***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

AND

*** HON'BLE MS. JUSTICE J. UMA DEVI**

+Civil Revision Petition No.2338 of 2018

Date: 05-11-2018

#Between:

Madamanchi Anil Kumar, S/o M. Sambasiva Rao,
aged 40 years, UDC, APSPDCL, Awsiraopet,
Narasaraopet Mandal, D.No.3-29-8/7,
Brindavan Gardens, 2nd Lane, Guntur,

… Petitioner

And

Margadarshi Chit Fund Pvt. Limited, represented
By its Managing-cum-Foreman, Robertsonpet,
Machilipatnam, Krishna District and others

… Respondents

! Counsel for the Petitioner : Mr. N. Sri Hari

^ Counsel for 1st Respondent : Mr. P. Durga Prasad

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? Cases referred

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE MS. JUSTICE J. UMA DEVI

Civil Revision Petition No.2338 of 2018

ORDER: *(per V. Ramasubramanian,J)*

One of the award-debtors has come up with the above revision, challenging an order of attachment of his salary passed by the Executing Court in execution of an award.

2. Heard Mr. N. Srihari, learned counsel for the revision petitioner and Mr. P. Durga Prasad, learned counsel for the 1st respondent.

3. The 1st respondent initiated arbitration proceedings against the respondents 2 to 8 as well as the petitioner herein, on the ground that they were part of a chit group and that the money became due and payable by all of them jointly and severally. The Arbitrator passed an Award on 21-12-2016, holding the petitioner herein, as well as respondents 2 to 8 jointly and severally liable to pay a sum of Rs.5,29,430/- with subsequent interest.

4. On the ground that the award amount was not paid, the 1st respondent/award-holder filed E.P.No.48 of 2017 in A.C.P.No.25 of 2016, for the attachment of the salary of the petitioner herein. The Executing Court passed an order dated 21-02-2018 directing the attachment of the salary of the petitioner. It is against the said order that the petitioner is before this Court.

5. The petitioner has raised several contentions, some of which could be rejected outright. The contention that all the judgment debtors are liable to pay the amount due in equal shares, does not hold water, since the liability is joint and several. The contention that the Deputy Registrar of Chits passed an award without following the Rules and without issuing any summon or notice before passing of the award, is a ground that should have been taken in appropriate proceedings under section 34 challenging the arbitral award. The petitioner is not entitled to challenge the validity of the award in execution proceedings.

6. But there is one contention raised by the petitioner, which deserves serious consideration as it is squarely covered by a decision of a Division Bench of this Court in **Punyamurthula Venkata Viswa Sundara Rao v. Margadarsi Chit Fund Pvt. Ltd., Hyderabad and others**[1] in favour of the petitioner. This contention is that a Recovery Certificate issued by the Deputy Registrar of Chits, cannot be acted upon, as per Rule 55 of the Andhra Pradesh Chit Fund Rules, 2008 (for short "the Rules") and that an execution is maintainable only if the recovery certificate has been issued by the Registrar of Chits to the competent Civil Court.

6. In **Punyamurthula Venkata Viswa Sundara Rao v. Margadarsi Chit Fund Pvt. Ltd., Hyderabad and others,** the maintainability of the petitions for execution of the awards passed by the Deputy Registrar of Chits were under challenge before a Division

[1] 2017 (3) ALD 387 (DB)

Bench of this Court. The facts out of which the aforesaid decision arose, as culled out from paragraph 3 of the decision are (i) that the Deputy Registrar made an award under Section 69 of the Chit Funds Act, 1982, directing the judgment debtors to pay a particular amount of money and (ii) that an execution petition was filed in a Court other than the one within whose jurisdiction the award was passed. The award was passed by the Registrar of Chits at Kakinada, East Godavari District, but the execution petition was filed in West Godavari District. Therefore, only two points arose for consideration in **Punyamurthula Venkata Viswa Sundara Rao.** The points that arose for consideration in that case, were enunciated in paragraph 9 of the judgment as follows:

> *1) whether the decree holder has to proceed against all the judgment debtors, who are guarantors, by claiming proportionate amount decreed.*
>
> *2) whether the execution Courts in which E.Ps. were filed against the present judgment debtors, who are revision petitions herein, have jurisdiction to entertain the execution petitions.*

7. While dealing with the second point from paragraph 12 onwards, the Division Bench of this Court took note of Rule 55 of the Rules. After extracting the Rule in paragraph 12 of its decision, the Division Bench analyzed Section 71 of the Act, in paragraph 13 and came to the conclusion in paragraph 15 that the expression “proper authority” appearing in Rule 55 (3) would include a civil Court and that therefore, it is only the Registrar, who is competent to forward the application for execution to the property authority, be it the Civil Court or Revenue Authority. Paragraph 15 of the judgment reads as follows:

> *"The counsel for the respondent persuaded us to accept that proper authority specified under Sub Rue 3 of Rule 55 would mean only revenue authority as the word authority alone is specified but not the word court. But we are unable to comprehend the said argument, in the light of the clarity given under Rule 55 of Sub Rule 2. The said rule gives an option to the applicant to state whether he desires to get the award executed through a civil Court or through the revenue authorities. Hence, the word used under Sub Rule 3 of Rule 55 as proper authority has to be construed to include both civil Court and revenue authority. If the intention was to mean only revenue authority, much pains might not have been required for the legislature, to specify the same by using the word revenue authority, instead of using the word proper authority. Proper authority, in the above context, would be what the decree holder chooses under subrule 3. Hence, though it may look too technical an approach and appreciation, when the language of a statutory provision is worded as clearly as not to leave any ambiguity, we have to conclude that the decree holder did not follow the procedure prescribed under Rule 55 in getting the award executed. The proper channel through which the award and the certificate has to reach the execution Court, is the Registrar. It is only the Registrar who is competent to forward the application of the applicant to the proper authority, be it civil Court or revenue authority, for execution, along with a certificate issued by him under Section 71 of the Act."*

8. After so interpreting the scope of the expression "proper authority" appearing in Rule 55 (3), in paragraph 15 of its judgment, the Division Bench went into another aspect in paragraph 18. Even at the beginning of paragraph 18, the Division Bench indicated that they were about to clarify something that was not argued and that they were clarifying it to ensure that there is no scope for another round of litigation. Paragraph 18 of the judgment reads as follows:

> *"There is another aspect which needs to be clarified. Though no argument was advanced in that regard, it would be better for us to clarify the said aspect, so as not to leave scope for another round of litigation, at any later point of time. The dispute in this case was dealt with by the Deputy Registrar. Though the proceedings do not spell any nomination made by the Registrar, it has to be assumed that the registrar nominated the Deputy Regiatrar, to settle the dispute, by invoking the power given to him under Section 66 of the Act, which permits the registrar to appoint a person to*

settle the dispute which is referred to him. But such powers are not conferred on him in respect of the certificate that has to be issued, for the purpose of execution of the award. The wording of section 71 and also Rule 55 makes it clear that it is only the Registrar who has to issue the certificate referred in the above provisions. Though the opening part of section 71 says that the registrar or his nominee can pass the award, clause (a) of section 71 specifies the Registrar as the person who has to issue the certificate. But in this case the Deputy Registrar, apart from deciding the dispute has also issued the certificate, that is supposed to be issued by the Registrar, which shall not be accepted by the executing Court."

9. Thus, the Division Bench came to the conclusion that while an award may be passed by the Deputy Registrar of Chits, on the basis of a nomination made by the Registrar under Section 66 of the Act, no such power of nomination was conferred upon the Registrar either under Section 71 or under Rule 55 to authorize someone else to issue a certificate of recovery. Therefore, the Division Bench came to the conclusion in paragraph 18 that it is only the Registrar, who is competent to issue a certificate under Section 71 read with Rule 55 of the Rules.

10. Therefore, on the basis of the decision of the Division Bench in **Punyamurthula Venkata Viswa Sundara Rao**, it is contended by the learned counsel for the petitioner that the execution proceedings are liable to be set aside. According to the learned counsel, no certificate of recovery was issued by the Registrar in this case, and that therefore, no execution was maintainable.

11. We have carefully considered the above submissions.

12. We have two difficulties in accepting the contention of the learned counsel for the petitioner. The first is that the *ratio decidendi* of any judgment is to be found from what it lays down and not from what follows out of it. We have seen the two points that arose for consideration in **Punyamurthula Venkata Viswa Sundara Rao.** Those two points formulated in paragraph 9 of the decision, do not cover and do not even extend to the conclusion that the Division Bench reached in paragraph 18. In fact, it was made clear in paragraph 18 that no argument was advanced in that regard. Therefore, what was laid down in paragraph 18 of the judgment of the Division Bench, cannot be taken as *ratio decidendi* of the said decision.

13. The second difficulty that we have is that certain statutory provisions and certain Government Orders were not placed before the Division Bench in **Punyamurthula Venkata Viswa Sundara Rao.** Section 2 (o) of the Chit Funds Act, 1982 defines the word "Registrar" to mean the Registrar of Chits appointed under Section 61. Section 2 (o) goes further to say that the word "Registrar" would also include an Additional, a Joint, a Deputy or an Assistant Registrar" appointed under Section 61. This definition was not noted by the Division Bench in **Punyamurthula Venkata Viswa Sundara Rao.** Section 61 of the Act speaks about the appointment of the Registrar and other officers. Sub-section (1) of Section 61 reads as follows:

> "The State Government may, by notification in the Official Gazette, appoint a Registrar of Chits and as many Additional, Joint, Deputy and Assistant Registrars as may be necessary for the purpose of discharging the duties imposed upon the Registrar by or under this Act. "

14. Section 61 (1) has two limbs. Under the first limb, the State Government is empowered to appoint a Registrar of Chits by a notification in the Official Gazette. By the second limb, the State Government is empowered to appoint as many Additional, Joint, Deputy and Assistant Registrars, for the purpose of discharging the duties imposed upon the Registrar by or under the Act. Therefore, it is clear that there was power of delegation available for the State Government to appoint Additional, Joint, Deputy and Assistant Registrars for the purpose of discharging the duties imposed upon the Registrar by or under the Act.

15. Section 66 of the Act speaks about the settlement of disputes. Under sub-section (1) of Section 66, the Registrar is entitled to settle any dispute either by himself or refer the dispute for disposal to a person appointed by him. The person to whom the Registrar refers the dispute for disposal is called as "the nominee". Sub-section (1) of Section 66 reads as follows:

> "If the Registrar is satisfied that any matter referred to him or brought to his notice is a dispute within the meaning of section 64, he shall, subject to such rules as may be prescribed, settle the dispute himself, or refer it for disposal to a person appointed by him (hereinafter in this Chapter referred to as the nominee.)"

16. Where the petitioner has actually fallen into a trap is to mix up the power of delegation available under Section 61 (1) with the

power of nomination available under Section 66 (1). The power of delegation under Section 61 (1) is available only with the Government, whereas the power of nomination merely to decide a dispute, is with the Registrar under Section 66 (1). Secondly, the delegation under Section 61 (1) is only upon Additional, Joint, Deputy or Assistant Registrars. But a nomination under Section 66 (1) could be upon any person. Thirdly, the delegation under Section 61 (1) is of all the duties imposed upon the Registrar. On the contrary, the nomination under Section 66 (1) is only for settling a dispute. Fourthly, the delegation under Section 61 (1) can be ordered only by a notification issued in the Official Gazette. But the nomination under Section 66 (1) cannot be and need not be by publication in the Official Gazette.

17. Unfortunately, the Division Bench in paragraph 18 of the report in **Punyamurthula Venkata Viswa Sundara Rao** has mistaken the power of nomination available to the Registrar under Section 66 (1) to be a power of delegation. The meaning to be assigned to the word "Registrar" appearing in Rule 55 (3), was not considered by the Division Bench in **Punyamurthula Venkata Viswa Sundara Rao.**

18. Rule 55 (3) of the Rules reads as follows:

> "(3) On receipt of such application for execution, the Registrar shall forward the same to the proper authority for execution along with a certificate issued by him under section 71 of the said Act and a proclamation issued under rule 54 in the manner prescribed therein."

19. The Chit Fund Rules, 2008 do not define the word "Registrar". The definition part of the Rules contains only five words and expressions. After defining five words and expressions in Rule 2, it is stated in Rule 2 itself that the words and expressions not defined in the Rules shall have the same meaning as assigned to them in the Act. Therefore, the word "Registrar" appearing in Rule 55 (3) has to be interpreted in the same manner as is defined in Section 2 (o) of the Chit Funds Act, 1982. If this is done, it will be clear that any Additional, Joint, Deputy or Assistant Registrar to whom a delegation has been made under Section 61 (1) will be entitled under Rule 55 (3) to issue a certificate of recovery. If the Government, by a notification in the official Gazette, issued under section 61(1), can appoint a Deputy Registrar or Assistant Registrar to perform all the duties of the post of Registrar, he becomes empowered automatically to issue a certificate of recovery under rule 55 also. The expression used in section 61 (1) is "all the duties".

20. Unfortunately,---

(i) the distinction between delegation under Section 61 (1) and nomination under Section 66 (1);

(ii) the definition of the expression "Registrar" under Section 2 (o);

(iii) the interpretation to be given to the word "Registrar" in Rule 55 (3) read with the definition clause in Rule 2 of the Rules; and

(iv) the availability of the Gazette notifications containing delegation of powers, were all not placed before the Division Bench, which decided **Punyamurthula Venkata Viswa Sundara Rao**. Hence, the

decision in **Punyamurthula Venkata Viswa Sundara Rao** cannot be taken to be an authoritative pronouncement on the question as to who is competent to issue a certificate of recovery.

21. Section 71 of the Act deals with the procedure for recovery of money. It reads as follows:

> *"71. Money how recovered.—Every order passed by the Registrar or the nominee under section 68 or section 69 and every order passed by the State Government in appeal under section 70 for payment of any money shall, if not carried out, —*
>
> *(a) on a certificate issued by the Registrar, be deemed to be a decree of a civil court, and shall be executed in the same manner as a decree of such court, or*
>
> *(b) be executed in accordance with the provisions of any law for the time being in force for the recovery of amounts as arrears of land revenue:*
>
> *Provided that no application for execution under clause (b) shall be made after the expiry of three years from the date fixed in the order, and if no such date is fixed, from the date of the order."*

22. Clause (a) of Section 71 speaks about a certificate issued by the Registrar. The word "Registrar" appearing in Section 71 (a) has also to be given the same meaning as found in Section 2 (o). Therefore, we hold that if any Additional, Joint, Deputy or Assistant Registrar has been appointed by the State Government, by a notification in the official gazette, to perform all the duties dischargeable by the Registrar under the Act, then such a delegate will be competent to issue a certificate of recovery. It is not correct to say that the Registrar of Chits alone is competent to issue a certificate of recovery.

23. Once the law on the issue is settled, the dispute on hand can be resolved by looking into the availability of any order issued by

the Government under Section 61 (1). The learned counsel for the 1st respondent produced the copies of two Gazette Notifications, one from the State of Andhra Pradesh and another from the State of Telangana. G.O.Ms.No.1472, Revenue (Regn.II), dated 10-12-2008 issued by the State of Andhra Pradesh in exercise of the powers conferred by Section 61 (1) of the Chit Funds Act, 1982 reads as follows:

> "In exercise of the powers conferred by sub-section (1) of Section 61 of the Chit Funds Act, 1982 (Central Act 40 of 1982) the Governor of Andhra Pradesh hereby appoints the Commissioner and Inspector General of Registration and Stamps, A.P., Hyderabad as Registrar of Chits, the Additional Inspector General-I, Office of the Commissioner and Inspector General of Registration and Stamps, A.P., Hyderabad as Additional Registrar of Chits, the Joint Inspector General-I, Office of the Commissioner and Inspector General of Registration and Stamps, and the Deputy Inspector General of their respective zones as Joint Registrars of Chits, the Assistant Inspector General (Chits) Office of the Commissioner and Inspector General of Registration and Stamps and the District Registrars of Registration Districts in the State of Andhra Pradesh as Deputy Registrars of Chits and the Chit Registrars as Assistant Registrars of Chits within the limits of their respective jurisdiction for the purpose of discharging the duties imposed upon the Registrar by or under the said Act as the case may be."

24. In so far as the State of Telangana is concerned, the Government issued G.O.Ms.No.260 Revenue (Registration-I), dated 11-10-2016, appointing several officers as officers empowered to discharge the duties imposed upon the Registrar by or under the Act. This Government Order was published in the Government Official Gazette extraordinary bearing No.379-D published on 11-10-2016.

25. It must be noted that Section 61 (1) carefully uses the phrase "the duties imposed upon the Registrar **by or under the said Act**". **The duties enumerated in the Act are those imposed by the Act. The duties enumerated in the Rules are those imposed under the Act.** Therefore, Rule 55 (3) has to be read only in this manner and not in any other manner.

26. Thus, it is clear that the only contention raised by the petitioner based upon the judgment of this Court in **Punyamurthula Venkata Viswa Sundara Rao** is bound to fail. Accordingly, it fails, and the Civil Revision Petition is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 05-11-2018

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