

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4582 of 2018

ORDER:

The revision petitioner is the 2nd among 4 disputants of the claim to pass an award made before the Deputy Registrar of Chits, Nellore, by the revision 1st respondent M/s. Sriram Chits Private Limited. In that claim there was an exparte award passed by the said Registrar vide dispute claim petition No.136 of 2015. It is consequent to which there was EP.No.118 of 2017 filed for recovery of Rs.9,80,248/- in seeking salary attachment and after serving notice and orders of salary attachment dated 20.09.2017 in said EP.No.118 of 2017 before the I Additional Senior Civil Judge, Nellore. The petitioner filed before the Deputy Registrar of Chits, an application under Order IX Rule 13 CPC and Section 151 CPC along with another application to condone the delay in filing the said exparte decree set aside petition. Same were dismissed by order dated 16.03.2018 by the Deputy Registrar of Chits and impugning the same present revision filed.

The impugned order of learned Deputy Registrar dated 16.03.2018 reads that any party aggrieved by any order passed by the Deputy Registrar of Chits under Section 69 (Chit Funds Act 1982) may within two months from the date of order of the award, file petition before the State Government thereby the petition to set aside the exparte order is dismissed/returned.

The contentions in the grounds of revision impugning the same are the learned Registrar went wrong in not entertaining the petition under CPC though Section 67 of the Act categorically says the Registrar or the nominee have the same powers of Civil Court and thereby ought to have entertained the petitioner and ought not to have dismissed or returned the petition that too when the original award was an exparte award without notice to the petitioner and without need of approaching the State Government against that exparte award the petitioner is entitled to file the petition to set aside the exparte order, hence to allow the revision.

The learned counsel for the 1st respondent-Chit Fund Company opposed the revision on its maintainability by supporting the order of the learned Registrar. Other respondents are endorsed as not necessary parties being co-disputants with the revision petitioner.

A perusal of the Chit Fund Act which came into force with effect from 15.09.2008 along with AP Chit Fund Rules 2008 also came into force with effect from that day which is prospective in operation undisputedly to the chit transactions from that day. There is no blanket provision in the Sections of the Act or by any of the Rules of all the provisions of the CPC applicable. There is also no specific provision of a decree passed exparte can be set aside. In this regard coming to the relevant provisions, Rules and the proposition concerned, it is necessary to refer the following:

No doubt in **M/s. Shriram Chits Private Ltd. vs. B. Durga Prasad Rao**, a Division Bench of this Court in the C.R.P.No.4549 of 2016, held on 20-09-2016, that the Junior Civil Judge has Jurisdiction to execute under Section 71 of the Chit Funds Act,1982, 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 money and from certificate issued by the Registrar, which is deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court, by saying placing reliance under the provisions of the Arbitration and Conciliation Act and on the judgment of the Division Bench in **Potlabathuni Srikanth v. Shriram City Union Finance Ltd. and Another**¹ is wholly misplaced; for **Potlabathuni Srikanth** supra arose out of the execution proceedings instituted before the Senior Civil Judge, Mangalagiri, for execution of an award passed under the Arbitration and Conciliation Act, 1996. The judgment debtor-respondent in the E.P raised objection to the jurisdiction of the Senior Civil Judge, Mangalagiri, based on the definition of Court under Section 2(1)(e) of the Act. In that context, the Division Bench held that as per the definition of Court under the said provision, the Principal Civil Court of original jurisdiction in a district i.e., the District Court alone has jurisdiction to entertain the Execution Proceedings and

¹ 2016 (2) ALD 10 (DB)

that therefore, the Senior Civil Judge, Mangalagiri, had no jurisdiction to entertain the E.P.

In Punyamuthula Venkata Viswa Sundara Rao vs. M/s Margadarsi Chit Fund Pvt.Ltd., a Division Bench of this Court in the C.R.P.No.5236 of 2016, held on 14-03-2017, that in any award passed by Chit Registrar under Chit Funds Act, 1982, the decree holder has to file an application before the Registrar of Execution, then the Registrar has to forward the application to proper authority with his certificate to the court or even to the Revenue Authorities.

Thus same are not an answer to contend that exparte award can be set aside by invoking Order 9 Rule 13 CPC, by the Chit Registrar or his nominee, who passed the award. The answer can be had only from the reading of the provisions of the Act and the Rules. Rule 49(4) of the A.P. Chit Fund Rules of 2008, would show that the Registrar has been empowered only to pass an exparte award and the power to set aside the exparte award is not conferred specifically from that Rule or any other Rule and not even by Section 67 or any other section of the Act. For the said conclusion it is apt to refer the following expressions:

In **R.M.Lakshmanan vs. Shri Krishna Chit Funds**, it was held in CRP(NPD)MD)No.193 of 2007 by **order dt.09.04.2007, by MR.JUSTICE S.NAGAMUTHU** of MADURAI BENCH OF MADRAS HIGH COURT(in the Civil Revision Petition has been filed by the petitioners challenging

the order of Registrar of Chits, Virudhunagar dated 09.01.2007 made in Na.Ka.No.204/u/2007), a careful reading of Rule 49(4) of the Chit Fund Rules would show that the Registrar has been empowered only to pass an exparte award and the power to set aside the exparte award is not contained therein. A careful reading of Sec.67 of the Chit Fund Act would show that the Registrar has been given only limited powers of the Civil Court as listed out in the section itself which do not include power to set aside exparte award. Any award passed under this Act, is appealable under Section 70 of the Chit Fund Act. Therefore it is for the petitioners to prefer an appeal to the authority under Section 70 of the Chit Fund Act if so advised. In the backdrop of the above conclusions, it has to be necessarily held that the Civil Revision Petition is not sustainable.

In **K.Periyasamy vs. Shriram Chits Tamilnadu (p) Ltd.**, Mr. Justice S.Manikumar of the Madras High Court held in the C.R.P.No.431 of 2013, dt.27.02.2013 filed against the order in Ar.O.P.No.20 of 2011 dated 04.08.2012, rejecting the application filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award passed by Chits Arbitrator - Deputy Registrar of Chits, Namakkal in AOP.No.26 of 2010 dated 23.07.2010, on facts of the petitioner highest bidder knocked bid and received chit amount has committed default in payment of the chit instalments under the Chit Funds Act, 1982, when the matter

has been referred to the Deputy Registrar of Chits, after notice issued and on hearing the petitioner, from what he has admitted of only Rs.10 lakhs has been paid and balance due of Rs.6,25,000/-, that since an award relating to the chit transaction has been passed under the provisions of the Chit Funds Act, 1982, the appeal preferred under section 34 of the Arbitration Act, is not maintainable, but for to avail an appeal remedy provided under section 70 of the Chit Funds Act, as rightly concluded by the learned District Judge.

Having regard to the above, this Civil Revision Petition is dismissed as not maintainable in either way of return or rejection once it is not maintainable before the learned Registrar, but for remedy of appeal for the same to entertain if at all filed within 15 days from the date of receipt of this order.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 28.08.2018
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