IN THE HIGH COURT OF JUDICATE AT MADRAS
Reserved on : 09.04.2019
Pronounced on : 30.12.2019
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
WP No.18381 of 2007

D.Balaraman ... Petitioner

Vs.

1.The Commissioner and Secretary,
Department of Commercial Tax
Appellate Authority under Chit Funds Act,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.

2.The Registrar of Chit Funds,
North and South Chennai,
Chennai - 600 001.

3.The Foreman, M/s.Sri Ram Chit Funds,
Tamil Nadu Limited, Anna Nagar Branch - 3,
No.2, Main Bazaar Road, Collector Nagar,
Mugapair East,
Chennai - 600 050. ... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to G.O(D)Ms.No.109 dated 10.03.2006 passed by the Commissioner and Secretary Commercial Tax and Registration (K) Department in partially confirming the award passed by the Registrar, Chit Funds, North Madras in ARC No.905/2000 dated 08.10.2001 and quash the same and consequently remit the matter to the Registrar, Chit Funds.

For Petitioner : Mr.D.Govindareddy

For Respondent : Mr.M.Karthikeyan [RR1 &2]
Additional Government Pleader

Mr.K.V.Ananthakrishnan [R3]

ORDER

The petitioner was a subscriber to one of the chit groups run by the third respondent. The value of the chit was Rs.3.00 lakhs payable at Rs.10,000/- per month in 30 monthly installments. He bid in the second auction held on 20.08.1998 in the third month. The case of the petitioner is that he prized the chit for a sum of Rs.2.10 lakhs, the discount being Rs.90,000/-. He executed a promissory note for a sum of

Rs.2.70 lakhs and three of his relatives stood as sureties. Yet the foreman paid him only a sum of Rs.86,900/- after deducting Rs.3,100/- towards verification charges, Rs.10,000/- towards the current installment and retaining a sum of Rs.1.00 lakh as Fixed Deposit for a period of twelve months. The petitioner continued to remit the monthly dues till the 20th installment. Following his default, the foreman issued legal notice dated 13.02.2000 calling upon the petitioner to pay the entire balance amount of Rs.1,42,222/-. After receiving the same, the petitioner paid a sum of Rs.9,400/-, Rs.8,500/- and Rs.8,250/- on various dates. Since the demand of the chit company was not complied with in full, the foreman filed ARC No.905 of 2000 before the District Registrar of Chit Funds, North and South, Chennai claiming a sum of Rs.1,24,537.60 with interest at the rate of 24% per annum. The petitioner filed his response to the claim. The Arbitrator/District Registrar of Chits by award dated 08.10.2001 allowed the claim of the chit company and directed the petitioner herein as well as the guarantors to pay a sum of Rs.1,24,537.60/- with interest at the rate of 24% per annum from the date of the filing of the arbitral case. Aggrieved by the same, the petitioner filed an appeal under Section 70 of the Chit Funds Act, 1982 before the State Government. The Government by the impugned order bearing G.O (D) No.109, Commercial Taxes and Registration (K) Department, dated 10.03.2006 declined to interfere with the award of the Chit Registrar except as regards the rate of interest, which was reduced from 24% to 12% per annum. The other contentions of the petitioner were rejected. Challenging the same, this writ petition came to be filed.

2.A detailed counter affidavit has been filed by the third respondent. The learned counsel appearing for the third respondent reiterated the contentions set out therein. According to the third respondent, the total chit value was Rs.3.00 lakhs. The amount paid by the petitioner was Rs.1,94,459.40/-. Adding the interest amount of Rs.18,997.00/-, the claim in the ARC was quantified at Rs.1,24,537.60/-. The third respondent denied the allegation of the petitioner that the entire prize amount was not paid to him. The learned counsel would further contend that the jurisdiction of this Court under Article 226 of the Constitution of India is rather limited and that this Court cannot conduct any factual investigation. The proceedings under the Chit Funds Act are summary in nature. In as much as the impugned order has not been shown to be illegal or perverse or against law, he prayed for dismissal of the writ petition.

3.The question that now arises for consideration is whether the rights of the petitioner have been infringed or not. To answer this, it is necessary to have a look at the statutory scheme. The parliament enacted the Chit Funds Act, 1982 (Central Act 40 of 1982) to provide for the regulation of chit funds and for matters connected therewith. It repealed the earlier State legislations including the Tamil Nadu Chit Funds Act, 1961. The constitutional validity of the Act was upheld by the Hon'ble Supreme Court in Shriram Chits and Investment (P) Limited vs. Union of India, (1993) Supp 4 SCC 226. The jural relationship between a chit fund entity and the subscribers created by a chitty agreement and the issue as to whether it is a debt in prasenti or a promise to discharge a contractual obligation has been dealt with by the Hon'ble Supreme Court in M/s.Oriental Kuries Ltd., rep.by its Chairman P.D.Jose vs. Lissa in Civil Appeal No.5401 of 2009 on 06.11.2019. The Hon'ble Supreme Court observed as under :

> "At the time when modern banking was not fully developed in small towns and rural areas, chit fund institutions emerged to cater to the financial needs of low-income households. A conventional chit fund is an old indigenous financial institution involving periodic subscriptions by a group of persons. It is, in law, a contract between the subscribers and the foreman, which provides that the subscribers shall subscribe a certain sum by way of regular installments for a specified period of time. Each subscriber in his turn, as determined by lot, or auction, or in any other manner specified, is entitled to the prize amount. The number of subscribers in a chit fund would constitute the number of installments, so that every subscriber is assured of receiving the prize amount. As there is a mutuality of interest amongst the subscribers to each chit fund, it constitutes a convenient instrument which combines savings and borrowings.
>
> The duties of the foreman of the chit fund include enrolling subscribers, and drawing up the terms and conditions of the scheme in the form of an agreement. For these services, the foreman charges a commission, on which a ceiling is fixed.
>
> Each prized subscriber must furnish acceptable security against the remaining installments, so as to be eligible to receive the lumpsum payment. The security is to be furnished by the subscriber directly to the foreman. In the event of default by a subscriber to pay his installments on the due date, the chit fund scheme may provide for forfeiture of dividend, or levy of penal interest...
>
> Where a contract provides for payment of money in installments, and contains a stipulation

that on default being committed in paying any of the installments, the whole sum shall become payable at once, such a stipulation would not be in the nature of a penalty.....

When a prized subscriber is allowed to draw the chit amount, which is in the nature of a grant of a loan to him from the common fund in the hands of the foreman, with the concessional facility of effecting re-payment in installments; this is subject to the stipulation that the concession is liable to be withdrawn in the event of default being committed in payment of any of the installments.

The chit subscriber at the time of subscription, incurs a debt which is payable in installments. If a subscriber is permitted to withdraw the collected sum on his turn, without being bound to pay the future installments, it would jeopardize the interest of all other subscribers, and the entire mechanism of the chit fund system would collapse.

A perusal of the provisions of Chapter V of the 1982 Act makes it clear that if a prized subscriber defaults in making payment of an installment, the chit foreman has the right to recover the amount covering all future subscriptions from the defaulting subscriber as a consolidated amount.

Section 32 of the 1982 Act empowers the foreman to recover the consolidated payment of all future subscriptions forthwith in the case of a default."

The object is to empower the foreman to recover the amount in a lump sum from a defaulting subscriber, so as to secure the interest of the other subscribers, and ensure smooth functioning of the Chit Fund. Such a provision would not amount to a penalty.

The relationship between the foreman and the subscribers in a chit fund transaction is of such a nature that there is a necessity and justification for making stringent provisions to safeguard the interest of the other subscribers, and the foreman. If a prized subscriber defaults in payment of his subscriptions, the foreman will be obliged to obtain the equivalent amount from other sources, to meet the obligations for payment of the chit amount to the other members, who prize the chit on subsequent draws. For raising such an amount, the foreman may be required to pay high rates of interest.

The stipulation of empowering the foreman to recover the entire balance amount in a lump sum, in the event of default being committed by a prized subscriber, is to ensure punctual payment by each of the individual subscribers of the chit fund. Without punctual payments, the system would become unworkable, and the foreman would not be in a position to discharge his obligations to the other members of the chit fund.

....., the relationship between a chit subscriber and the chit foreman is a contractual obligation, which creates a debt on the day of subscription. On default taking place, the foreman is entitled to recover the consolidated amount of future subscriptions from the defaulting subscriber in a lump sum."

4.The Act contains ninety sections spread over VII Chapters. Chapter V deals with the rights and duties of prized subscribers. Section 31 of the Chit Funds Act, 1982 reads as under :

"31.Prized subscriber to furnish security.- Every prized subscriber shall, if he has not offered to deduct the amount of all future subscriptions from the prize amount due to him, furnish, and a foreman shall take, sufficient security for the due payment of all future subscriptions and, if the foreman is a prized subscriber, he shall give security for the due payment of all the future subscriptions to the satisfaction of the Registrar.

In exercise of the powers conferred by Section 89 of the Chit Funds Act, 1982, the Tamil Nadu Chit Funds Rules, 1982 were framed. Form VIII contains the model form of chit agreement. Clause 7 of the model form sets out the procedure for receiving the prize amount by a prized subscriber. It reads as under :

VII.Procedure for receiving the prize amount by a prized subscriber.

1.A prized subscriber or his nominee shall receive from the foreman the prize amount within (here specify the period) after furnishing to the satisfaction of the foreman sufficient security, for the payment of future subscriptions. 2.In case the prized subscriber or his nominee fails to receive the prize amount after furnishing sufficient security the foreman shall deposit the amount in the approved bank and inform the prized subscriber of that fact. 3.In case the amount so deposited is not sufficient for the payment of future subscriptions, it shall be competent to the foreman to realize from such prized subscriber such amount as may be deficient together with the interest due thereon and all other incidental charges.

4.In case there remains any portion of the amount deposited after paying the future subscriptions and other charges such portion shall be payable by the foreman to the prized subscriber after the termination of the chit, failing which it shall be competent for the prized subscriber or his nominee to realize from the foreman such portion as remains together with the interest due thereon from the date of termination of the chit.

5.If at any time after the prize amount is deposited in an approved bank, the prized subscriber of his nominee furnishes sufficient security, the foreman shall withdraw the amount so deposited and pay it to the prized subscriber or his nominee after deducting there from the amount due from him for the payment of the installment prior to the date on which the security is furnished.

6.If the foreman fails to pay the prize amount to the prized subscriber or his nominee furnishing sufficient security, it shall be competent for such subscriber or his nominee to realize from the foreman the prize amount together with interest due thereon from the date of furnishing such security."

5.Section 31 of the Act is in two parts. The first part applies to a subscriber of a chit group who has prized the chit. The second part deals with the situation where the foreman himself is a subscriber. The subscriber is under a duty to furnish security if he has not offered to deduct the amount of all future subscriptions from the prize amount due to him. Such a situation may arise if the subscriber after remitting some installments is unable to take part in the chit group any further. He may therefore prize the chit and call upon the foreman to deduct all his future subscriptions from the prize money at one go. If that is not the case and the subscriber intends to receive the prize money, he has to necessarily furnish sufficient security for the due payment of all future subscriptions. In fact, duty is cast on the foreman to take it.

6.The expression "security" does not appear to have been defined either in the Act or in the Rules framed thereunder. Black's Law Dictionary defines it as follows :

> "Collateral given or pledged to guarantee the fulfillment of an obligation; esp., the assurance that a creditor will be repaid (usu. with interest) any money or credit extended to a debtor."

P.Ramanatha Aiyar's Advanced Law Lexicon 5th Edition, Volume 4, at page 4708 reads as under :

> "The word 'security' as used in Order XXXVIII of Code relates to the security of the amount. This word cannot be stretched to the extent that in garb of security, defendant may be directed to deposit the suit amount. (Devendra Kumar Jain vs. G.N.Goyal, AIR 2006 M.P.25, 28, para 8) (CPC (5 of 1908), O.XXXVIII)"

I am of the view that the expression "security" found in Section 31 of the Act must receive a similar construction. The security can be in the form of a promissory note or an immovable property or a third party guarantee or any other thing of value. Of course, this must be to the satisfaction of the foreman. He can, on reasonable grounds, reject the security offered by the subscriber in toto or say that it is insufficient. In such a case, he must pay the portion of the prize money in proportion to the security and deposit the balance amount in an approved bank. He cannot retain it himself. Nor can he deposit the prize money or the portion thereof in a group company or sister concern as that would amount to an unfair chit practice. There cannot also be any delay in the disbursement of the prize amount. If there is delay, the Arbitrator/Chit Registrar will take that into account and scale down the liability of the subscriber by applying the terms of the chit agreement. If the chit agreement is silent, the general principles of law and equity shall be invoked. A careful reading of Clause VII of the model form VIII would show that a distinction has been drawn between furnishing security and depositing the amount. The subscriber after all is badly in need of funds. That is why, he is willing to forego a certain amount as discount and it can be as high as 30%. "Prize amount" means the difference between the chit amount and the discount. The foreman in the garb of taking security cannot make the subscriber to deposit a major portion of the prize money itself. "Security" in this context will only mean a non-monetary collateral security. The prize amount or a portion thereof cannot be retained or diverted when the subscriber furnishes non-monetary security to the satisfaction of the foreman. This alone can be the true import of Section 31 of the Act.

7.The petitioner's claim is that even though he prized the chit for a sum of Rs.2.10 lakhs, what was paid to him was only a sum of Rs.86,900/-. The chit company in their claim petition in ARC No.905 of 2000 averred that the petitioner herein received the prize money of Rs.2.10 lakhs by way of cheque bearing No.248583 dated 25.09.1998. However, in para 4 of their counter affidavit filed in this writ petition, the stand is as under :

> "The prize amount of Rs.2,10,000/- was paid to him after deducting the current installment, verification charges and adjusting a sum towards Rs.1,00,000/- fixed deposits with Shriram City Union Finance Ltd., as security to cover the future liability and the balance of Rs.86,900/- was paid to him."

In paragraph 6, the third respondent alleges that the petitioner could not furnish sufficient security for payment of the prize money of Rs.2.10 lakhs. I must observe here that the third respondent is not taking a consistent stand and this is unfortunate. The petitioner has enclosed a copy of the cheque bearing No.254082 dated 08.12.1998 issued by the chit company favoring him for a sum of Rs.86,900/-. Thus, it has been established beyond doubt that even though the petitioner prized his chit for Rs.2.10 lakhs, he was paid only a sum of Rs.86,900/-. It is relevant to note that the auction was held on 20.08.1998. Thus, there is a clear gap of more than three and half months between the date on which the petitioner prized his chit and the date when he was paid a portion of the prize money.

8.The amount of Rs.1.00 lakh was deposited in Shriram City Union Finance Ltd., which belongs to the same group of companies as that of the third respondent. The deposit details are as under :

S.No.	Receipt No.	Series No.	Date	Amount
1	2041333	223522	29.11.1998	Rs.15,000/-
2	2041334	223520	29.11.1998	Rs.15,000/-
3	2041335	174932	29.11.1998	Rs.15,000/-
4	2041336	741974	29.11.1998	Rs.15,000/-
5	2041337	741933	29.11.1998	Rs.15,000/-
6	2041338	961935	29.11.1998	Rs.15,000/-
7	2041339		29.11.1998	Rs.10,000/-

The third respondent would claim that the petitioner received the entire prize money and on his own deposited a portion of the prize money in fixed deposits in the Shriram City Union Finance Ltd., in his name. The petitioner made such deposits in small denominations of six deposits of Rs.15,000/- and one deposit for a sum of Rs.10,000/- so that he can withdraw the amount at his own convenience without losing the interest on the said deposit.

9.The learned counsel appearing for the chit company emphasized that the voluntary nature of the arrangement can be discerned from the fact that after the deposits attained maturity, a sum of Rs.58,409.40/- was adjusted towards a portion of the petitioner's chit liability and the balance amount of Rs.48,072.40/- was received by the petitioner. It is obvious that the fixed deposits had earned interest in the meanwhile. Though this contention of the counsel appearing for the chit company appears attractive, I find it difficult to subscribe to the story. Judicial gaze cannot stop at the surface or be misled by a fig leaf. It must tunnel beyond. Only a deep and probing perception will reveal the truth. In this case, the petitioner had foregone a sum of Rs.90,000/-. He was obviously in urgent need of funds. That is why, he prized his chit in the second auction itself. No prudent person would be content with Rs.86,900/- when he was entitled to receive Rs.2.10 lakhs. The third respondent delayed making the payment. He withheld Rs.1.00 lakh. The amount was deposited in a sister concern and marked as lien towards future installments. Yet the petitioner did not protest. That does not establish that the arrangement had the approval of the petitioner. It only proves his helplessness.

10.The petitioner had executed a promissory note for a sum of Rs.2.70/- lakhs. Three of his relatives stood as sureties. Their details are as follows :

a).D.Narayanan, Asst. Ex.Engineer,
TNEB Kalasapakkam, Thiruvannamalai District.

b).M.V.Narayanamoorthy, Bank of India,
Kodungaiyur.

c).M.Ganesan, Health Inspector Gr.I,
Govt. Primary Health Centre,
Mangalam, Thiruvannamalai District.

A mere look at the service details of the sureties is sufficient to convince any one that sufficient security had been given for the due payment of all future subscriptions. The third respondent has not seriously challenged the sufficiency of security offered by the petitioner. That is why, in the claim petition as well as in more than one place in the counter affidavit the chit company states that the entire prize money was paid. The chit company tried to make it appear that the fixed deposit was voluntarily made by the petitioner.

11. I, therefore, hold that the foreman had illegally withheld the sum of Rs.1.00 lakh after the petitioner prized his chit for Rs.2.10 lakhs. The foreman not only withheld a substantial portion of the prize money but also deposited the amount in a company that belongs to his group. I can see a rustic logic in the conduct of the petitioner. The chit value is Rs.3.00 lakhs. The foreman had retained the sum of Rs.1.00 lakh in his own group company. Thus, the amount payable by the petitioner was Rs.2.00 lakhs. That is why, the petitioner probably stopped the remittance of dues from the 20^{th} installment onwards. In this case, both the Chit Registrar as well as the appellate authority failed to note that the statutory right of the petitioner enshrined in Section 31 of the Act to receive the entire prize money was violated. Therefore, the orders impugned in the writ petition are quashed. I am however constrained to remit the matter. This is for more reasons than one. The petitioner had received a sum of Rs.48,072.40/- out of the F.D maturity value. The foreman did not pay even the portion of the prize money immediately. There was a delay of more than three and half months. The F.D was held by a group company. Therefore, the liability figure will have to be reworked in the light of what has been laid down above. Hence, the matter is remitted to the file of the Chit Registrar, North and South, Chennai for fresh disposal in accordance with law.

12.The writ petition stands allowed on these terms. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

Skm

To
1.The Commissioner and Secretary,
Department of Commercial Tax
Appellate Authority under Chit Funds Act,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.

2.The Registrar of Chit Funds,
North and South Chennai,
Chennai - 600 001.

+1 cc to M/s.K.V.Ananthakrushnan Advocate sr106833

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