IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.No.2373 of 2012

1. Laazar
2. M.Mary Lilly Bai.
3. G.S.Mercy .. Appellants

versus

1. The State of Tamil Nadu,
Rep. by the Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Fort St. George, Chennai - 600 009.

2. The Deputy Registrar of Chits,
Nagercoil, Kanyakumari District.

3. S.Kanakaraj,
Foreman,
Palliyadi Rathna Chits Fund Ltd.,
Nagercoil, Kanyakumari District. .. Respondents

Writ Appeal filed against the order dated 23.02.2012 in W.P.No.29493 of 2007.

Prayer in W.P.No.29493 of 2007:

Petition filed under Article 226 of the constitution of India, praying for the issuance of writ of certiorari calling for the records from the file of the first respondent dated 06/07/2007 in Letter No.10826/K/07-1 and quash the same as illegal.

For Appellant : Mr.G.Sumitra

For Respondent : Mr.Elumalai (for R1 & R2)
Government Advocate

JUDGMENT

(Order of the Court was delivered by S.MANIKUMAR, J.)

Challenge in this writ appeal is to an order dated 23.02.2012, made in W.P.No.29493 of 2007, by which the writ Court declined to set aside the order dated 06.07.2007, passed by the 1st respondent.

2. Brief facts leading to the appeal are that Palliyadi Rethna Chits Funds Limited, Nagercoil, filed ARC No.(Chitty) No.67 of 2005, against the writ petitioners to realize a sum of Rs.1,49,133.75p, with interest at 12% per annum, till the date of realisation.

3. First appellant, was a subscriber of chit No.7, registered under Nagercoil Assistant Chit Registrar No.48 of 2002. Other two appellants are the co-obligants. First Appellant received Rs.2,02,250/- on 06.03.2003, against a promissory note on 08.03.2003 and defaulted in payment.

4. Upon considering the material on record, the Joint Chit Registrar, Kanyakumari (P) Nagercoil, passed an award under Section 69 of Central Chit Fund Act, by which appellants were made liable to pay Rs.1,39,464/-, to the complainant viz., Vs.Mr.S.Kanakaraj, Chit Conductor, Palliyadi Rathna Chit Fund (P) Ltd., Palliyadi and Post, with interest, at the rate of 12% per annum till the date of realisation. Thereafter, Palliyadi Rathna Chit Funds (P) Ltd., filed execution petition under Order 21 Rule 48 and Section 151 of CPC, before the District Munsif, Nagercoil, for an order of attachment and salary of respondents therein viz., Smt.M.Meri Lilli Bai and Smt. Selvi Mercy Bai.

5. At this stage, appellants filed appeal before the Secretary to Government, Chennai, with delay. Additional Secretary to Government, Commercial Taxes and Registration Department, Chennai, rejected the appeal as time barred and on 06.07.2017, passed the following order.

> "I am directed to inform that your appeal against the award in A.R.C.No.67/2005, dated 14.5.07 has been examined and the same is rejected as time barred since no valid reasons have been adduced to condonation of delay."

6. Being aggrieved, WP.No.29493 of 2007, has been filed for a writ of certiorari, to quash the letter dated 06.07.2007. Adverting to the rival submissions, writ Court vide order dated 23.02.2012, dismissed the writ petition, as hereunder.

> "4. I heard the counsel for both sides.

The only grievance of the petitioners is that the appellate authority / first respondent, without taking into consideration the reasons for the delay in filing the appeal, has simply rejected the appeal. A perusal of the impugned order of the first respondent would reveal that the appeal was filed by the petitioners belatedly besides that no valid reasons were adduced for condoning the delay. Therefore, it is evident that the appellate authority not only rejected the appeal on the ground of delay but reasons were given for rejecting the appeal. I am also convinced that the reasons given by the petitioners for not preferring the appeal within the prescribed period is not valid and convincing. Therefore, I do not find any reasons to interfere with the order passed by the first respondent. The writ petition is therefore dismissed. No costs. Consequently, connected miscellaneous petition is closed."

7. Being aggrieved, instant writ appeal is filed on the following grounds:

"i) The tribunal has erred in accepting the reasons assigned in the impugned order which has been passed, even without notice to the third respondent, who is the aggrieved party in filing the appeal by the appellant.

ii) The tribunal ought to have seen that there was no finding by the 1st respondent regarding service of award on the appellant and in the said circumstances, the filing of appeal on coming to know of the award through the execution proceeding ought to have been entertained by the 1st respondent.

iii) The tribunal erred in holding that no valid reason was given by the appellants to condone the delay.

iv) The reasoning of the tribunal that the explanation for condoning the delay was not convincing is erroneous in as much as there is no proof for service of award copy on the appellants.

v) The tribunal ought to have seen that it was not the case of the third respondent that the appellants were served with the award copy which is mandatory under the Chit Funds Act.

vi) The tribunal failed to see that the 1st respondent has disposed of the appeal itself while deciding the condonation petition, even without calling for the records, and that it is erroneous.

vii) The tribunal ought to have seen that no reason was assigned by the 1st respondent for dismissing the condonation application and confirming such order by the tribunal, is erroneous.

viii) The tribunal ought to have seen that there was no application of mind by the 1st respondent in as much as he has stated that the appeal barred by time without even looking for moment that condone delay petition has been filed."

8. Though, Ms.G.Sumitra, learned counsel for the appellant sought reversal on the grounds stated supra, we do not find any manifest illegality in the order impugned, warranting interference. There is no error in the order of the 1st respondent dated 06.07.2017. Hence, the writ appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
State of Tamil Nadu,
Commercial Taxes and Registration Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Deputy Registrar of Chits,
Nagercoil,
Kanyakumari District.

3.The Joint Registrar of Chits,
Nagarcovil.

4.The District Munsif,
Nagarcovil.

+1cc to M/S.J.Anandhavalli, Advocate Sr.29604

W.A.No.2373 of 2012

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srg 21/05/2018