

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.20270 of 2016

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed seeking verbatim the following relief:

“For the reasons stated in the above accompanying affidavit, it is therefore prayed that this Hon'ble Court may be pleased to issue Writ, or Writs, Order or Orders more particularly in the nature of mandamus thereby challenging the proceedings issued by the 1st Respondent vide memo No.2466/ Regn.I/ A1/ 2016-1 dt:19.02.2016 preferred by the Respondent No.3 to 7, as illegal, arbitrary and against the principles of natural justice and consequently set aside the same and to pass such other order or orders that are deem as fit and proper in the circumstances of the case.”

2. I have heard the submissions of *Sri V.S.R.M.V.Prasad Sanka*, learned counsel appearing for the writ petitioner; of the learned Government Pleader for Revenue appearing for the respondents 1 & 2; and, of *Dr.P.B.Vijaya Kumar*, learned counsel appearing for the respondents 3 to 7. I have perused the material record.

3. The facts necessary for consideration are as follows: - ‘The writ petitioner is a chit fund company. The 3rd respondent is one of its subscribers of a chit. The 3rd respondent was declared as a highest bidder and was paid the prize amount of Rs.1,80,000/- on 06.06.2014. On the 3rd respondent subscriber becoming a defaulter, the writ petitioner filed a case before the 2nd respondent, that is, Deputy Registrar of Chits/ Arbitrator, Hyderabad (South), for recovery of the dues payable under the said chit to the writ petitioner chit fund company. The said dispute was registered as ABR/ C.F/ No.1062/ 2014.’ The 2nd respondent passed an award, dated 28.09.2015. The operative portion of the said order reads as under:

“In exercise of powers conferred Under Section 69 of the Chit Funds Act, 1982, I do hereby order that in view of above disputant is found entitled to recover Rs.2,05,000/- along with interest at 18% per annum on the principal amount of Rs.1,90,000/- from the date of dispute till the date of realization. The costs of the dispute is Rs.10,383/- are also awarded. The dispute is accordingly awarded in favour of the disputant and against the opponents No.1 to 5 jointly and severally. Any other payment made shall also be adjusted after filing of the dispute in aforesaid quantified entitled amount.”

A recovery certificate was issued under Section 71(a) of the Chit Funds Act, 1982 ('the Act', for brevity); respondents 3 to 7 preferred an appeal against the said award passed by the 2nd respondent before the 1st respondent, The State of Telangana, represented by its Principal Secretary, Revenue Department (Region-I), Hyderabad. The said appeal was admitted by the 1st respondent, vide Memo dated 19.02.2016. Stay order was also granted in the said appeal.

4. In this backdrop of facts and chronology of events, the case of the writ petitioner is this: - 'Respondents 3 to 7 preferred the appeal before the 1st respondent after abnormal delay. Under Section 70 of the Act, any party aggrieved by any order passed by the 2nd respondent is required to prefer appeal to the State Government, within two months from the date of the order or award. However, the said appeal was preferred after abnormal delay, that is, after a delay of 112 days. The appeal preferred belatedly after a delay of 112 days ought to have been rejected by the 1st respondent. After admitting the appeal and granting orders of stay, the 1st respondent has not fixed a date for appearance of both the parties and for hearing of the appeal. Respondents 3 to 7 have not paid the amount due with interest as per the Award passed by the 2nd respondent. The amount involved in the matter is public money;

and, on recovery of the same, it will be adjusted towards the sums payable to the successful bidders. There is no provision either in the Act or under the Rules, for condonation of the delay. No notices were ordered on the application for condonation of delay, if any, filed in the appeal. The 3rd respondent, having played fraud and violated the principles of natural justice, obtained orders of stay from the 1st respondent. The same resulted in injustice. Non-fixing of a date for appearance and hearing of the appeal resulted in further gross injustice. The 1st respondent acted illegally and in violation of principles of natural justice. Hence, the present writ petition is filed.'

5. On 21.07.2016, this Court, while admitting the writ petition, granted interim suspension of the order, dated 19.02.2016. The said order reads as follows:

"The petitioner company is a Registered Chit Fund Company, wherein the 3rd respondent is a subscriber for the chit value of Rs.3,00,000/- and is paying the subscription amount every month. Thereafter, the 3rd respondent participated in the chit auction and became the successful bidder and lifted the chit, for which respondents 4 to 7 stood as guarantors for future liability of the chit amount. The 3rd respondent after paying some installments, committed default in payment of amount. Therefore, the petitioner company filed a case vide No.ABR/ C.F/ No.1062/ 2014 before the 2nd respondent and issued notices to respondents 3 to 7. Thereafter, since respondents 3 to 7 never appeared, they were set ex parte and the 2nd respondent passed an award against respondents 3 to 7. Therefore, the petitioner filed execution proceedings for attachment of salary of respondents 4 and 5 and the same is pending before the X Junior Civil Judge, City Civil Court, Hyderabad.

Aggrieved by the said award, respondents 3 to 7 preferred an appeal before the 1st respondent, who, by impugned order dated 19.02.2016, admitted the same and granted stay.

The grievance of the petitioner company is that as per Section 70 of the A.P.Chit Funds Act, against the order of Registrar or the nominee, appeal shall be filed within two months before the State Government, but there is no provision for condonation of the delay under the provisions of the Chit Funds Act. The 1st respondent without considering the same, straightaway entertained the appeal and granted stay though it is filed beyond limitation.

In view of the same, there shall be interim suspension of the order, dated 19.02.2016, in Memo No.2466/ Regn.I/ A1/ 2016-1 passed by the 1st respondent."

6. The respondents filed vacate stay petition along with the counter affidavit of the 4th respondent stating therein as follows:

The award is an *ex parte* award. None of the respondents in the dispute before the 2nd respondent were served with notices. The aggrieved respondents preferred an appeal before the 1st respondent. The appellate authority granted stay of all further proceedings and in the same week, copy of the appeal petition was sent to the writ petitioner company. The writ petitioner company might have received the same in February, 2016. The said fact is suppressed by the writ petitioner. The appellate authority is well within its jurisdiction in condoning the delay of 45 days in preferring the appeal. There is no provision for condoning the delay does not mean that the appellate authority has no jurisdiction or power to entertain an application for condonation of delay and condoning the delay. The 2nd respondent/ Deputy Registrar of Chits/ Arbitrator ought to have acted according to the rules and in a fair manner and ought to have given an opportunity to these respondents. However, since no opportunity was given to these respondents, they are constrained to rush to the appellate authority and obtain stay of all further proceedings. No case has been made out by

the writ petitioner for interference. Hence, the interim order obtained by the writ petitioner may be vacated.

7. Learned counsel for the petitioner & the respondents 3 to 7, and the learned Government Pleader made submissions in line with the pleadings, which are stated supra, in detail.

8. Learned Government Pleader appearing for respondents 1 and 2 further having placed reliance upon the orders of this Court in W.P.nos.38437 of 2015, 32028 of 2015, 33 of 2016 & 42896 of 2015 contended that this Court consistently held that the 1st respondent/appellate authority is having power and jurisdiction to entertain the appeal filed belatedly along with a petition for condonation of delay and decide such application. He further submitted that, in view of the settled legal position, the contentions of the petitioner that the appellate authority has no jurisdiction or power to either entertain an application for condonation of delay or condone the delay in filing an appeal and that any appeal filed belatedly beyond the period of time allowed for preferring the appeal is not maintainable are all false and untenable.

9. I have given earnest consideration to the facts & submissions.

10. As already noted, when the writ petitioner company filed a case for recovery of dues from the respondents 3 to 7, the 2nd respondent registered the said case as a dispute and passed an award, dated 22.01.2015, and issued a recovery certificate. Thereupon, the aggrieved respondents 3 to 7 preferred an appeal before the 1st respondent. Admittedly, the said appeal was preferred beyond the time of two months provided under Section 70 of the Act for preferring such an

appeal. The 1st respondent having entertained and admitted the appeal granted orders of stay. Though, the writ petitioner did not specifically plead in the writ petition that the appeal preferred by the opposite parties before the 1st respondent was not accompanied by an application for condonation of delay, a contention was raised that no such application for condonation of delay was filed along with the said appeal. However, it was further contended that the delay was condoned and appeal was admitted and stay orders are also granted. Further, in the affidavit filed along with the vacate stay petition, it is not specifically stated as to whether the said appeal was accompanied by an application for condonation of delay and as to whether the said application was allowed in accordance with the procedure established by law by passing an appropriate order on the said application. However, during the course of hearing, learned counsel for the respondents 3 to 7, after due verification, submitted that an application for condonation of delay was also filed along with the said appeal.

11. Learned counsel for the respondents 3 to 7 relied upon a decision of this Court in W.P.No.32028 of 2015 (P.Srinivasa Rao v. State of Telangana) wherein this Court considered the question – ‘Whether the appellate authority under Section 70 of the Act has power to condone the delay?. In the said decision, this Court, having referred to the ratios in the decisions in Sajida Begum v. State Bank of India [AIR 2013 AP 24]; and, Baleshwar Dayal Jaiswal v. Bank of India and others [AIR 2015 SC 2881] held that Sections 4 to 29 of the Limitation Act apply to an appeal under Section 70 of the Act and consequently, Section 5 of the Limitation Act would also be applicable.

12. In this backdrop, what is to be noted is that it appears that the application for condonation of delay, which was said to have been filed

along with the appeal preferred by the respondents 3 to 7, was allowed by the 1st respondent/ appellate authority without issuing notices and affording an opportunity of hearing to the writ petitioner. The said course adopted by the 1st respondent/ appellate authority is unjust and is not in accord with the principles of natural justice. In that view of the matter and having regard to the facts & legal position obtaining, this Court finds that this writ petition can be disposed of with appropriate directions.

13. In the result, the Writ Petition is disposed of; and, consequently while setting aside the orders condoning delay and/ or admitting the appeal and granting stay passed by the 1st respondent/ appellate authority, the matter is remitted to the said authority directing to issue notices to the writ petitioner in the application filed for condonation of delay and dispose of the same in strict accordance with the procedure established by law, however, after affording an opportunity of hearing to both parties. Nonetheless, the said appellate authority shall complete the necessary exercise in the above regard within four weeks from the date of receipt of a copy of this order. It is needless to state that the appellate authority shall, if necessary, take up the appeal for hearing and disposal in accordance with law, subject, however, to the result of the petition filed for condonation of delay. It is needless to say that in the event the appeal is entertained, the appellate authority shall also consider and dispose of the application seeking stay in accordance with the procedure established by law.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

22.06.2018
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