

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.20257 of 2016

ORDER:

Heard.

2. The present Writ Petition came to be filed challenging the proceedings issued by the first respondent vide Memo No.4351/ Regn.I/ A1/ 2016-1, dated 04.03.2016, as illegal, improper and incorrect.

3. A perusal of the material on record would show that the petitioner company is a Registered Chit Fund company, carrying on the chit fund business after obtaining permission from the competent authority in accordance with the Chit Fund Act, 1982. The third respondent was a subscriber of the petitioner company bearing ticket No.8 in the Chit group, LP12KA for a value of Rs.5 lakhs, which is payable at the rate of Rs.12,500/- per month for a period of 40 months. The third respondent participated in chit auction held on 15.04.2012 and became a successful bidder, having agreed to forego an amount of Rs.2 lakhs out of the chit value. After declaring that the third respondent is the highest bidder, the petitioner company deducted an amount of Rs.2 lakhs and paid prize amount of Rs.3 lakhs on 26.07.2012. Respondent Nos.4 to 9 stood as guarantors to the third respondent and executed the agreement of guarantee in favour of the petitioner company for the future liability of Rs.3 lakhs. Respondent Nos.3 to 9 executed demand promissory note and other necessary documents in favour of the petitioner company for payment of future subscriptions by the third respondent. The third respondent has paid 19 instalments and thereafter started committing defaults from 10.12.2012 onwards. Thereby, the petitioner company filed a case for recovery of the amount due to the company, before the second respondent and the second respondent

registered the dispute vide No.ABR/ C.F/ No.520/ 2013 and notices were served on respondent Nos.3 to 9. As they failed to appear, an ex parte order of award came to be passed along with recovery certificate on 09.01.2014 against respondent Nos.3 to 9. It is further stated that the petitioner company filed execution proceedings by way of attachment of salary of respondent Nos.3,4,5 and 7 in E.P.No.40 of 2016 on the file of I Senior Civil Judge, City Civil Court, Hyderabad and the same is pending. Respondent Nos.3 to 9 preferred an appeal against the said award and the same was admitted by the first respondent vide memo No.4351/ Regn.I/ A1/ 2016-1, dated 04.03.2016 and stay of execution of the award was also granted. Challenging the said memo, the present writ petition came to be filed on the ground that the said memo was admitted without condonation of delay as the same was filed beyond the period of limitation.

4. By an order dated 21.07.2016, this Court while issuing *rule nisi*, granted interim suspension of the order dated 04.03.2016.

5. A counter affidavit came to be filed opposing the averments made in the affidavit filed in support of the writ petition.

6. The main ground urged by the learned counsel for the petitioner is that the appeal could not have been entertained without an application to condone the delay of nearly 840 days. The said fact is not seriously disputed by the learned counsel for the respondents.

7. It has been clearly stated across the Bar that the appellants have not filed any application to condone the delay, though the appeal was filed beyond the period of sixty days, as contemplated under Section 70 of A.P. Chit Funds Act.

8. Having regard to the above, the order of taking cognizance of the appeal by the first respondent is set aside and respondent Nos.3 to 9, if

intends to file fresh appeal, they shall prefer a fresh appeal along with an application to condone delay, in which event, the authorities shall pass necessary orders, in accordance with law by taking into consideration the period of pendency of writ petition before this Court and also the explanation submitted by respondent Nos.3 to 9 with regard to delay in filing the appeal. It is needless to mention that respondent Nos.3 to 9 shall submit the fresh appeal within a period of four weeks from today along with all necessary applications, including the application seeking grant of stay, in which event the first respondent shall pass orders, in accordance with law, within a period of one week there from. Till such time, *status-quo* as on today to be maintained for a period of six weeks. It is also needless to mention that none of the parties shall withdraw the amount which is alleged to have been deposited, till appropriate orders are passed by the appellate authority. The respondent authority is directed to return the certified copy of the Memo/award filed along with the Appeal, so as to enable the respondents to prefer a fresh appeal.

9. Accordingly, the writ petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed in the light of this final order.

23.03.2017
vnb

JUSTICE C. PRAVEEN KUMAR