadapa.

3) Heard learned counsel for petitioner. There is no representation for respondents.

4) On perusal of the record and upon hearing the petitioner, this Court finds force in the submission of petitioner.

5) So far as the first ground is concerned, Rule 55 speaks of the procedure for execution of the Awards passed under Sections 68 and 69 of the Act by the Registrar or his nominee. For convenient reference, Rule 55 is extracted thus:

“Rule-55. Procedure for execution of awards: —

(1) Every order or award passed by the Registrar, or his nominee under Section 68 or 69 shall be forwarded by the Registrar to the foreman or to the party concerned with instructions that the foreman or, as the case may be, the party concerned should initiate execution proceedings forthwith according to the provisions of Section 71.

(2) If the amount due under the award is not forthwith recovered, or the order thereunder is not carried out, it shall be forwarded to the Registrar with an application for execution along with all information required by the Registrar, for the issue of certificate under Section 71. The applicant shall state whether he desires to get it execute the award through a civil court or through the revenue authorities as provided under Section 71.

(3) On receipt of such application for execution, the Registrar shall forward the same to the proper authority for execution along with a certificate issued by him under Section 71 and a proclamation issued under Rule 54 in the manner prescribed therein.

(4) Every order passed in appeal under Section 70 shall also be executed in the manner laid down in sub-rules (2) and (3).”

Rule 55 contemplates that if the amount under Award is not recovered or the order thereunder is not carried out, the Foreman shall forward to the Registrar, the execution application along with the order and other information required by the Registrar for issuance of Certificate under Section 71 of the Act. The applicant shall state whether he desires to get the Award executed through the Civil Court or through the Revenue authorities as provided under Section 71. Thereupon, the Registrar shall forward the execution application to the proper authority i.e., either the Civil Court or the Revenue authorities as desired by the foreman for execution along with certificate issued by him under Section 71 and proclamation issued under Rule 54 in the manner prescribed therein. Thereupon, the proper authority i.e., Civil Court or the Revenue authority shall execute the Award. Thus, it is clear that the Execution Court cannot assume jurisdiction directly to entertain the Execution Petition to execute the Award of the Deputy Registrar of Chits, Kadapa, presented by the decree-holder. This aspect was clarified by a Division Bench of this Court in C.R.P.Nos.1340, 1779, 1533, 2140 and 2841 of 2015.

6) In the instant case, the Foreman, it appears, filed the Execution Petition directly before the Senior Civil Judge's Court and the said Court assumed jurisdiction bypassing the procedure contemplated under Rule 55. Hence, the EP is not legally sustainable.

7) The second ground is concerned, Section 69 of the Act lays down that the Registrar or his nominee after giving a reasonable

opportunity to the parties to dispute to be heard, make an Award on the dispute. Then Section 71 of the Act lays down that every order passed by the Registrar or the nominee under Section 68 or Section 69 and every order passed by the State Government in appeal under Section 70 for payment of money shall, if not carried out,—

(a) on a certificate issued by the Registrar, be deemed to be a decree of a civil court, and shall be executed in the same manner as a decree of such court, or

(b) be executed in accordance with the provisions of any law for the time being in force for the recovery of amounts as arrears of land revenue:

8) It is pertinent to note that the terms ‘Award’ occurring in Section 69 and ‘Civil Court’ occurring in Section 71 are not defined in the Chit Funds Act. Therefore, we have to necessarily refer to Arbitration and Conciliation Act, 1996 for execution of the Award. Section 36 of Arbitration and Conciliation Act, 1996 deals with the enforcement of the Arbitral Award. In this context, in C.R.P.Nos.1340, 1779, 1533, 2140 and 2841 of 2015 vide order dated 01.10.2015, a Division Bench of this High Court on a perusal of several decisions, has held that the “Court” referred to in Sections 34 and 36 of the Arbitration and Conciliation Act is the “Court” as defined under Section 2(1)(e) of the Arbitration and Conciliation Act, 1996 and thus in unmistakable terms refers to a “District Court” but

not the character of a grade inferior to the Principal Civil Court of original jurisdiction. The Division Bench ultimately held that the Senior Civil Judge Courts of Mangalagiri, Peddapuram, Gajuwaka and Chittoor have no jurisdiction to deal with the Execution Petitions filed under Section 36 of the Arbitration and Conciliation Act. In view of the authoritative pronouncement of the Division Bench, the Execution Petition in the instant case has to be filed before the District Court.

9) In the result, this Civil Revision Petition is allowed holding that E.P.No.62 of 2017 is not maintainable under law. The 1st respondent/decree-holder is directed to move an appropriate application before the Registrar concerned for forwarding his Execution Petition to the proper authority. No order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 05.10.2017

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