IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

CRP(NPD).No. 1788 of 2018 and
C.M.P.No.10030 of 2018

K.Elumalai

... Petitioner

Vs.

1. Selvapraba Chit Funds Private Limited,
   Represented by its Foreman.

2. Ukkaravel
3. K. Bukruthin
4. A. Arivazhagan ...Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the fair and decreetal order in E.P.No.125 of 2016 in A.R.O.P.No.117 of 2015 passed by the learned Principal District Judge, Cuddalore District, dated 18.04.2018.

For Petitioner : Mr.K. Srinivasan
For Respondents : G. Vijayakumar for Caveator

****

O R D E R

This revision petitioner is the subscriber in M/s. Selvapraba Chit Funds Private Limited and the first respondent is M/s. Selvapraba Chit Funds (P) Ltd., Neyveli. The petitioner participated in the bid and his offer was confirmed for a sum of Rs.19,68,283/- on 14.09.2015 and also received the bid amount. He has also executed a promissory note in favour of M/s. Selvapraba Chit Funds Private Limited for repayment of the subscription. Subsequently, the petitioner has defaulted in payment of subscription. However, as per the Chit Agreement, the first respondent referred the matter to the Registrar/Arbitrator for passing of the award as per the Tamil Nadu Chit Funds Act, 1982. After considering the facts and circumstances of the case, the Deputy Registrar of Chits/Arbitrator passed an award for a sum of Rs.19,68,683/-. Based on the award passed by the Deputy Registrar of Chits, Cuddalore, in A.R.C. proceedings in A.R.No.117 of 2015. The

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first respondent/Chit Fund Company has filed the Execution Petition in E.P.No.125 of 2016 on the file of the District Munsif Court, Cuddalore.

2. The first respondent herein has filed an application under Order XXI Rule 48 of Civil Procedure Code, to attach the salary of the Judgment Debtors 2 to 4. After considering the facts, the executing Court passed the pro-order of attachment and served to the Garnishee to attach the salary of the Judgment Debtors 2 to 4 and recover a sum of Rs.25,000/- per month from the salary of the 2nd respondent; a sum of Rs.6,333/- per month from the salary of the 3rd respondent and a sum of Rs.6333/- per month from the salary of the 4th respondent respectively. Aggrieved by the said pro-order of attachment passed by the executing court, one of the Judgment Debtors/1st respondent therein has filed the present revision petition before this Court.

3. The main contention of the learned counsel for the petitioner is that since the debt was secured by the promissory note and also the immovable properties, the Deputy Registrar/Arbitrator does not have any power to pass an arbitraral award. Therefore, the executing Court does not have any power to execute the decree and the award passed by the Deputy Registrar/Arbitrator itself is nullity. Therefore, under these circumstances, the Judgment Debtor-1 has filed the Civil Revision Petition in CRP.(PD).No.476 of 2018 before this Court on earlier occasion to quash the arbitraral award and the same was dismissed by this Court by order dated 08.02.2018.

4. Liberty was granted to the Judgment Debtor to approach the executing court to file an appropriate petition. But the petitioner has not filed any such application before the executing court as directed by this Court and thereafter, the petitioner has filed the present revision petition against the pro-order of attachment passed by the executing Court. The first respondent has filed counter affidavit and after considering the rival submissions made by the Decree Holder and the Judgment Debtors, the executing court passed the pro-order of attachment of the salary of the respondents 2 to 4 who are the guarantors in the said loan agreement. There is no proof to show that the petitioner has paid either any subscription or the award amount. The main contention of the petitioner is that the Deputy Registrar/Arbitrator does not have any power to pass such orders under the proviso to Section 33 of the Act is not acceptable one.

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5. Further, the learned counsel for the petitioner would refer the proviso under Section 33 of the Tamil Nadu Chit Funds Act, 1982, since the debt is secured by the promissory note. The Decree Holder/ M/s.Selvaprapha Chit Funds (P) Ltd., is entitled to proceed only against the Negotiable Instruments by filing civil suit and not otherwise. Therefore, the Deputy Registrar/Arbitrator does not have any power to pass the award amount and the learned counsel also placed reliance on the judgment of this Court in Sundaram BNP Paribas Home Finance Limited v. Mir Ali and Others reported in [2012 (2) CTC 209].

6. The learned counsel for the respondent would refer the very same proviso to the said Section and submit that if any debt is secured, the proceedings against the Judgment Debtor under Section 33 of the Act is barred, if there is any default of the subscription, there is no bar under this Section. Therefore, as per the chit agreement and also as per the Tamil Nadu Chit Funds Act, 1982, when once default is committed by the subscriber towards subscription amount, then they can proceed as per the Tamil Nadu Chit Funds Act, 1982, as contemplated under the provisions therein. The proviso to Section 33 of the Act and also said citation referred to by the learned counsel for the petitioner are not applicable to the present case, because, that was arising against the SARFAESI proceedings, whereas, this award is only for default of the subscription amount.

7. Heard both sides and perused the records.

8. It is not in dispute that the revision petitioner is the subscriber in M/s.Selvaprabha Chit Funds Private Limited and also the petitioner has not paid the entire subscription amount and he participated in the bid and took the chit amount for a sum of Rs.19,68,283/-, dated 14.09.2015 and received the bid amount on the date and promised to pay the subsequent subscription. The petitioner has also executed a promissory note and he has also admitted there was a default. Therefore, the first respondent herein has approached the Arbitrator as contemplated under the Tamil Nadu Chit Funds Act, 1982, (Deputy Registrar/Arbitrator). The Deputy Registrar/Arbitrator passed an award in A.R.O.P.No.117 of 2015. Hence, under these circumstances, there is no illegality or infirmity in the pro-order of attachment passed by the executing Court.

9. As stated by the learned counsel for the respondents, the authority cited by the learned counsel for the petitioner is not applicable to the present case on hand. In this case, proceedings was taken for non-payment of subscription amount and not for recovery of the loan amount.

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10. Under these circumstances, there is no merit in the revision petition and the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

The Principal District Judge,
Cuddalore District.

+1cc to Mr.G. Vijayakumar , Advocate, S.R.No.41856
+1cc to Mr.Mr.K. Srinivasan, Advocate, S.R.No.42115

CRP(NPD).No. 1788 of 2018

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nr 13/08/2018

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