HONOURABLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HONOURABLE SMT. JUSTICE T. RAJANI

<u>CRP. Nos. 5236, 5741 and 5753 of 2016</u>

%14.03.2017

Punyamuthula Venkata Viswa Sundara Rao and another

...Petitioners

VERSUS

$ M/s.Margadarsi Chit Fund Private Limited and others

...Respondents

< **GIST:**

> **HEAD NOTE:**

!**Counsel for Petitioners: Sri C.S.N. Raju**

^**Counsel for 1st Respondent: Sri P.Durga Prasad**

? Cases referred

1. 1982 AIR 1497

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COMMON ORDER: (Per Hon'ble Smt. Justice T.Rajani)

These three civil revision petitions arise out of three E.Ps. Nos.4, 7 and 6 of 2016 in AACFs. Nos.82 of 2012, 165 of 2013 and 82 of 2012, respectively, which are filed to execute the order passed against all the judgment debtors in the Arbitration proceedings before the Deputy Registrar of Chits and Arbitrator under Chit Fund Act 1982, (for short 'the Deputy Registrar') Kakinada, in AACF.No.82 of 2012 on 14.07.2014.

The revision petitioners are the judgment debtors and the 1st respondent, M/s.Margadarsi chit funds Private Limited, is the decree holder. (To suit the convenience in the context, the parties hereinafter would be referred to as the judgment debtors and the decree holder.)

The facts leading to these revisions may be briefly stated thus. The decree holder represented by its Principal Officer and Manager, Kakinada, obtained the award against the principal debtor and all the judgment debtors, who include these revision petitioners, figured as judgment debtors 2, 3 and 6, respectively. The Deputy Registrar made an order under Section 69 of Chit Funds Act, 1982 (for short 'the Act') ordering that the judgment debtors 1 to 6 shall pay to the decree holder a sum of Rs.7,09,701/- with interest at 18% per annum on the principal amount of Rs.6,42,475/- from the date of raising of the dispute i.e. 14.09.2012 till the date of realization apart from costs of Rs.10,880/-.

The decree holder is a Company registered under the Indian Registration Act and carrying on business in running the chits, with due permission from the competent authority under the Act.

First judgment debtor, who is the principal debtor, is a subscriber of the decree holder chit fund company. He subscribed to ticket No.49 in group LT01CK registered with previous sanction No.231/2009, for a value of Rs.15,00,000/-, which is repayable at the rate of Rs.30,000/- per month for a period of 50 months. The first judgment debtor participated in the auction held on 24.01.2010 and became the successful bidder and the decree holder paid the prize money to the first judgment debtor on the basis of the sureties submitted by the other judgment debtors i.e. judgment debtors 2 to 6, who executed a guarantee agreement in favour of the decree holder.

The liability of the judgment debtors, arises from out of the guarantee agreement executed in favour of the decree holder. Having obtained an order from the Deputy Registrar as mentioned above, the decree holder also obtained recovery certificate from the Deputy Registrar and filed the above three E.Ps. only against the judgment debtors 2, 3 and 6, who are the revision petitioners herein.

Questioning the maintainability of the said E.Ps., the judgment debtors 2, 3 and 6 have approached this Court by way of filing the present revision petitions.

The maintainability of the E.Ps. is assailed on the following grounds, which are common in all the revision petitions:

"E.P. No.4 of 2015 in AACF. No.82 of 2012 was filed on the file of the Additional Senior Civil Judge, West Godavari District at Eluru and E.P. Nos.6 and 7 of 2016 in AACF.Nos.82 and 165 of 2012, respectively, were filed on the file of the V Senior Civil Judge, City Civil Court at Hyderabad.

The award copy in AACF. No.82 of 2012 was obtained from the Chit Registrar at Kakinada, East Godavari District and as per the Code of Civil Procedure (for short 'the CPC") any execution petition need to be filed in original court and has to be got ordered, before getting the same transferred to its original place of execution. In the instant case, original Court of jurisdiction is at Kakinada, transfer E.P. has to be filed at E.P. Court at Kakinada after getting the same ordered to the Court of actual execution. But no such steps have been taken. It is well settled law by our Hon'ble High Court that total awarded amount have to be claimed against guarantors/ judgment debtors, proportionately by distributing it equally among all the judgment debtors. As such, the judgment debtors, who are the guarantors have to contribute 1/6th share to the decree holder. But claiming total amount from some of the judgment debtors is erroneous and against equity. "

From the arguments advanced by the learned counsels on either side, two points arise for our consideration.

1) *whether the decree holder has to proceed against all the judgment debtors, who are guarantors, by claiming proportionate amount decreed.*

2) whether the execution Courts in which E.Ps. were filed against the present judgment debtors, who are revision petitions herein, have jurisdiction to entertain the execution petitions.

The revision petitioners/ judgment debtors, in their grounds of revision stated that the law is well settled by our High Court that awarded amount has to be claimed proportionately from all the judgment debtors, who are guarantors. But unfortunately the law is well settled otherwise i.e. that the decree holder has an option to proceed against either the principal debtor or any of the guarantors or against all of them. There need to be no interpretative pains, to arrive at the conclusion that the liability of a surety is co-extensive with that of the principal debtor, as section 128 of the Indian Contract Act is clearly worded. It says that the liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract.

One ruling of the Supreme Court reported in the case of **MAHARASHTRA STATE ELECTRICITY BOARD, BOMBAY Vs. OFFICIAL LIQUIDATOR, HIGH COURT, ERNAKULAM, ANR**.[1] can be cited, to say that the courts also understood the liability of the surety, the same lines. Hence that would leave us without any demur in concluding, that it is completely the prerogative of the decree holder, as to against whom he should proceed, for realizing the debt.

So far as the second point is concerned, it needs to be dealt with in the background of Rule 55 of A.P. Chit Funds Rules, 2008, which is extracted here under, for ready reference.

> **55. Procedure for execution of awards: —**
> (1) Every order or award passed by the Registrar, or his nominee under Section 68 or 69 of the Act, 1982 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 of the said Act.
>
> (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 secion 71 of the said Act. 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 of the said Act.

[1] 1982 AIR 1497

> (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 of the said Act and a proclamation issued under Rule 54 in the manner prescribed therein.
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> (4) Every order passed in appeal under Section 70 of the said Act shall also be executed in the manner laid down in sub-rules (2) and (3).

It is clear from the above rule that execution proceedings should be initiated by the party concerned in accordance with the provisions of Section 71 of the Act. The procedure for filing an execution petition in the civil Court is only through the Registrar who shall forward the application for execution to the proper authority along with a certificate issued by him under Section 71 of the Act. Section 71 of the Act confers the status of a decree of a civil Court, on the certificate issued by the Registrar. Section 71 of the Act runs as under:

> "71. **Money how recovered:-** Every order passed by the Registrar of the nominee under Section 68 or Section 69 and every order passed by the State Government in appeal under Section 70 for payment of any money shall, if not carried out,-
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> (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
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> (b) be executed in accordance with the provisions of any law for the time being in force for the recovery of amount as arrears of land revenue:
>
> Provided that no application for execution under clause (b) shall be made after the expiry of three years from the date fixed in the order, and if

no such date is fixed, from the date of the order."

Under Sub rule 2 of Rule 55 if the amount under the award is not recovered and the order therein is not carried out it shall be forwarded to the Registrar with an application for execution for issue of certificate under Section 71 of the Act. The applicant shall also state whether he desires to get it executed through a civil Court or through the revenue authorities as provided under Section 71 of the Act. Section 71 of the Act also gives an option for the awardee to get the order executed in the manner of a decree of such Court or in accordance with the provisions of any law for the time being in force for recovery of amount as arrears of land revenue.

The counsel for the respondent persuaded us to accept that proper authority specified under Sub Rue 3 of Rule 55 would mean only revenue authority as the word authority alone is specified but not the word court. But we are unable to comprehend the said argument, in the light of the clarity given under Rule 55 of Sub Rule 2. The said rule gives an option to the applicant to state whether he desires to get the award executed through a civil Court or through the revenue authorities. Hence, the word used under Sub Rule 3 of Rule 55 as proper authority has to be construed to include both civil Court and revenue authority. If the intention was to mean only revenue authority, much pains might not have been required for the legislature, to specify the same by using the word revenue authority, instead of using the word proper authority. Proper authority, in the above context, would be what the decree holder chooses under subrule 3. Hence, though it may look too technical an approach and appreciation, when the language of a statutory provision is worded as clearly as not to leave any ambiguity, we have to conclude that the decree holder did not follow the procedure prescribed under Rule 55 in getting the award executed. The proper channel through which the award and the certificate has to reach the execution Court, is the

Registrar. It is only the Registrar who is competent to forward the application of the applicant to the proper authority, be it civil Court or revenue authority, for execution, along with a certificate issued by him under Section 71 of the Act.

The above discussion would make it clear that the E.P. Court does not have jurisdiction to entertain a petition for execution of the award of the Deputy Registrar of Chit Funds, if presented by the decree holder.

The ruling of the High Court of Madras reported in 2011(4) LW 745 and the ruling of this court made in civil revision petitions 1340 of 2015 and batch, which were submitted by the appellants, do not bear upon the issues involved in this case.

There is another aspect which needs to be clarified. Though no argument was advanced in that regard, it would be better for us to clarify the said aspect, so as not to leave scope for another round of litigation, at any later point of time. The dispute in this case was dealt with by the Deputy Registrar. Though the proceedings do not spell any nomination made by the Registrar, it has to be assumed that the registrar nominated the Deputy Regiatrar, to settle the dispute, by invoking the power given to him under Section 66 of the Act, which permits the registrar to appoint a person to settle the dispute which is referred to him. But such powers are not conferred on him in respect of the certificate that has to be issued, for the purpose of execution of the award. The wording of section 71 and also Rule 55 makes it clear that it is only the Registrar who has to issue the certificate referred in the above provisions. Though the opening part of section 71 says that the registrar or his nominee can pass the award, clause (a) of section 71 specifies the Registrar as the person who has to issue the certificate. But in this case the Deputy Registrar, apart from deciding the dispute has also issued the certificate, that is supposed to be issued by the Registrar, which shall not be accepted by the executing Court.

In the light of the above position, the course that has to be followed by the decree holder is to make an application to the Registrar for execution, to be forwarded to the proper authority at the option of the decree holder and the Registrar shall himself issue the certificate and forward the said application to the court or revenue authority, as chosen by the decree holder.

In the result, the execution courts, in which the E.Ps pertaining to these judgment debtors are filed, are directed to return the petitions presented by the decree holder, with a liberty to get the applications forwarded to the civil court, through the Registrar along with the certificate issued by the Registrar.

Civil Revision Petitions are accordingly disposed of.

As a sequel to disposal of the revision petitions, miscellaneous petitions if any, shall stand closed.

JUSTICE C.V. NAGARJUNA REDDY

JUSTICE T. RAJANI

Date: 14.03.2017

Note: L.R.copy to be marked Yes/No.
LSK