IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2018

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD) No.237 of 2007
and
C.M.P.No.271 of 2007

Shriram Chits & Investments (P) Ltd.,
Erode, Rep. by its Foreman
2nd Floor, 159/A, Mettur Road,
Erode - 638 011. ... Petitioner

/Vs/

A.Sirajudeen ... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order and decreetal order dated 04.12.2003 passed in E.A.No.519 of 2003 in E.P.No.310 of 2000 ARC No.50 of 1994 on the file of I Additional Subordinate Judge, Erode.

For Petitioner : Mr.K.V.Ananthakrishnan

For Respondent : No appearance

WEB COPY

* * * * *

O R D E R

The instant Civil Revision Petition has been filed by the petitioner/decree holder challenging the order dated 04.12.2003,

http://www.judis.nic.in

passed by the I - Additional Subordinate Judge, Erode in E.A No.519 of 2003 in E.P.No.310 of 2000 in A.R.C.No.50 of 1994.

2. The petitioner is a Chit Fund Company and they have obtained an award dated 17.10.1994, against the respondent in A.R.C.No.50 of 1994. The petitioner has filed Execution Petition in E.P.No.310 of 2000 in A.R.C.No.50 of 1994 before the I-Additional Subordinate Judge, Erode to execute the award.

3. The respondent being the judgment Debtor has filed E.A.No.519 of 2003 in E.P.No.310 of 2000 under section 47 of the Civil Procedure Code, seeking for a declaration that the award passed against him in A.R.C.No.50 of 1994 dated 17.10.1994 on the file of the Deputy Registrar of Chits, Erode is null and void and inexecutable.

4. The main ground raised by the respondent/judgment debtor in E.A.No.519 of 2003 is that the statutory notice under section 33 (1) of the Chit Funds Act was not issued by the petitioner/decree holder prior to the initiation of the arbitration. The petitioner/decree holder also filed a counter statement before the executing Court in E.A.No.519 of 2003 and has stated that the statutory notice under section 33 (1) of the Chit Funds Act was issued to the respondent/judgment debtor and

WEB COPY

http://www.judis.nic.in

further stated that the issue raised by the respondent/judgment debtor cannot be raised under section 47 of the Civil Procedure Code. The Counter statement also states that the Executing Court cannot go behind the decree. Further, it is also stated that the respondent/judgment debtor has waived his right to raise such an objection and if at all, such an objection can be raised only before the arbitrator and not before the executing Court.

5. E.A.No.519 of 2003 filed by the respondent/judgment debtor was allowed by the executing Court following a judgment of this Court reported in 1999 (3) CTC 210 in the case of Dr.Vimala Vs. Shriram Chits and Investments Private Limited. In that decision, it was held that since there is no statutory notice in writing as warranted under section 33 (1) of Chit Funds Act, the decree passed is a nullity and the same cannot be executed.

सत्यमेव जयते

6. Aggrieved by the order passed by the Executing Court in E.A.No.519 of 2003, the instant Civil Revision Petition has been filed by the petitioner / decree holder.

WEB COPY

7. The learned counsel for the petitioner would submit that the

http://www.judis.nic.in

order passed by the Executing Court in E.A.No.519 of 2003 is erroneous and he relied upon a decision of this Court dated 24.04.2012 passed in C.R.P. (NPD) No.1544 of 2005 and C.R.P. (NPD) No.677 of 2006, wherein the same defences which were raised by the respondent/judgment debtor were raised and this Court held as follows:-

> 17. *Admittedly, the respondents herein were served with notice during the Arbitration proceedings. The respondent/Surety in C.R.P.NPD.No.1544 of 2005, did not choose to appear before the Deputy Registrar of Chits, resulting in an ex-parte award/decree. The respondent kept quiet and did not challenge the said award. When the Execution Petition was filed, the respondent appeared and filed a counter. In the counter too, no such objection, as regards the jurisdiction of the Arbitrator or the executability of the decree was ever raised. On the contrary, the respondent appears to have paid a sum of Rs.34,000/- to the revision petitioner-Chit Company and they have filed a memo before the Executing Court on 21.02.2003. This could be seen from the counter filed by the revision petitioner herein in E.A.No.208 of 2004. Thus, in the absence of any reply or any records to disclose that such averment is false, the same is accepted as true and correct. Therefore, upto that stage of the matter, the respondent did not raise any objection as regards the executability of the decree.*

WEB COPY

http://www.judis.nic.in

After a lapse of one year, the respondent filed an application under Section 47 of C.P.C., stating that no notice was issued to him under Section 33 (1) of the Act. However, the revision petitioner in their Claim petition, have stated that they have issued notice under Section 33 (1) of the Act, however, the copy of such notice was not marked. In any event, the revision petitioner raised a dispute before the Deputy Registrar of Chits and a notice was issued to the respondent by the Deputy Registrar, while entertaining the dispute under Section 64 of the Act. Therefore, even at this stage, the respondent could have raised such a plea, if really, he wanted to to so.

18. It is contended that non compliance of Section 33 (1) of the Act is fatal to the case of the revision petitioner and the resultant decree itself, is a nullity. From the language employed in sub-section 1 of Section 33 of the Act, it is seen that a Foreman shall not be entitled to claim a consolidated payment from a defaulting priced subscriber, under Section 32, unless, he makes a demand to that effect in writing. Without adding/substituting/deleting any word from the statute, if the Statute is read verbatim, it requires the notice to be issued to the defaulting priced subscriber by the Foreman, without which, he shall not be entitled to claim a consolidated payment. The consolidated payment has not been defined under the Act and I am not inclined to accept the contention of the respondent that the consolidated payment shall be the entire remaining amount payable on the priced chit. In my view, a proper

WEB COPY

http://www.judis.nic.in

interpretation to the term would be the amount payable up to the said date, when notice is issued. In any event, this Court is not inclined to go into that aspect, since this Court is fully convinced that the respondent is not entitled to raise such plea at the stage of having remained mute through out the entire proceedings and having not challenged the award/decree, by filing an Appeal, as provided under Section 70 of the Act. Even assuming that the Arbitrator has not issued prior notice under Section 33 (1) of the Act, the awards, at best, could be construed as irregular, which will not render the award as void. It has not been disputed by the respondent that the Arbitrator has jurisdiction to adjudicate any dispute referred to him in exercise of power under Section 64 of the Act. In any event, the notice issued under Section 64 of the Act, by the Arbitrator/Chit Registrar is per se a notice to the priced Subscribers/Sureties, giving them full and an effective opportunity to raise all contentions. However, the respondent in C.R.P.NPD.No.1544 of 2005, having not raised such an objection at the earliest point of time, should be held to be estopped from raising such a contention, at the stage of execution.

19. Therefore, even assuming that there is no notice, issued under Section 33 (1) of the Act, the same cannot be held, to render the decree as nullity. However, on facts, the respondent shall not be entitled to raise any such plea, that too, at the stage of execution proceedings. Hence, the order of the Executing Court in

WEB COPY

http://www.judis.nic.in

allowing E.A.No.208 of 2004, filed by the respondents/Surety in C.R.P.NPD.No.1544 of 2005, untenable.

21. The findings of the Executing Court is that, under Ex.X.1, the entire balance amount was not demanded. As noticed above, the language employed in Section 33 (1) of the Act does not used the expression "balance amount" but, the provision only used the expression "demanding the future balance amount" on the Claim a consolidated payment. Thus, the Executing Court was not justified in importing words into the statute, which are not contained therein. Therefore, the notice-Ex.X.1, is held to be a proper and valid notice issued under Section 33 (1) of the Act and the respondents having not raised any contention as regards the validity of the notice, either before the Arbitrator or at the time of filing a counter in the Execution Petition, they cannot raise such a plea, at the fag end, when the execution petition was finally heard.

22. On the above stated facts, the decision of this Court rendered in the case of Dr.Vimala, (referred supra), does not render any support to the case of the respondents. Therefore, the order passed by the Executing Court in E.A.No.636 of 2005, calls for interference.

WEB COPY

8. In the arbitration award, there is a reference that Section 33 (1) notice under the Chit Funds Act was issued by the

http://www.judis.nic.in

petitioner/decree holder prior to the initiation of the arbitration proceedings.

9. The learned Single Judge in the judgment cited supra, has referred to the judgments of Supreme Court and High Courts and has rightly come to the conclusion that under Section 47 of the Civil Procedure Code while deciding an issue, the executing Court cannot go behind the decree, unless and until the Court which passed the decree lacks the inherent jurisdiction. In the case on hand, the award passed by the arbitrator does not suffer from any contravention of law.

10. The learned single Judge has also given a categorical finding that the decision of this Court rendered in the case of 1999 (3) CTC 210 in the case of Dr.Vimala Vs. Shriram Chits and Investments Private Limited, which was relied upon by the executing Court while passing the impugned order, does not render any support, in view of the decisions rendered by the Hon'ble Supreme Court and other High Courts.

WEB COPY

11. This Court is also of the considered view that the executing Court ought not to have allowed E.A.No.519 of 2003 filed under Section 47 of the Civil Procedure Code by the respondent/judgment

http://www.judis.nic.in

debtor. Therefore, the order passed by the Execution Court in E.A.No.519 of 2003 suffers from legal infirmity and is erroneous.

12. Accordingly, the order dated 04.12.2003, passed by the I Additional Subordinate Judge, Erode in E.A.No.519 of 2003 in E.P.No.310 of 2000 in ARC No.50 of 1994 is set aside and the Civil Revision Petition shall stand allowed. No costs. Consequently, the connected miscellaneous petition is closed.

23.03.2018

kv

Speaking Order/Non Speaking Order

Index : Yes/No

Internet : Yes/No

To

1. The I Additional Subordinate Judge, Erode.

2.The Section Officer,
V.R.Section, High Court, Madras.

WEB COPY

http://www.judis.nic.in

ABDUL QUDDHOSE.,J.

kv

CRP (NPD) No.237 of 2007
and
C.M.P.No.271 of 2007

WEB COPY

23.03.2018

http://www.judis.nic.in