

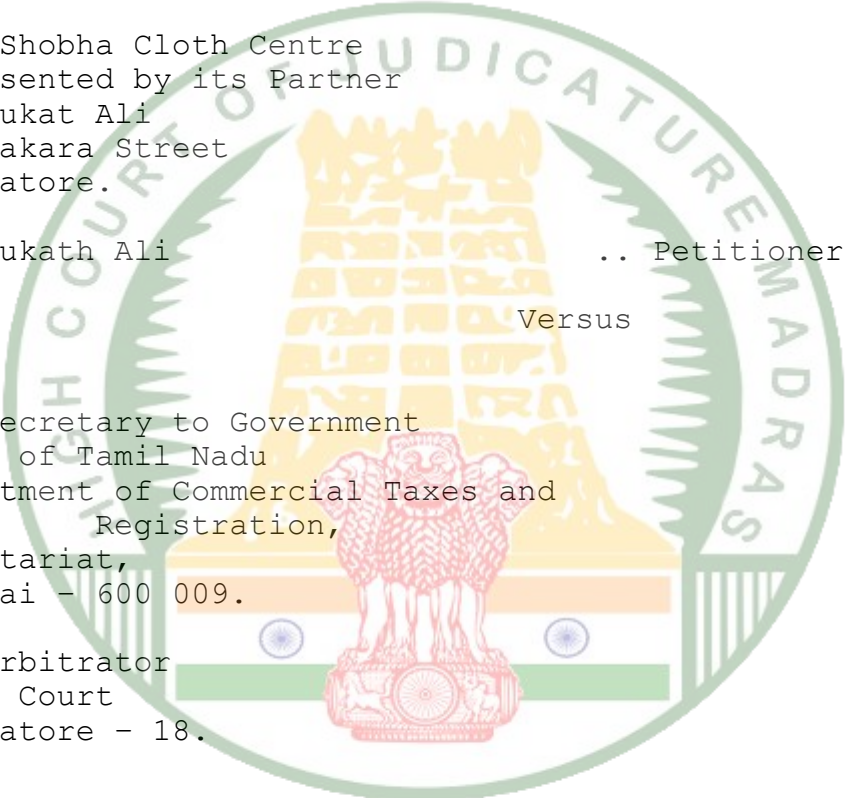
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 24 .04.2019

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.3788 of 2010
and
M.P.No.1 of 2010

- 
1. M/s. Shobha Cloth Centre
represented by its Partner
M.Shoukat Ali
Oppanakara Street
Coimbatore.
2. M.Shoukath Ali .. Petitioners
- Versus
1. The Secretary to Government
State of Tamil Nadu
Department of Commercial Taxes and
Registration,
Secretariat,
Chennai - 600 009.
2. The Arbitrator
Chits Court
Coimbatore - 18.
3. M/s.Sankeshwar Chits Funds (P) Ltd.,
represented by its Managing Director
Mr.C.Shanthilal
1192, Rangai Gowder Street,
Coimbatore - 641 001.
.. Respondents
- WEB COPY

Writ petition has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records and in connection with the order of the first respondent in his Order No.G.O.(D) 507, dated 19.11.2008 and quash the same with consequently forbear the third respondent from executing claim in ARC No.53/2006.

For Petitioner : Mr.D.Shivakumaran
For Respondents 1 & 2 : Mr.R.P.Prathap Singh
Government Advocate
For Respondent -3 : Mr.G.Mohandoss

ORDER

The petitioner has prayed for a Writ of Certiorarified Mandamus to quash the order of the first respondent in his Order No.G.O.(D) 507 dated 19.11.2008 and consequently, forbear the third respondent from executing the claim in ARC.No.53 of 2006.

2. The petitioner are a business firm represented by its partner, who is he second petitioner herein, who were running a textile showroom in the name and style of "Shoba Cloth Centre". During the Coimbatore Bomb Blast, anti-social elements burnt the said shop and the petitioner had incurred a loss to the tune of Rs.40 crores. When the petitioner was having his business running, there was some business transaction with one M/s.C.K.Enterprises and after the said riot, the petitioner and M/s.C.K.Enterprises had entered into an oral agreement, which resulted in joining with the third respondent company as subscriber. The said M/s.C.K.Enterprises is the sister concern of the third respondent. At the time of joining the bids subscription, the third respondent company had obtained blank stamp promissory note, blank stamp vouchers along with the signatures in blank printed form. To their surprise, the third respondent had raised a dispute before the second respondent Arbitrator in ARC No.53 of 2006 regarding a claim that the petitioner herein, who had joined the bid No.SKC No.3/01 Ticket No.6 and entered into the Chit Agreement No.127/4 dated 12.03.2001. The first petitioner had authorised one M/s.C.K.Enterprises and M/s.R.S.Collections to bid on behalf of them. In the auction conducted on 06.04.2001, one Sunil Kumar, representing the first petitioner, had participated in the auction and bid the chit for Rs.90,000/- and received a sum of Rs.2,10,000/- as the bid amount. The chit, which has commenced from 15.03.2001 would end on 15.09.2002. After the said bidding, as per the allegations of the third respondent, there was no further monthly payment by the petitioner after 10.03.2002 and therefore, claimed Rs.1,95,600/- with interest at 18% p.a. The petitioner has replied to the legal notice issued by the third respondent, wherein the third respondent claimed an amount of Rs.1,95,600/- along with interest at 24% and costs. The learned Arbitrator has passed an award ie., Rs.1,95,000/- together with 24% interest to be paid by the petitioner.

Aggrieved by the said order of the second respondent, the petitioner preferred an Appeal before the first respondent under Section 70 of the Chit Funds Act, 1982. At the initial stage, the petitioner had filed a stay petition before the first respondent and without assigning any reason, the same was dismissed by the first respondent. Aggrieved by the same, the petitioner preferred Writ Petitions in W.P.No.21120 and 21121 of 2008. This Court had considered the same and restored the stay petitions filed by the petitioner and also directed the first respondent to dispose of the appeal within a period of 12 weeks. The first respondent passed an order dated 19.11.2008 confirming the award of the second respondent while rejecting the petitioner's appeal, without going into the merits of the case and decided the matter in one-sided manner and arbitrarily. Hence, the petitioner sought for interference from this Court raising various grounds against the order of the first respondent.

3. The petitioner further contended that the arbitration claim is not maintainable and barred by limitation and condoning of delay suo-motu by the second respondent has to be quashed. The first respondent has not given any opportunity to the petitioner and had violated the principles of natural justice and has not considered the matter by applying its mind when the claim of the third respondent is denied and pleaded it is not a bonafide one. The first respondent has not considered the materials and evidences of the petitioner, but confirmed the order of the second respondent, which is arbitrary and unreasonable.

4. The first and second respondent had filed a counter denying the averments of petitioner. The learned counsel for the respondent would submit that the petitioner had joined the chit promoted by the respondent Company in Group No. SKC 03/01 vide Ticket No.10 and the chit was duly registered with Joint Registrar of Chits, Coimbatore, in agreement No.127/01, which was for a face value of Rs.3,00,000/- and 20 monthly instalments at Rs.15,000/- each. The petitioner has paid the chit amount initially and through his authorised representative, in the third auction conducted, had given their bid foregoing the discount of Rs.90,000/- and received the price money of Rs.2,10,000/- on 18.06.2001, after signing proper receipts and executing necessary documents. The petitioner has paid till 6th instalment and thereafter, defaulted in payment of instalments. To recover the unpaid defaulted amount with interest and costs, the third respondent had filed an Arbitration Petition before the Deputy Registrar of Chits, Coimbatore, furnishing all the documentary evidence, namely, payment receipt, promissory note, ledger abstract, minutes copy abstract and other relevant records. The Arbitration Case was numbered as ARC.No.53 of

2006 and the Managing Director of the respondent Chit Fund Company was examined on 01.11.2006 and the matter was adjourned to 13.11.2006 for cross examining the said Managing Director of the Chit Company by the petitioner. Thereafter, several opportunities were given to cross examine the said witness and the matter was posted on 30.08.2007. In spite of giving more opportunities, on 30.08.2007, the writ petitioner had deliberately remained absent and did not make any representation either in person or through his counsel, hence, the Arbitrator, who was left with no other alternative, has proceeded further and passed an ex parte award by applying its mind, on merits. The petitioner, even though appeared in the ARC case through his Advocate and had also filed a counter, preferred to remain ex parte and has not participated in the trial proceedings. The absence was only wilful and wanton with an intention to drag on the proceedings.

5. The learned counsel for the respondents would also submit that the Chit Funds Act, 1982 cast duty on the Arbitrator and the Presiding Officer to decide the disputes in two hearings, as the procedure is summary in nature, which is purely based on documentary evidence. The award has been passed only after giving an opportunity to the petitioner to cross examine the witnesses and finally the same was decided ex parte on merits, considering the counter affidavit filed. Aggrieved by the same, the petitioner had filed an Appeal and the same was considered by the first respondent after analysing the pros and cons of the issue on hand and after assigning valid reasons, the appellate authority had dismissed the appeal as per the provisions and procedures under Section 70 of the Chit Funds Act, 1982. The learned counsel would further submit that the award passed by the second respondent was confirmed by the Appellate Authority in G.O.(D).507 dated 19.11.2008, which has to be confirmed and hence, prayed for dismissal of the Writ Petition.

6. On perusal of the application filed under Section 64 and Rule 45 of the Chit Funds Act (Act 40 of 1982), it could be seen that the first petitioner has authorised one M/s.C.K.Enterprises and R.S.Collections to bid on behalf of them by letter dated 03.03.2001 with the maximum discount of 30%. On the auction held on 15.03.2001, the first respondent was represented by one Sunil Kumar, who had participated in the auction and taken the bid for an amount of Rs.2,10,000/- and the first respondent has executed a promissory note for Rs.3,00,000/- on 18.06.2001 in favour of the third respondent and the receipt for receiving the said amount of Rs.2,10,000/- was acknowledged by the second petitioner by signing the voucher dated 18.06.2001. The petitioner was paying Rs.1,000/- on daily basis upto 06.05.2003 and the total amount paid by the

petitioner were Rs.25,250/- excluding the dividend of Rs.4,150/- and they paid the last amount of Rs.3,000/- by cheque dated 07.05.2003 in Cheque No.541163 drawn on Bank of India and totally, the amount paid by the petitioner was Rs.1,04,400/- as against Rs.3,00,000/-, which is due from the petitioner.

7. The third respondent had submitted that 5th instalment was paid by the petitioner on 15.06.2001, hence the reference to the Chit Arbitrator was filed within the time prescribed and the Chit Arbitrator has also got sufficient power and jurisdiction to condone the delay under Section 65(3) of Chit Fund Act, if there is any delay. As such, there is no infirmity in taking the petition on file.

8. The petitioner herein has filed counter affidavit in ARC proceedings before the Arbitrator stating that the statements of the third respondent in the claim petition are totally false and the first petitioner, namely, Shoba Cloth Centre was closed and become defunct from 1997 after the Bomb Blast Riots in Coimbatore. Hence, the first petitioner is no more in existence after 1997 and the third respondent cannot add dead persons in the Chit Groups is questionable. Further, the second petitioner was not in-charge of the first petitioner, when it was alive and carrying on business and the other partners were not made as a party to the dispute and he is not liable. It is seen that the petitioner have contended that the entire materials, stocks, books of accounts and other documents got perished when the building was set on fire and the entire business of the petitioner came to a standstill and no further transaction were made from M/s.C.K.Enterprises or R.S.Collections. For the clearance of dues to the said M/s.C.K.Enterprises or R.S.Collections, an oral mode of payment was agreed upon and the petitioner agreed to pay Rs.1,000/- each day upto a particular period. Accordingly, the petitioner have been paying at the rate of Rs.1,000/- per day and cleared the dues and the alleged amount of Rs.3,000/- paid on 07.05.2003 was the final payment made by way of cheque, by which the entire loan amount was settled to the said suppliers, namely M/s.C.K.Enterprises or R.S.Collections. By suppressing the facts, the third respondent has filed a false claim before the Arbitrator. The second petitioner denied execution of all the documents, which were submitted by the third respondent before the Arbitrator. He would further submit that it is false that the alleged joining of Chit Group by the first petitioner and second petitioner and the alleged bid and authorisation issued to the third party in the said chit instalments are cooked up documents and it is only created by the third respondent and its sister concern without the consent or knowledge of the petitioner and he is not liable to pay the same. The petitioner herein would further submit that they suspects some forgery and

fabrication of records and signature and sought for perusing the document and also reserved their rights to file additional counter in the ARC case.

9. The Arbitrator has considered both the petitioner and the respondent's averments and has passed the award making the petitioner liable to pay a sum of Rs.1,95,600/- along with costs of Rs.4,000/- and in default, with future interest at 12% from 14.02.2006. In spite of giving repeated adjournments, when the matter was taken up on 14.02.2006, the same was adjourned to 16.03.2006 and there was no appearance of the petitioner herein on that day and only on 05.04.2006, they appeared before the Arbitrator and on 26.09.2006 counter was filed and on the same day, the third respondent had filed his proof affidavit and examined in chief and in spite of giving several opportunities, the petitioner has not cross examined the third respondent and only on 30.08.2007, i.e., after a year, the same was decided ex parte. Immediately setting aside petition was filed by the petitioner herein and the same was taken for trial on 11.09.2007 and on 25.09.2007, the third respondent has filed his counter and after consideration, the setting aside petition was dismissed on 08.10.2007. On 26.09.2006, the claimant/third respondent had marked the documents, Ex.C1 to C10, viz., payment receipt, promissory note, true copy of statement of accounts relating to the petitioner, chit agreement copy, copy of form-3, copy of form-4, copy of legal notice, acknowledgment card and reply notice sent by the petitioner and the issue was decided in favour of the third respondent.

10. Against the said award, appeal has been filed before the Secretary to Government/Appellate Authority, Commercial Taxes Department, Chennai. The petitioner's appeal was considered by the said Appellate Authority and he has finally come to the conclusion that on perusing the original records, it was found that on 18.06.2001, the respondent has paid Rs.2,10,000/- to the appellant and summons were issued on 14.02.2006 and 17.07.2006 and hence, it was considered that there was no reason to interfere with the order passed by the Deputy Registrar of Chits, Coimbatore and in the above circumstances, the Government has confirmed the order of Deputy Registrar of Chits, Coimbatore in ARC No.53 of 2006, dated 23.10.2007.

11. Regarding the allegation of no opportunity was given to the petitioner and hence, there is violation of principles of natural justice is concerned, on perusal of records, it is seen that the petitioner were sent a notice to appear on 16.03.2006 and on that day, the petitioner have not appeared and only on 05.04.2006, they have appeared and on 26.09.2006 counter has been filed and on the said day, the claimant/third respondent

has filed his proof affidavit and examined in chief and after that, inspite of several adjournments given, the petitioner herein did not chose to cross examine PW.1. Only on 30.08.2007, the same was decided and the petitioner were set exparte, after giving them sufficient opportunity. The petitioner have filed a setting aside petition and the same was taken on 11.09.2007 and on 25.09.2007, counter has been received and only on 08.10.2007, the setting aside petition has been dismissed. This would show that opportunity was given to the petitioner and the same was not utilised by the petitioner or his counsel and hence, there is no violation of principles of natural justice.

12. Again it was seen that Sections 49(4) and (5) of the Chit Funds Rules, 1984, prescribes as follows:-

"49. Procedure for hearing and decision of disputes:-

...

(4) Where the disputant appears and the opponent does not appear when the dispute is called out for hearing, then, if the Registrar or his nominee is satisfied from the record and proceedings that the summons was duly served, the Registrar or his nominee may proceed with the dispute exparte. Where the summons is served by any officer of the Registrar or his nominee, he shall make his report of service on oath.

(5) The Registrar or his nominee may not ordinarily grant more than two adjournments to each party to the dispute at his request. The Registrar or his nominee may, however, at his discretion grant such further adjournments on payment of such costs to the other side and such fees to the Registrar or his nominee, as the case may be, may direct."

13. From the above, it could be seen that Sections 49(4) prescribes that when the claimant appeared and the respondent did not appear when the dispute is called out for hearing, then if the Registrar or his nominee satisfied that the summons was duly served, he or his nominee can proceed with the dispute exparte. Section 49(5) provides that the Registrar or his nominee may not ordinarily grant more than two adjournments to each party to the dispute at his request. However, he can grant such further adjournments on payment of costs to the other side. From the above, it is clear that proceedings being summary in nature has to be concluded within a prescribed time and only at the discretion of the Registrar, it may be adjourned further. Accordingly, Chit Arbitrator has considered the case of the

claimant/third respondent and after giving sufficient opportunity to the petitioner, the Arbitrator has decided the matter and set the petitioner exparte.

14. Next question to be decided is regarding whether the petitioner are liable to pay money to the third respondent.

15. On perusal of the Writ affidavit in para-3, the petitioner himself has admitted that the petitioner and M/s.C.K.Enterprises entered into some oral agreement between them, that resulted in joining with the third respondent company as a subscriber. While joining as bid subscriber, the third respondent company had obtained blank stamp promissory note, blank stamp voucher with signatures in printed forms. This admission proves that the claim of the petitioner that the petitioner is not a subscriber at all to the chit as false statement.

16. The second petitioner's submission that he has got nothing to do with the chit fund and it is only with the said M/s.C.K.Enterprises to whom the petitioner has business transaction and he paid Rs.1,000/- per day for the said dues and the same was paid to him and the last payment was Rs.3,000/- by way of cheque could not be gone into since these are the disputed facts. The learned Arbitrator has condoned the delay as per Section 65(3). Since the last payment of Rs.3,000/- was paid by the petitioner to the third respondent and from that day (2003), three years has been taken into account and the claim petition has been filed in time and even assuming there is a delay, the same has been condoned by the authorities.

17. The petitioner counsel submitted that the petitioner should be given further opportunity and the matter should be remanded to the appellate authority for fresh enquiry. In the impugned order in para-3, the appellate authority has observed as follows:-

"3. With a view to give an opportunity to putforth their views in person, the case was heard on 30.09.2008. On 30.09.2008, the counsels for appellant and respondent were present and gave their oral submissions. The counsel for the appellant wanted the case to be remanded back to the chit Arbitrator for fresh enquiry, which was objected to by the counsel for the respondent. Further, no fresh evidence was produced by the appellant and both the advocates wanted the decision based on the material at hand. After hearing the argument, the Appellate Authority has ordered that orders on the appeal may be issued based on the records

available with the Government."

18. When the counsel for the appellant/petitioner herein wanted the case to be remanded to the Chief Arbitrator for the fresh enquiry, the same was objected to by the respondent herein and no fresh evidence was produced by the appellant/petitioner herein and both counsels wanted the decision based on the materials on hand. No material available with the appellate authority at this length of time hence, no purpose will be solved in remanding the matter. It is also the case of the petitioner that the entire documents/records have been burnt in the riot during 1997. Therefore, there is no question of he trying to produce any fresh further records. When the second petitioner himself has admitted signing all the documents, namely, promissory note and other vouchers and at this length of time, he cannot come and canvass as if they are forged ones. When sufficient opportunity was given to the petitioners at an earlier point of time and also at the time of filing this Writ Petition also, no document was filed by the petitioners. When the Arbitrator and the Appellate Authorities have given a finding after going through the documents and disputed facts, this Court do not find any reason to interfere, but concurs with the above findings. Hence, in view of the same, this Court is not inclined to interfere with the order passed by the appellate authority and the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Insp.Cell)

//True copy//

Sub Assistant Registrar

mra

To

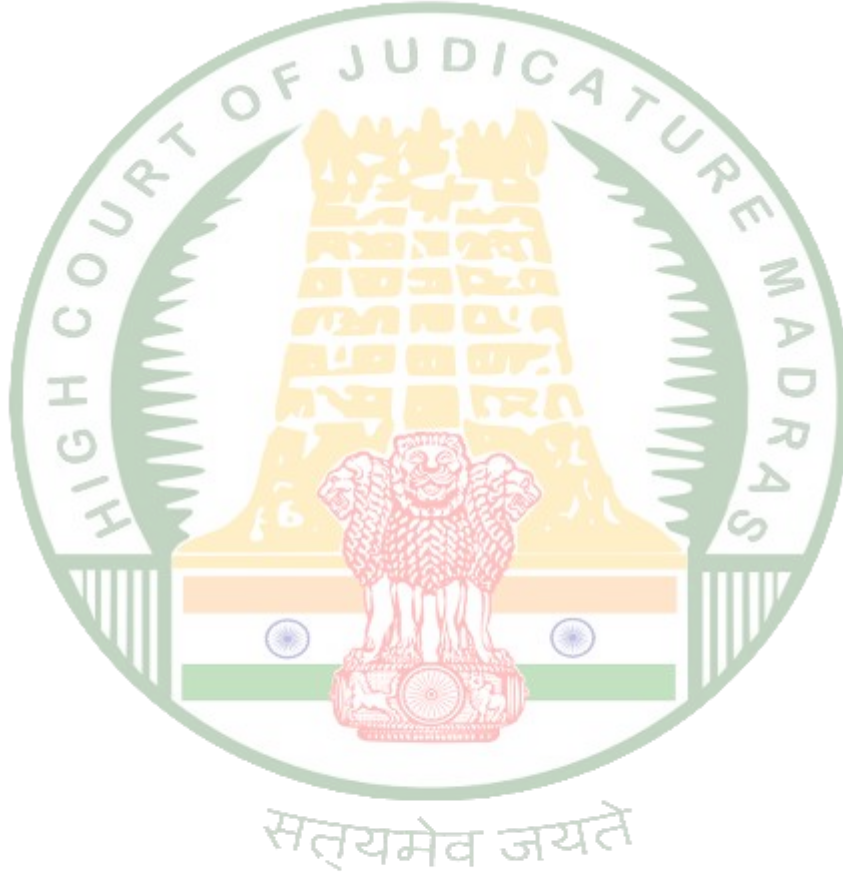
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Chits Court
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+1cc to Mr.D.Shivakumaran, Advocate SR.No.39342

+1cc to Government Pleader SR.No.39921

Writ Petition No.3788 of 2010
and
M.P.No.1 of 2010

KAN (CO)
GMY (30/04/2019)



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