

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.3357 of 2011 and M.P.No.1 of 2011

1 Krishna Jewellery
2 Sheeba Rajeev Kumar ...Petitioner

Vs.

1 State of Tamilnadu rep. by its
Principal Secretary to Government,
Commercial Taxes and Registration Dept.,
Secretariat, Chennai - 600 009.
2 The Arbitrator
Central Chennai District Chit Fund Cases,
Chennai - 600 001.
3 Sree Gokulam Chit & Finance Company (P) Ltd.,
No.49, Arcot Road,
Kodambakkam, Chennai - 600 024. ...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order passed in the Appeal in Letter No.15886/ G/2009-1 dt.29.12.2009 on the file of the 1st respondent filed against the order of award passed by the 2nd respondent in Arbitration Case No.920 of 2008 dt.9.7.2009 quash the same and direct the 1st respondent to take up the appeal of the petitioners on merits after condoning the delay in filing the appeal.

For Petitioner : Mr.S.Doraisamy

For Respondent
No.1 & 2 : Mr.P.P.Purushothaman, G.A.

For Respondent
No.3 : No appearance

O R D E R

According to the petitioner, the petitioner has preferred an appeal under Section 70 of Chit Fund Act, 1984 against the exparte award passed by the Arbitrator in A.R.C. No.920 of 2008, dated 9.7.2009. In the aforesaid appeal, petitioner also filed an application to condone the delay of 41 days in preferring the appeal. The first respondent dismissed the said appeal by stating that the appeal has been filed beyond the prescribed period of two months under the Tamilnadu Chit Fund Act, 1984. Challenging the aforesaid order, the petitioner has preferred the present writ petition.

2 According to the learned counsel for the petitioner, the first respondent lost at sight and rejected the application on the ground that the first respondent has no power to condone the delay of 41 days in filing the appeal. In support of his submission, the counsel for the petitioner has placed reliance in the unreported judgment in the case of GANESAN REP. BY HIS POWER AGENT RUKMANI GANESAN VS. THE COMMISSIONER, H.R.& C.E., CHENNAI AND TWO OTHERS (W.P.(MD) NO.13804 OF 2013 DATED 22.8.2014) wherein the Commissioner, H.R.& C.E. department allowed the condone delay application. Assailing the said order, the aggrieved party has preferred the writ petition before this Court.

3. After considering various decisions of the Hon'ble Supreme Court, this Court in the aforesaid judgment, in para 13 and 27, held as under:

"13. Further, the learned counsel, by referring to the decisions of the Hon'ble Supreme Court in the cases of Mangu Ram v. Delhi Municipality, reported in AIR 1976 SC 105 and Union of India vs. M/s.Popular Construction Co., reported in AIR 2001 SC 4010 and the decision of the Honourable Division Bench of this Court in the case of Rethinasamy v. Komalavalli, reported in 1982 MLJ 406, submitted that there is an important difference between the Limitation Act, 1963 and the Limitation Act, 1908 and the 1963 Act has been enacted for the purpose of determining the period of limitation prescribed for any suit or application or appeal by any special or local law the provisions contained in Sections 4 to 24, which would include Section 5, shall apply in so far as and to the extent to which

they are not expressly excluded by such special or local law. Therefore, the learned counsel submitted that the special law, which is the H.R. & C.E., Act having not excluded the power under Section 5 of the Limitation Act, 1963, the provisions of Section 5 would be applicable to the proceedings before the first respondent. On the factual aspect, the learned counsel, by referring to the affidavit filed before the first respondent in the condone delay petition, submitted that the third respondent has shown sufficient cause and he was unable to contact his counsel to give instructions due to ill-health and the delay is neither wilful nor want and beyond the control of the third respondent and therefore, in the interest of justice, the delay should be condoned.

27. For all the above reasons, it is held that the impugned order, dated 31.7.2013 passed by the first respondent is perfectly valid, justified and advances substantial justice and since the matter in controversy requires to be examined on merits and for the reasons assigned, the matter should not be terminated on the technical ground of limitation. Therefore, the exercise of discretion by the first respondent is perfectly valid as the first respondent has power to invoke the provisions of Section 5 of the Limitation Act. That apart the delay is not inordinate especially when the third respondent was not a party to the proceedings before the second respondent. Further, the petitioner has not established that the third respondent deliberately filed the appeal belatedly for mala fide reasons and the cause pleaded by the third respondent that he was unwell has not been established to be absolutely false by providing any evidence before the first respondent."

Apart from the aforesaid judgment, this Court has also considered the authority as power to condone the delay beyond the prescribed period in filing the appeal. It is useful to extract relevant provisions under Section 70 of the Chit Funds Act, 1982 which reads as follows:

"70. Appeal against decision of Registrar or the nominee.- Any party aggrieved by any order passed by the registrar or the nominee or the award of the Registrar or the nominee under Sec.69, may, within two months from the date of the order or award, appeal to the State Government."

4. From the aforesaid provisions, the limitation period prescribed, petitioner ought to have filed the application within two months. But there is no exclusive provision for filing the appeal before the first respondent. In the aforesaid decision, this Court has elaborately discussed the issue regarding the power to condone the delay beyond the limitation period is maintainable before the first respondent and also by considering the decision of the Hon'ble Supreme Court in ESHA BHATTACHARJEE VS. MANAGING COMMITTEE OF RAGHUNATHPUR NAFAR ACADEMY & ORS., REPORTED IN (2013) 12 SCC 649, wherein the Hon'ble Supreme Court has held that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice. Petitioner herein has filed the application to condone the delay of 41 days in preferring the appeal. Therefore, the reason stated in the impugned order, that the application filed by the petitioner is dismissed on the ground that the application has been file beyond the period prescribed under Section 70 of Chit Funds Act, 1982. Therefore, this Court is of the view that the impugned order passed by the respondent is liable to be quashed and the delay in filing the application is condoned and the first respondent is directed to number the appeal if it is otherwise in order and in accordance with law.

*** Accordingly, the impugned order is quashed. Consequently, the Writ Petition is allowed. No Costs. Connected miscellaneous Petition is closed.**

Sd/-

Assistant Registrar(I)

Dated: 08.01.2019

*** Corrected as per order dated 07.02.2019 made in W.P.No.3357 of 2011**

sd/- Assistant Registrar(CS V)

Dated:11.02.2019

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to
Government,
State of Tamil Nadu,
Commercial Taxes and
Registration Dept.,
Secretariat, Chennai - 600 009.

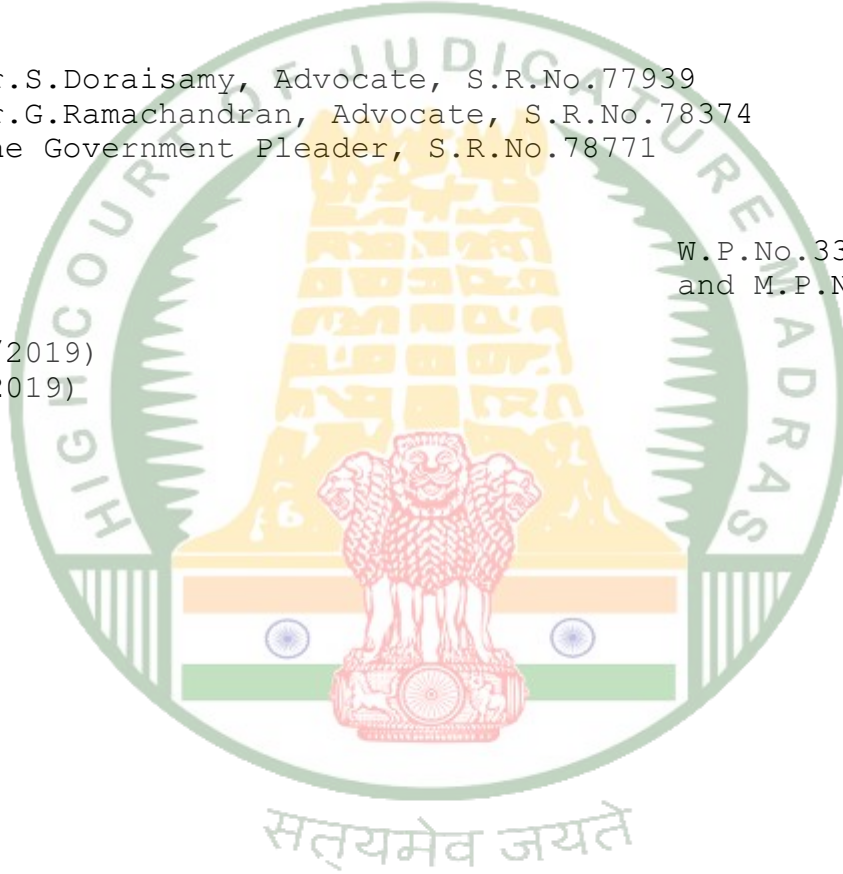
To be substituted
to the order already
despatched on
05.02.2019

- 2 The Arbitrator
Central Chennai District Chit Fund Cases,
Chennai - 600 001.

+1cc to Mr.S.Doraisamy, Advocate, S.R.No.77939
+1cc to Mr.G.Ramachandran, Advocate, S.R.No.78374
+1cc to the Government Pleader, S.R.No.78771

W.P.No.3357 of 2011
and M.P.No.1 of 2011

ss(co)
kak(11/01/2019)
SP(11/02/2019)



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