

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 8921 of 2015

ORDER:

1) Heard learned counsel for the third respondent and learned Government Pleader for Revenue. No representation on behalf of the writ petitioner. Though vacate petition is filed seeking to vacate the interim stay granted by this Court on 01.04.2015, but with the consent of the counsels present before the Court, the main writ petition is taken up for hearing.

2) Assailing Memo No.3498/Regn.II/2015-1, dated 11.03.2015, issued by the first respondent, consequent to the order passed by the second respondent vide ABR/CF/No.194 of 2012, dated 22.12.2012, the present writ petition came to be filed.

3) The facts leading to filing of the writ petition would show that the petitioner subscribed with the third respondent – chit fund company, vide chit series No.AMTX3, holding ticket No.6, for the chit value of Rs.10 lakhs and the chit commenced on 31.03.2010, with monthly subscription of Rs.25,000/- for 40 months. On being declared as a successful bidder, the petitioner was paid Rs.6 lakhs towards prize amount, on 31.03.2010 itself. Two blank cheques were obtained from the petitioner towards security. It is stated that though the petitioner was paying amount regularly, he was declared as defaulter and accordingly, presented one of the cheque, issued

towards security, for a sum of Rs.7,38,922/-. The case of the third respondent is that that the petitioner took the entire amount on 30.03.2010 itself, paid 15 monthly installments regularly and failed to pay subsequent amounts. A written complaint came to be filed as C.C.No.655 of 2012, which was renumbered as C.C.No.203 of 2012 and the same was dismissed on 30.10.2012. On 13.05.2013, the third respondent again filed another complaint under the provisions of Negotiable Instruments Act, alleging that another cheque issued by the petitioner was also dishonoured. The said complaint was numbered as C.C.No.333 of 2013 on the file of Special Magistrate, Hasthinapuram, Ranga Reddy District. After an elaborate enquiry and trial, the petitioner was acquitted of the charges leveled therein. While things stood thus, one K.Dattatreya Rao, who is one of the guarantors to the chit amount is said to have informed the petitioner about receiving notices in E.P.No.71 of 2013, from the Court of VII Senior Civil Judge, City Civil Courts, Hyderabad. The petitioner enquired into the matter and came to know that the third respondent filed the above E.P. for execution of the order passed in ABR/CF/No.194 of 2012, by the Deputy Registrar – second respondent herein, dated 22.12.2012. Immediately, thereafter, the petitioner is said to have filed vakalath in E.P. on 27.10.2014 and also an application on 09.12.2014, to set aside the exparte award which was returned on the ground of maintainability. Subsequently, the petitioner filed an original petition before the

Hon'ble Chief Judge, City Civil Court, Hyderabad, against the award passed by the second respondent, which was also returned on the ground of maintainability. At this juncture, the petitioner filed an appeal before the first respondent under Section 70 of the Andhra Pradesh Chit Fund Act, 1982, against the award of the second respondent. Vide order dated 11.03.2015, the first respondent dismissed the said appeal, on the ground that the same came to be filed with a delay of 24 months. Aggrieved by the said order, the present writ petition came to be filed.

4) A counter came to be filed by the third respondent disputing the averments made in the writ affidavit.

5) The issue as to whether the authorities have power to condone the delay is no more *res-integra*, in view of the orders passed by this Court in W.P.No.32028 of 2015 and W.P.No.18764 of 2016. While dealing with similar issue, in W.P.No.18764 of 2016, the learned Single Judge disposed of the writ petition, setting aside the order condoning delay and remitted the matters back to the concerned authority with a direction to issue notices to the petitioner in the application filed for condonation of delay and dispose of the same, in accordance with the procedure established by law. Similar view was also expressed in W.P.No.32028 of 2015, the relevant portion of which is as under:

“Therefore, the impugned order is set aside. The matter shall stand remitted back to the first respondent to act in terms of the

directions given below. The first respondent shall hear the parties and then pass appropriate orders in accordance with law, with regard to condonation of delay and if satisfied, entertain the appeal and then consider the same on its merits.”

6) In view of the judgments referred to above, the writ petition is allowed. The order under challenge is set aside and the matter is remitted back to the appellate authority i.e., the first respondent with a direction to issue notices in the application filed for condonation of delay and dispose of the same, in accordance with law, after hearing all concerned. Further, if the delay is condoned, the appellate authority shall take up the appeal for hearing and dispose of the same, in accordance with law. It is needless to mention that the said exercise shall be completed as early as possible, preferably, within a period of four to eight weeks from the date of receipt of a copy of the order.

7) Miscellaneous petitions, pending if any, including W.V.M.P.No.3120 of 2016, shall stand closed in the light of this final order. No order as to costs.

JUSTICE C. PRAVEEN KUMAR

27.09.2018

vhb