

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.812/2018**

% 25th September, 2018

M/S ARORA H/W & PAINT STORE

..... Appellant

Through: Mr. Sami Ur Rehman,
Advocate (Mobile No.
9990765845).

versus

M/S JAWAHAR CHITS (P) LTD.

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 39318/2018 (delay in re-filing)

For the reason stated in the application, delay in re-filing is
condoned, subject to just exceptions.

CM stands disposed of.

RFA No.812/2018 & CM No.39317/2018 (stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the Judgment of the Trial Court dated 29.05.2018 by which the trial court has decreed the suit filed by the respondent/plaintiff for an amount of Rs. 4,46,140/- alongwith *pendente lite* interest at 12% per annum and future interest at 6% per annum till realization.

2. The facts of the case are that the appellant/defendant approached the respondent/plaintiff company to become a member of the Chit Group and the appellant/defendant was allotted Ticket No. 22 with respect to Chit Group No. JCP-08. The appellant/defendant took the prize money of Rs. 3,50,000/- in February 2012. However, the appellant/defendant failed to pay the installments which were originally fixed at twenty five in number. As on January 2016, there were 17 installments due against the appellant/defendant with outstanding liability of Rs. 3,43,140/- as principal and Rs. 1,62,526/- towards interest. Since the appellant/defendant failed to pay the amount due, therefore, the respondent/plaintiff served upon the appellant/defendant a Legal Notice dated 24.11.2015. The same failed to yield any result, and therefore, the subject suit was filed.

3. The appellant/defendant contested the suit by filing a written statement. It was pleaded that the suit was time barred as the Chit Agreement is dated 17.10.2011, and therefore, limitation expired in October, 2014 whereas the suit was filed on 19.02.2016. It was also contended by the appellant/defendant that all the payments due have already been made by the appellant/defendant to the respondent/plaintiff. The appellant/defendant however did not deny that he had become member of the Chit Group and that he had in fact taken the prize money of Rs. 3,50,000/-.

4. After the pleadings were complete, issues were framed and the parties led evidence. These aspects are recorded in paras 4 to 6 of the impugned judgment and these paras read as under:-

“4. On 06.3.2017, on the pleadings of the parties following issues were framed, namely :-

1. Whether on the date of the institution of the present suit, the defendant owed Rs. 3,43,140/- to the plaintiff on the account of principal amount? OPP.
2. Whether on the date of the institution of the present suit, the defendant also owed Rs. 1,62,526/- to the plaintiff on the account of interest? OPP.
3. Whether the suit is barred by limitation? OPD.
4. Whether the plaintiff is entitled to any relief, if so, what relief?

5. In support of its claim, the plaintiff got examined its director Bhanwar Singh Tanwar as PW1, who during his examination in chief tendered his affidavit Ex. PW1/A alongwith documents Ex.PW1/1 to Ex. PW1/5. PW1 Bhanwar Singh Tanwar was cross examined by counsel for the defendant and thereafter, evidence on behalf of the plaintiff was closed.

6. In support of its defence, the defendant got examined DW1 Atul Arora, who during his examination in chief tendered his affidavit Ex DW1/A. He was cross examined by counsel for the plaintiff and thereafter, evidence on behalf of the defendant was closed.”

5. The first issue is as to whether the suit was within limitation. This issue was issue no. 3 in the impugned judgment.. The trial court has held this issue against the appellant/defendant by observing that the last installment was payable in September, 2013, and the suit which was filed on 19.02.2016 i.e. within a period of three years from September, 2013 is therefore, within limitation. I do not find any illegality in the aforesaid reasoning and conclusions of the trial court because the liability and the cause of action against the appellant does not arise from the date of the Chit Agreement dated 17.10.2011/Ex.PW1/2 but three years from when the payment became due. The last installment with respect to the Chit Agreement/Ex.PW1/2 was to be paid in September, 2013 and

therefore, in my opinion, the trial court has rightly held that the suit filed on 19.02.2016 is within limitation by observing as under:-

“Re: Issue no. 3.

8. Before taking up other issues, it will be in the interest of justice to take up the issue no. 3 for discussion. Onus of proof qua this issue has been on the defendant. It is submitted by counsel for the defendant that since chit agreement Ex. PW1/2 was entered into between the parties on 17.10.2011, therefore, the amount in respect of the said agreement became barred by limitation on 17.10.2014. It is further submitted by counsel for the defendant that since the claim of the plaintiff is barred by limitation, therefore, the suit be dismissed under section 3 of the Limitation Act, 1963. In the light of the evidence adduced by the parties I do not see any force in this contention of counsel for the defendant, for as per agreement Ex.PW1/2, not disputed by the defendant and proved during the testimony of PW1 Bhanwar Singh Tanwar, last installment of Rs. 20,000/- in respect of Ex. PW1/2 was to be paid in September, 2013. Since, as per agreement Ex. PW1/2 the liability was to be discharged by the defendant by the month of September, 2013, therefore, cause of action first time accrued in September, 2013 and not prior to that. The suit was instituted on 19.02.2016, within three years since September, 2013 and hence, the suit is within limitation. Issue no. 3 is decided in favour of the plaintiff and against the defendant.”

6. Learned counsel for the appellant/defendant argues that the suit was barred under Section 64 of the Chit Funds Act because the parties were to be referred to arbitration, however, this argument is without any merit because no such defence was taken in the written statement and no such issue was framed. Resultantly, there is no such issue which has been decided by the

trial court. Entitlement to arbitration is a waiveable right, and once no such claim was raised by the appellant/defendant in written statement or during the pendency of the suit, the suit could not have been dismissed on account of there existing an arbitration clause in the Chit Agreement/Ex.PW1/2.

7. I may otherwise note that respondent/plaintiff has proved its case by examining its witnesses. PW-1 has proved all the relevant documents as Ex.PW1/1 to Ex.PW1/5. As already stated above, appellant/defendant did not deny becoming a member of the Chit Group and also taking the prize money of Rs. 3,50,000/- in February, 2012.

8. Though the learned counsel for the appellant/defendant finally argued that the appellant/defendant had paid all the amounts due, however, when asked to show any proof of payment, counsel for the appellant/defendant conceded that no documentary proof was available with him. However, it was argued that the appellant/defendant wanted to summon a witness from the respondent/plaintiff company who had received the installments but the prayer was wrongly declined. However, in my opinion, even this

latter argument is without any merit because payment to a Chit Fund Company will necessarily have to be evidenced by means of relevant receipts or other documents and mere self-serving oral statements cannot be believed as proof of payments having been made. Further, the fact that an employee of the respondent/plaintiff colludes with the appellant/defendant to state assumingly that the amounts have been paid, such statements of an employee of alleged payment would obviously not have been believed, even if the alleged employee would have stated so.

8. There is no merit in the appeal. Dismissed.

SEPTEMBER 25, 2018/ib

VALMIKI J. MEHTA, J