

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.18764 of 2016

ORDER:

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

“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.18935/ Regn.II/ 2015-1 dt:03.10.2015 preferred by the Respondent No.3 to 8, as illegal, arbitrary and against the principles of natural justice and consequently directing the Respondent No.1 herein to fix a date for hearing of main appeal and dispose as soon as possible conveniently by the 1st Respondent 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 8. I have perused the material record.

3. The case of the writ petitioner chit fund company, in brief, is this: - ‘The writ petitioner is a chit fund company. The 3rd respondent is one of its subscribers of a chit. In an auction held, the 3rd respondent was declared as a highest bidder and was paid the prize amount of Rs.24,00,000/-, on 24.02.2012. On the 3rd respondent-subscriber becoming a defaulter, the writ petitioner filed a case before the 2nd respondent, that is, the Deputy Registrar of Chits/ Arbitrator, Hyderabad (South), for recovery of the dues payable under the said chit transaction to the writ petitioner. The said dispute was registered as

ABR/ C.F/ No.553/ 2014. The 2nd respondent passed an award, dated 22.01.2015. The operative portion of the said award 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.23,25,070/- along with interest at 18% per annum on the principal amount of Rs.19,95,425/- from the date of dispute till the date of realization. The costs of the dispute is Rs.42,689/- are also awarded. The dispute is accordingly awarded in favour of the disputant and against the opponents No.1 to 6 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). On 10.09.2015, the respondents 3 to 8 preferred an appeal against the said award passed by the 2nd respondent. The said appeal preferred before the 1st respondent, that is, The State of Telangana, represented by its Principal Secretary, Revenue Department (Region-I), Hyderabad, was admitted by the 1st respondent, *vide* Memo dated 03.10.2015; and, stay order was also granted in the said appeal. Respondents 3 to 8 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 175 days. The appeal preferred belatedly 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 parties and for hearing of the appeal. Despite granting of a recovery certificate, the respondents 3 to 8 have not paid the amount due with interest. 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. 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 date for appearance and for hearing of the appeal resulted in further gross injustice. The said act of the 1st respondent is illegal, arbitrary and contrary to the principles of natural justice. 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 1st respondent acted illegally and in violation of principles of natural justice. Hence, the present writ petition is filed.'

4. On 16.09.2016, this Court, while admitting the writ petition, granted orders of interim suspension. The said order reads as follows:

"Heard learned counsel for the petitioner, who submits that in similar circumstances this Court granted interim orders in WPMP No.24874 of 2016 in WP No.20270 of 2016 dated 21.07.2016.

In view of the same, there shall be interim suspension of the order dated 03.10.2015 in Memo No.18935/ Regn.II/ 2015-1 passed by the 1st respondent."

5. The respondents filed vacate stay petition along with the counter affidavit of the 1st 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, a copy of the appeal petition was sent to the writ petitioner company; and, the writ petitioner company might have received the same on 7th or 8th of October, 2015. The said fact is suppressed by the writ petitioner. The appellate authority is well within its jurisdiction in condoning the delay

of 175 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 to contest the case filed by the writ petitioner. However, since no opportunity was given to these respondents, they are constrained to rush to the appellate authority and obtain orders of 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.

6. Learned counsel for the petitioner & the respondents 3 to 8 and the learned Government Pleader made submissions in line with the pleadings, which are stated supra, in detail.

7. 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.

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

9. As already noted, when the writ petitioner company filed a case for recovery of dues from the respondents 3 to 8, 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 8 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. 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 8, after due verification, submitted that an application for condonation of delay was also filed along with the said appeal.

10. Learned counsel for the respondents 3 to 8 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.

11. 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 8 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.

12. 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 with a direction 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.

22.06.2018
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M. SEETHARAMA MURTI, J