IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.12.2018

CORAM
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
W.P.No.8227 of 2011
and M.P.No.2 of 2011

1.S.Subramanian
2.J.Ashok Kumar
3.R.madheswaran .. Petitioners

vs.

1.State of Tamilnadu
Represented by Secretary to Government,
Commercial Taxes and Registration Department,
Fort.St.George, Chennai.
2.The Arbitrator,
Chit Fund Cases,
North and South Chennai,
Rajaji Salai, Chennai.
3.Shriram Chits Tamilnadu (P) Ltd.,
No.8A, Jeyanthi Nagar,
Nanganallur Branch,
Nanganallur, Chennai 600 061. .. Respondents

Prayer.: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for the records pertaining to award dated 28.09.2010 in Case No.2252 of 2005 on the file of the second respondent and the order dated 20.01.2011 in Letter No.20592/G/2010-1 passed by the first respondent and quash the same.

For Petitioners : Mr.Sai Krishnan for
M/s.Sai Bharath and Ilan

For R1 & R2 : Mr.P.Purushothaman
Government Advocate.

For R3 : Mr.K.V.Ananthakrushnan

O R D E R

The petitioners have filed the Writ Petition praying to issue a writ of certiorari calling for the records pertaining to award dated 28.09.2010 in Case No.2252 of 2005 on the file of the second respondent and the order dated 20.01.2011 in Letter No.20592/G/2010-1 passed by the first respondent and quash the same .

2. According to the learned counsel for the petitioners, the petitioners have preferred an appeal under Section 70 of Chit Fund Act, 1984 against the award passed by the Arbitrator in A.R.C. No.2252 of 2005, dated 28.09.2010. In the aforesaid appeal, petitioners also filed an application to condone the delay of 27 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 petitioners have preferred the present writ petition.

3. The learned counsel for the petitioners would submit that the first respondent lost at sight and rejected the application on the ground that the reasons adduced by the petitioners herein was not genuine one and thus rejected the appeal petition filed under Section 70 of the Chits Funds Act, 1982. According to the learned counsel for the petitioners, the entire proceedings are vitiated for the sole reason that they are not transparent and the proceedings are not made known immediately to the parties concerned and no notice whatsoever was issued to the petitioners before passing the Award dated 28.09.2010 and as such the order of the first and second respondents stand vitiated and as such liable to be set aside. In this connection, the learned counsel for the petitioners 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) .

4. The learned counsel for the third respondent would submit that in the event of allowing the writ petition by this Court, appropriate directions may be given to the first respondent to dispose of the appeal within a reasonable time fixed by this Court.

5. This Court in the above cited decisions in GANESAN REP. BY HIS POWER AGENT RUKMANI GANESAN VS.THE COMMISSIONER, H.R.& C.E., CHENNAI AND TWO OTHERS after

considering various decisions of the Hon'ble Supreme Court and this Court, in para Nos. 13 and 27, has held as follows:

> " 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 sofar 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 any evidence before the first respondent."

This Court has also observed that the authority has power to condone the delay beyond the prescribed period in filing the appeal. It is useful to extract the 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."

6. On a perusal of the aforesaid provisions, it is clear that within the limitation period prescribed, the petitioners ought to have filed the application within two months. But there is no excluding provision in the Act 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. In this regard, this Court also referred to the decisions 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; the courts are not supposed to legalise injustice but are obliged to remove injustice. In the case on hand, the petitioners herein have filed the application to condone the delay of 27 days in preferring

the appeal. In the light of the foregoing discussions, this Court is of the view that the reason stated in the impugned order for rejecting the application filed by the petitioner on the ground that the same was filed beyond the period prescribed under Section 70 of Chit Funds Act, 1982, cannot be accepted and the same requires interference of this Court.

7. Considering the facts and circumstances of the case and in the light of above decisions cited supra, this Court is inclined to pass the following orders:

> i) The impugned order passed by the first respondent dated 20.01.2011 in Letter No.20592/G/2010-1 is hereby quashed and the delay in filing the application is condoned. On condition that the petitioners shall pay a sum of Rs.5,000/- to the third respondent, within a week from the date of receipt of a copy of this order.
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> ii) The first respondent, Commercial Taxes and Registration Department, Fort.St.George, Chennai, is directed to number the appeal if it is otherwise in order, within a week from the date of receipt of a copy of this order and thereafter, the first respondent is also directed to dispose of the appeal on merits and in accordance with law,within a period of eight weeks from the date of receipt of a copy of this order, after affording due opportunity of hearing to the petitioners as well as any of the interested parties.
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> iii) The petitioners and the third respondent are directed to co-operate with the first respondent.

8. With the above directions, this writ petition is allowed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

kkd

To

1.

The Secretary to Government,
Commercial Taxes and Registration Department,
Fort.St.George, Chennai.

2.The Arbitrator,
Chit Fund Cases,
North and South Chennai,
Rajaji Salai, Chennai.

+1 CC TO GOVERNMENT PLEADER SR.NO. 83661
+1cc to M/s.Sai Bharath and Ilan, Advocate SR.No. 83262
+1cc to Mr.K.V.Ananthakrushnan , Advocate SR.No. 83358

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ASK(13/12/2018)