

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.11315 of 2007

1. O.P.Kulandaivel
2. S.Vadivelu
3. O.Palaniswamy

...Petitioners

Vs

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. George, Chennai 600 009.
2. The Chit Arbitrator,
Chit Court,
Coimbatore.
3. M/s.Cheran Chit Funds (P) Ltd.,
Rep. by its Chairman,
Cheran Plaza,
Trichy Road,
Coimbatore 641 108.

..Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in G.O. (D).No.311 and quash the orders dated 12.07.2006 made therein confirming the orders dated 25.11.2003 made in ARC.No.387 of 1999 on the file of the 2nd respondent and direct the 3rd respondent to release the pronote dated 05.08.1995 and the sale deeds dated 07.11.1973 and 03.04.1978 deposited by us.

For Petitioner : Mr.S.Thangavel

For Respondents : Mr.P.P.Purushothaman, G.A., for R1
No Appearance, for R2
Mr.S.Silambanan, Senior Counsel,
for M/s.Silambanan Associates, for R3

ORDER

Heard Mr.S.Thangavel, learned counsel for the petitioner, Mr.P.P.Purushothaman, learned Government Advocate appearing for the first respondent and Mr.S.Silambanan, learned Senior Counsel, appearing for M/s.Silambanan Associates, learned counsel for the third respondent.

2. The petitioner has come up with this Writ Petition for issuance of a Writ of Certiorarified Mandamus to quash the Government Order passed by the first respondent in G.O.(D). No.311 dated 12.07.2006, confirming the order of the second respondent made in ARC.No.387 of 1999 dated 25.11.2003 and to direct the 3rd respondent to release the pronote dated 05.08.1995 and the sale deeds dated 07.11.1973 and 03.04.1978.

3. According to the petitioners, the first petitioner joined in a chit group run by the third respondent chit Company for a value of Rs.10,00,000/- and in the 6th auction, the first petitioner was the successful bidder and he along with the petitioners 2 and 3 executed a promissory note and also deposited title deeds. The petitioners would allege that though the price amount was Rs.7,00,000/-, but the third respondent paid only Rs.4,00,000/- and the remaining Rs.3,00,000/- was adjusted in the account of the third petitioner, who was a subscriber of a chit in ticket No.35.

4. It is further alleged that the third petitioner was the successful bidder in the auction held on 08.07.1996. But the prize amount was not paid, since the third respondent had become defunct.

5. It is seen that the third respondent filed a case before the chit arbitrator in ARC No.387 of 1999 for recovery of Rs.4,63,000/- towards the balance installments due along with interest at the rate of 36% per annum and for recovery of costs. The second respondent after due notice to the petitioners passed the award dated 25.11.2003, directing the first petitioner and the guarantors to pay a sum of Rs.3,00,000/- towards principal and Rs.1,60,800/- towards interest and Rs.5,540/- for costs along with interest at 12% per annum. The petitioners have taken up the matter before the first respondent, who confirmed the order of the second respondent.

6. This Writ Petition has been filed contending that the respondents 1 and 2 without appreciating the facts of the case and law and in violation of the principles of natural justice passed the orders against the petitioners. It is further contended that even though the case was not contested by the

petitioners and they were set ex-parte, it is the bounden duty of the Courts to look into the case on merits and pass orders.

7. It is further stated that the third respondent failed to give dividend / discount for the installments of the chit groups and there was no proper demand made by the third respondent as required under Section 33 of the Chit Funds Act and the adjustment memo filed by the third respondent was not considered.

8. The second respondent has filed a detailed counter affidavit denying the allegations made by the petitioner and stated that the case was being adjourned on several occasions from 1999 to 2003 to enable the petitioners to defend their case. In spite of several opportunities given to the petitioners, they failed to even file a counter statement and represented that they would settle the claim through negotiation. The petitioners were absent for several hearings wilfully and wantonly and misused the proceedings to drag on the case.

9. The second respondent has further stated that though the parties were set ex-parte, the award has been passed on merits after considering the materials on record, which can be seen from the fact that the case was filed claiming Rs.4,50,000/- with interest at 36% per annum, but the award came to be passed for Rs.3,00,000/- together with interest at 12% per annum. It is stated that the case was filed after issuing final notice by the third respondent.

10. In the matter on hand, on perusal of the award of the second respondent, it is seen that even though the petitioners had appeared before the second respondent, for more than three years, admittedly, no counter was filed disputing the claim made by the third respondent. On the other hand, the chit Company produced i) receipts for payment of prize amount, ii) promissory note, iii) copy of the agreement and 4) notice issued under Sections 32 and 33 of the Act. After analysing the case of the third respondent, the second respondent had passed award as stated supra. The appellate authority also independently considered the case on merits and rejected the appeal preferred by the petitioners. The petitioners could not produce any document even before this Court to satisfy that the prize amount was not paid to the petitioners and it was adjusted for another transaction.

11. It is appropriate to mention that the authorities have passed the orders impugned in this Writ Petition on the basis of the evidence brought before them. Therefore, I find no valid ground to interfere with the impugned orders. In fine, the

Writ Petition fails and the same is dismissed as devoid of merits. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

pvs

To

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. George, Chennai 600 009.

2. The Chit Arbitrator,
Chit Court, Coimbatore.

+1cc to Mr.S.Thangavel, Advocate SR.No.69655

+1cc to Mr.Kaavya Silambanan, Advocate SR.No.69113

+1cc to Government Pleader, High Court, Madras-600 104
SR.No.69390

W.P.No.11315 of 2007

EU(CO)
GMY(25/10/2019)

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