

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2018

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.529 of 2003

1. Mervin Rajasekar
2. Chandhra Mohan

...Petitioners

Vs.

- 1.The Secretary  
Commercial Tax Department,  
Fort St. George,  
Chennai - 9.

- 2.The Joint Registrar of Chits,  
Kanyakumari at Nagercoil.

- 3.A. Sudhakaran

- 4.P.S. Christopher

... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent dated 17.09.2002 in letter No.23689/G/2000-1 and quash the same and direct the respondent to take the appeal filed by the petitioners on file.

For Petitioners : Mr.W.M.Abdul Majeed

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

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records of the first respondent dated 17.09.2002 in letter No.23688/G/2000-1 and quash the same and direct the respondent to take the appeal filed by the petitioners on file.

2. The brief facts which are required to be noticed for the disposal of this writ petition are as follows :- The

petitioners before this Court claimed to be guarantors as they stood as such for the fourth respondent, who had been the subscriber of a chit under the third respondent. It seems that, there had been a default on the part of the fourth respondent in making the subscription to the chit and therefore, these petitioners who stood as guarantors, since equally liable to be prosecuted, the third respondent Chit Company filed an A.R.C. proceeding before the second respondent in A.R.C.No.28 of 2000. Though, it was claimed by the petitioners that they had been present through their counsel on 17.08.2000, they had not been heard. However, the second respondent had passed a final order in A.R.C proceeding and passed ex-parte order and allowed the said arbitration proceedings filed by the third respondent Chit Company, against the petitioners as well as the fourth respondent.

3. Feeling aggrieved over the said order passed by the second respondent on 17.08.2000 in the said A.R.C proceeding in A.R.C.No.28 of 2000, the petitioners had filed statutory appeal under Section 70 of the Chit Funds Act, 1982 (herein after referred as "Act"). The said appeal was admittedly filed on 24.10.2000. The said appeal filed by the writ petitioners against the order of the second respondent in A.R.C. Proceeding, has been dismissed by the first respondent, vide impugned proceedings dated 17.09.2002, on the ground that the said appeal was filed on 24.10.2000 against the order passed by the second respondent dated 17.08.2000, under Section 70 of the Act, such appeal should have been filed within a period of 60 days from the date of the order, as it cannot be entertained with a delay of seven days, as there was no provision available under the Chit Funds Act to condone the delay of seven days in filing the said appeal and therefore, the said appeal filed by the petitioners was dismissed on the ground of non-availability of provision to condone the delay, by the impugned order of the first respondent dated 17.09.2002. Aggrieved over the said order, the petitioners filed the present writ petition with the aforesaid claim.

4. Mr.W.M.Abdul Majeed learned counsel appearing for the petitioners would submit that, first of all, the said order passed by the second respondent in A.R.C proceeding cannot be sustained on two grounds. Firstly, the writ petitioners stood only as guarantors and without any proceedings against the actual subscriber, who is the fourth respondent, such an award could not have been passed. Secondly, on the date of passing the award, i.e., on 17.08.2000, both the petitioners were represented by their counsel before the second respondent. However, unfortunately, the second respondent passed an ex-parte award stating that on behalf of the petitioners, who were the respondents in the A.R.C. proceeding, no one has appeared.

Therefore, the merits of their case was not considered by the Registrar in the A.R.C. proceeding therefore, it necessitated the petitioners to file statutory appeal under Section 70 of the Act.

5. The learned counsel appearing for the petitioners would further submit that, the order dated 17.08.2000 in A.R.C proceedings was received by the petitioners only a week after. Therefore, the said one week time should be excluded for the purpose of limitation in filing the appeal. Also, the learned counsel appearing for the petitioners would submit that, assuming that the appeal was filed with the delay of 7 days, such a delay should have been condoned by the first respondent, who is the statutory Appellate Authority under Section 70 of the Act by invoking the provision under Section 5 of the Limitation Act. In this regard, the learned counsel for the petitioners would submit that, even though there is no specific provision to condone the delay in filing the appeal under Section 70 of the Act, nevertheless, the applicability of the provisions of the Limitation Act especially under Section 5 of the Limitation Act cannot be denied and therefore, such applicability should have been made by the first respondent. The learned counsel appearing for the petitioners would further argue that, the Appellate Authority under Section 70 of the Act is certainly a Civil Court for the purpose of applicability of the provisions of the Limitation Act and therefore, the said applicability cannot be excluded.

6. In support of his contention, the learned counsel appearing for the petitioners relied upon the two decisions. First one is made by the Honorable Supreme Court in "(2000) 3 MLJ 108 (Supreme Court) in P.Sarathy vs. State Bank Of India" wherein, the learned counsel relied upon the following para which reads thus:

"15. Applying the above principles in the instant case, we are of the opinion that the Deputy Commissioner of Labour (Appeals), which was an Authority constituted under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 to hear and decide appeals, was a "court" within the meaning of Section 14 of the Limitation Act and the proceedings pending before him were civil proceedings. It is not disputed that the appellant could file an appeal before the Local Board of the Bank, which was purely a departmental appeal. In this view of the matter, the entire period of time from the date of institution of the departmental appeal as also the period from the date of

institution of the appeal under Section 41(2) before the Deputy Commissioner of Labour (Appeals) till it was dismissed will, therefore, have to be excluded for computing the period of limitation for filing the suit in question. If the entire period is excluded, the suit, it is not disputed, would be within time.

7. The learned counsel appearing for the petitioners would also rely upon the judgment of this Court made by the learned Judge reported in "2009-1-LW-954 in the matter of Ponnusamy and another Vs. The Debt Recovery Tribunal represented by its Registrar and another" where the learned counsel relied upon the following passages reads thus:

"36. Therefore, it is clear that Section 5 would apply even to some types of applications, though it may not apply to suits. The proceedings before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, though original in nature, should be treated as applications and not strictly like suits. Therefore the provisions of Section 5 of the Limitation Act, in my considered view would apply to applications under Section 17 of the SARFAESI Act. But the same logic cannot be extended to applications filed under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, since Section 24 of the 1993 Act makes the provisions of the Limitation Act, 1963 applicable to an application under the Act, meaning thereby that an application under Section 19 of the 1993 Act is to be treated as a suit.

37. Section 17 (1) of the SARFAESI Act, prescribes a period of limitation of just 45 days for filing an application, challenging any of the measures taken by the secured creditor under Section 13 (4) of the Act. The remedy under Section 17 (1) is virtually a remedy in respect of a right of redemption. Therefore, to hold that Section 5 of the Limitation Act, will not apply to an application under Section 17 (1) would virtually defeat the valuable right of redemption available to a mortgagor. This right of redemption normally gets extinguished after the sale of the property.

Therefore the apprehension expressed by the learned counsel for the Bank that the parties may come up with applications after a huge delay and defeat the object of the Act for speedy recovery of dues, may not be well founded for the simple reason that after losing possession of the property under Section 13 (4), a debtor cannot afford to wait for long. If he waits for long, the property may get sold and his rights may get extinguished. Hence the application of Section 5 of the Limitation Act, to proceedings under Section 17 (1) of the SARFAESI Act, would neither defeat the rights of the secured creditor nor cause irreparable hardship to the secured creditor.

8. By relying upon these decisions, the learned counsel appearing for the petitioners would further submit that, the exclusion of the provisions of the Limitation Act, especially Section 5 of the said Act should not have been made in the context that the appeal filed before the first respondent is by way of statutory appeal and therefore the first respondent can be construed as a quasi judicial authority and therefore the said appeal should have been entertained by condoning the delay of 7 days in preferring the said appeal.

9. However, Mr.P.P.Purushothaman, learned Government Advocate appearing for the respondents 1&2, would submit that, in the absence of any direct provision in the Act enabling the Appellate Authority to condone the delay in filing the appeal, filed under Section 70 of the Act, certainly such Appellate Authority cannot be vested with any power to condone the delay. The learned Government Advocate would further submit, if at all any provision is available to condone the delay and, if an application is filed by invoking the said provision by giving separate reasons, then it is for the quasi judicial authority/Court to entertain the said application after evaluating the reasons given by the party for approaching the Court belatedly, and such delay could have been condoned on merits, depending upon the reasons given in each case. Here, no such provisions expressly have been provided under the Act and therefore the Appellate Authority i.e., the first respondent cannot be expected to invoke such a power without the authority of law to condone the delay and therefore the reasonings given by first respondent in rejecting the appeal, admittedly filed with the delay by the petitioners, are fully justifiable and therefore the impugned order does not require any interference.

10. I have considered the submissions made by Mr.W.M.Adbul Majeed, learned counsel appearing for the petitioners and

Mr.P.P.Purushothaman, learned Government Advocate appearing for the respondents 1 & 2 and I have perused the material placed before this Court.

11. Before toiling the issue raised in this writ petition, let me take the relevant provisions of the Act as well as the provision of the Limitation Act. Under the provisions of the Act, the disputes related to the chits business can be referred to by the parties to the Registrar for Arbitration and in this regard, it is relevant to extract the provision under Section 64 of the Act, which reads thus:

"64. Disputes relating to the chit business:- (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the management of chit business shall be referred by any of the parties to the dispute, to the Registrar for arbitration if each party thereto is one or the other of the following, namely:-

(a) a foreman, a prized subscriber or a non-prized subscriber, including a defaulting subscriber, past subscriber or a person claiming through a subscriber, or a deceased subscriber to a chit;

(b) a surety of a subscriber, past subscriber, or a deceased subscriber."

12. As against the order passed by the Registrar under Section 64 of the Act, the appeal would lie before the Appellate Authority who is the State Government under Section 70 of the Act, which reads as follows :-

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

13. Insofar as the reference to be made by way of arbitration to the Registrar for adjudication under Section 64 of the Act is concerned, the Act itself prescribed certain limitation which is provided under Section 65 of the Act, which reads thus:

"65. Period of Limitation: (1) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963), but subject to the specific provisions contained in this Act, the period of limitation in the

case of a dispute referred to the Registrar under Section 64, shall -

(a) if the dispute relates to the recovery of any sum, including interest thereon, due to a foreman from a deceased subscriber, be three years, computed from the date on which such subscriber dies or ceased to be a subscriber; or

(b) if the dispute is between a foreman and a subscriber or a past subscriber, or the nominee, heir or legal representative of a deceased subscriber, and the dispute related to any act or omission on the part of either party to the dispute, be three years from the date on which the act or omission with reference to which the dispute arose, took place.

(2) The period of limitation in the case of any dispute other than those referred to in sub-section (1) which are required to be referred to the Registrar under Section 64 shall be regulated by the provisions of the Limitation Act, 1963 (36 of 1963), as if the dispute were a suit, and the Registrar, a Civil Court.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Registrar may admit a dispute after the expiry of the period of limitation specified therein, if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period."

14. On a careful reading of these Sections viz., Sections 64, 70 and 65 of the Act, it reveals that the dispute can be referred under the Act, to the Registrar of Chits under Section 64 of the Act and as against the order passed by the Registrar of Chits, an appeal would lie under Section 70 of the Act before the State Government. Insofar as referring the dispute before the Registrar under Section 64, the limitation has been prescribed under Section 65 of the Act, under which dispute relates to the recovery of any sum and the dispute between foreman and the subscriber, the limitation was three years. Insofar as the limitation of three years is concerned, Section 65(1) says that "Notwithstanding anything contained in the Limitation Act, 1963". Which means that the provisions contained in the Limitation Act cannot be made applicable for making any belated reference under Section 64 of the Act, especially, insofar as the dispute relates to the recovery of sum and dispute between the foreman and the subscriber. This is nothing

but in consonance with the limitation prescribed already for recovery of sum by way of Civil Suit under the Civil Procedure Code.

15. However, under the very same Section, under Section 65 of the Act, sub-section (3) reads that "Notwithstanding anything contained in sub-sections (1) and (2), the Registrar may admit a dispute after the expiry of the period of limitation specified therein, if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period". Thus, sub-section (3) of Section 65 of the Act clearly envisages that the provisions of the Limitation Act can be made applicable to certain cases not necessarily the cases or disputes referred for the purpose of recovery of sum or for dispute between the foreman and subscriber. One thing has been made clear, under sub-section (3) of Section 65 of the Act that the provision of the Limitation Act i.e., Section 5 of the Limitation Act can very well be made applicable for certain proceedings under the Chit Funds Act.

16. Herein, the case in hand, it is not the case of the petitioners to invoke Section 5 of the Limitation Act for the purpose of initial reference of the dispute under Section 64 of the Act for recovery of sum or for the dispute between foreman and subscriber. This is the case where an appeal was filed statutorily under Section 70 of the Act as against the award passed, of course an ex-parte order, under Section 64 of the Act. There has been an express limitation prescribed therein under Section 70 of the Act, with the language that "within two months from the date of the order or award, appeal to the State Government". However, the exclusion of the Limitation Act by virtue of the non-abstanti clause in Section 65 (1) of the Act, has not been made, insofar as the applicability of the said provision of the Limitation Act i.e., Section 5 of the Limitation Act, in case of appeals filed before the State Government under Section 70 of the Act.

17. The first respondent thought it fit to have such a non-abstanti clause in appeal also. However, the fact remains that only in certain case, which has been specifically mentioned therein, under sub clauses (a) and (b) of sub-sections (1) and (2) of Section 65 of the Act. Such exclusion has been specifically made. However, under sub-section (3) of Section 65 of the Act, it clearly says about the very applicability of the provisions of the Limitation Act and it has been infact allowed and expressly provided for.

18. When that being the position, it cannot be said that Section 5 of the Limitation Act cannot be made applicable to a belated appeal filed under Section 70 of the Act. Moreover, the

State Government acting as an Appellate Authority under Section 70 of the Act, by thus, required upon to decide the award passed by the Registrar of Chits under Section 64 of the Act. Thereby, the State Government acts as an Appellate Authority by exercising its power as quasi judicial authority, under Section 70 of the Act. When that being the position, they can very well be construed as Civil Court hence it will attract the provisions of Limitation Act. Therefore, they can very well be construed as a Civil Court for the purpose of entertaining appeals filed beyond the limitation period of two months, prescribed under Section 70 of the Act.

19. The said principle has also been underlined in the aforesaid judgment of the Hon'ble Supreme Court of India, in the case cited supra i.e., "P.Sarathy vs. State Bank Of India" , the Hon'ble Apex Court has construed that the Deputy Commissioner of Labour (Appeals), which was an Authority constituted under Section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947, to hear and decide appeals within the meaning of Section 14 of the Limitation Act. If the said principle is applied to the case in hand, certainly, the State Government being the Appellate Authority under Section 70 of the Chit Funds Act can very well be construed as a Court within the meaning of Limitation Act.

20. Like that, other decision, in "Ponnusamy and another Vs. The Debt Recovery Tribunal represented by its Registrar and another" cited Supra, the learned Judge of this Court after going through the various decisions, has given finding that, even though there is no separate provision under the SARFAESI Act to entertain proceedings under Section 17 (1) of the SARFAESI Act, after the expiry of the limitation period, however, the application under Section 5 of the Limitation Act to proceed under Section 17 of the SAEFAESI Act, would neither defeat the rights of the secured creditors nor cause irreparable hardship to the secured creditors. Accordingly, the applicability of Section 5 of the Limitation Act to the SARFAESI proceedings has been emphasized by the learned Judge in the judgment cited supra.

21. Also in another judgment in "S.Venkatachalam Vs. Secretary to Government, CTRE Department reported in AIR 1998 Mad 232", it has been held that, the principle of Section 12 of the Limitation Act has to be applied while calculating the period of limitation prescribed for an appeal under Section 20 of the Chit Funds Act, 1982. All these judgments would go to show that the applicability of the provisions of the Limitation Act especially Section 5 of the said Act, has not at all been taken away by any expressed provision of the Chit Funds Act. The only exemption to this aspect is that Section 65 (1) and (2)

of the Act, as it has expressly taken away the applicability of the Limitation Act that too only under two circumstances in clause (a) and (b) of sub-section 1 of Section 65 of the Act. Since, sub-section (3) of Section 65 of the Act, specifically provided that the applicability of the Limitation Act, even before the Registrar of Chits under Section 64 of the Act, in certain proceedings, the same logic can be applied in the case of the appeals filed under Section 70 of the Act to the Appellate Authority i.e., the State Government. Therefore, we can safely conclude that the Appellate Authority i.e., the State Government under Section 70 of the Act can very well entertain the appeal beyond the period of 60 days by invoking Section 5 of the Limitation Act, provided sufficient cause/reasons are given by the appellant to the satisfaction of the Appellate Authority.

22. In that view of the matter, this Court is of the considered opinion that the reasoning given by the first respondent/Appellate Authority in rejecting the appeal filed by the petitioners is not correct on the ground that it has been filed beyond two months i.e., beyond limitation period prescribed under Section 70 of the Act and such belated appeal cannot be entertained by condoning that delay as there was no provision available for such condonation. Therefore, the impugned order is liable to be set aside.

23. In the result, the impugned order is set aside and the matter is remitted back to the first respondent for reconsideration. On receipt of the application, if any, filed by the petitioners for condoning the delay of seven days in preferring the said appeal, the first respondent shall consider the same on merits and on the basis of the reasons to be adduced by the petitioners for such delay, which is only minimum, by invoking the provisions of Section 5 of the Limitation Act and accordingly pass necessary order and thereafter entertain the main appeal and decide the same on merit and in accordance with law. The above said endeavor shall be undertaken by the first respondent within a period of three months from the date of receipt of a copy of this order.

24. With these observations/directions, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

sni/rts

To

1.The Secretary  
Commercial Tax Department  
Fort St. George,  
Chennai - 9

2.The Joint Registrar of Chits  
Kanyakumari at Nagercoil

+1cc to Mr.G.Sumitra, Advocate SR.No.57950

+1cc to Government Pleader SR.No.58375

W.P.No.529 of 2003

RV (CO)  
GMY (09/04/2019)



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