

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	16/08/2019
Delivered on	29/08/2019

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.34973 of 2005 &
W.P.M.P.No.37919 of 2005

P.Suganthi ... Petitioner

Vs

1.Arbitrator of Chits,
Chennai Central,
Rajaji Salai,
Chennai - 1.

2.T.Panneer Selvam,
Foreman Chit Group Code No.67001,
Sriram Chits Tamilnadu Ltd.,
F.41, Anna Nagar East,
Chennai 102. ... Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Prohibition, prohibiting the proceedings pending before the first respondent herein in A.R.C.No.842 of 2000.

For Petitioner : Mr.GK.Harihara Rajan

For Respondents: Mr.P.P.Purushothaman
Government Advocate for R1

Mr.K.V.Ananthakrushnan for R2

सत्यमेव जयते
O R D E R

This Writ Petition has been filed for issuance of Writ of Prohibition, prohibiting the proceedings pending before the first respondent in A.R.C.No.842 of 2000.

2. According to the petitioner, she approached Sriram Chits & Finance, T.H.Road, Branch for financial assistance with one Sidharthan, a staff of Sriram Chits and at that time, he obtained several signatures of the petitioner in several blank printed forms of Sriram Chits and obtained two signed blank cheque for repayment for advancing loan.

3. The petitioner would further allege that since the said

Sidharthan colluding with his aides defrauded his employer, she dropped the matter and asked him to return the signed papers. Though one cheque was returned, but other signed papers were not given to her. It is further alleged that there was no legal chit transaction between the petitioner and the second respondent and for the illegal chit activity, the first respondent has no jurisdiction and the second respondent is liable to be punished for violation of Sections, 4, 7, 9, 20 read with 76 of the Chit Fund Act [in short "the Act"]. It is a case of the petitioner that she was not the subscriber of the second respondent and she never participated in the chit auction and received any amount.

4. The second respondent has filed a detailed counter affidavit stating that the petitioner joined in the chit as a substituted subscriber in the chit group No.67001/26 for the value of Rs.5,00,000/- payable at Rs.10,000/- in 50 months. She was substituted on 21.04.2000 in the place of removed subscriber P.H.Menon, hence she paid Rs.1,48,500/- at the time of joining the chit, as a substituted subscriber.

5. The petitioner joined in the chit group after completion of 29 installments and she was a successful bidder at the 30th auction held on 26.04.2000 for the bid amount of Rs.1,50,000/- and the prize amount of Rs.3,50,000/-. The second respondent, after receiving security for payment of future subscription and satisfying with the documents furnished by the petitioner, paid the prize amount to her under cheque No.40616, dated 06.06.2000 for the value of Rs.3,33,150/-, after deducting the incidental charges of Rs.9,250/-. Thereafter, the petitioner paid only three installments and hence, an arbitration case was filed before the first respondent for recovery of Rs.1,73,227/- along with interest at the rate of 12% per annum. It is further stated that the name of the petitioner will not be in the original chit agreement, but subsequently, her name was included as she joined as a substituted subscriber in the place of removed subscriber P.H.Menon.

6. In paragraph No.8 of the counter affidavit, it is stated that the Chit Fund Act is a Special Act and under Section 67 of the Act, the Registrar or the nominee shall hear a dispute and under 64 of the Act, the Registrar of Chits is empowered to solve all disputes arising between the foreman and the subscriber. It is also stated that after getting prior sanction and commencement certificate, the chit auction was conducted and the chit is lawful. The petitioner after receiving the prize amount and enjoyed the benefits, cannot question the jurisdiction of the first respondent and the dispute has to be adjudicated only by the Registrar and she cannot invoke the writ jurisdiction.

7. Mr.GK.Harihara Rajan, learned counsel for the petitioner would argue that no illegal activity can be permitted and the second respondent has violated many of the provisions of the Act, especially, Sections 4, 5, 6, 9, 10, 16, 18, 28 and 29 of the Act. It is further contended that for registration of the chit agreement, no subscribers have signed including the petitioner and having committed illegality, the second respondent cannot go to quasi the judicial forum and if at all, the second respondent has to file a suit for recovery of money. The learned counsel also brought to the notice of this Court the documents filed by the parties to show that there are variations in the forms.

8. Per contra, Mr.K.V.Ananthakrushnan, the learned counsel for the second respondent would urge that the second respondent runs the Chit Company in accordance with law after obtaining permission from the concerned authorities. Since the petitioner is a substituted subscriber in the place of one Menon, the name of the petitioner was not found in the original agreement and after the petitioner joined in the chit group, her name was included, while filling application for removal and substitution. It is the contention of the learned counsel for the second respondent, the petitioner has not denied or disputed the receipt of the prize amount paid by way of cheque and therefore the remedy of the petitioner is before the first respondent and disputed question of fact cannot be gone into in the Writ Petition.

9. In reply, the learned counsel for the petitioner, reiterated the grounds made in the Writ Petition.

10. Heard the rival submissions and carefully perused the materials available on record.

11. In the matter on hand, it is alleged by the petitioner that she approached Sriram Chits & Finance for financial assistance and at that time, one of the employees of the Chit Company obtained her signatures in several blank papers, including two cheque leaves and she was not the subscriber of the Chit Company and never took part in the chit auction and received any amount.

12. On the other hand, the Chit Company has contended that the petitioner was the substituted subscriber and she joined in the chit group in the 29th installment and she was a successful bidder in the 30th auction held on 26.04.2000 and she received the prize amount through a cheque, dated 06.06.2000. The contention of the petitioner that the Chit Company is being run in violation of the provisions of the Act, was denied by the second respondent. Though the petitioner had made serious

allegations against the second respondent, the disputed question of fact cannot be and need not be decided in the Writ Petition filed under Article 226 of the Constitution of India and the facts in dispute requires proper appreciation of evidence. It is relevant to extract Section 64 of the Act:-

64. Disputes relating to chit business.-

"(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the management of a chit business shall be referred by any of the parties to the dispute, to the Registrar for arbitration if each party thereto is one or the other of the following, namely:-

(a) a foreman, a prized subscriber or a non-prized subscriber, including a defaulting subscriber, past subscriber or a person claiming through a subscriber, or a deceased subscriber to a chit;

(b) a surety of a subscriber, past subscriber, or a deceased subscriber.

Explanation.-For the purposes of this sub-section, a dispute touching the management of a chit business shall include-

(i) a claim by or against a foreman for any debt or demand due to him from a subscriber, or due from him to a subscriber, past subscriber or the nominee, heir or legal representative of a deceased subscriber whether such debt or demand is admitted or not;

(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a foreman and recovered from the surety owing to the default of the principal borrower, whether such sum or demand is admitted or not; and

(iii) a refusal or failure by a subscriber, past subscriber or the nominee, heir or legal representative of a deceased subscriber to deliver possession to a foreman of land or any other asset resumed by him for breach of conditions of the assignment.

(2) Where any question arises as to whether any matter referred to for the award of the Registrar is a dispute or not for the purposes of sub-section (1), the same shall be decided by the Registrar whose decision thereon shall be final.

(3) No Civil Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1)"

13. A cursory perusal of the above provision makes it clear

that any dispute touching the management of the chit business shall be decided only by the Registrar and no Civil Court can entertain a proceeding in view of the bar in Section 64 (3) of the Act. Therefore, I find no substance in the contention of the learned counsel for the petitioner and the Writ Petition is liable to be dismissed as devoid of merits. Since the Arbitration Case is pending for about 15 years without any progress, the first respondent shall dispose of the Proceedings in A.R.C.No.842 of 2000, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

14. With the above observation and direction, the Writ Petition is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

r n s
To

Arbitrator of Chits,
Chennai Central,
Rajaji Salai,
Chennai - 1.

+1 cc to Mr.K.V.Anandhakrushnan Advocate sr75806
+1 cc to the government Pleader sr76117
+1 cc to M/s.G.K.Harihara rajan Advocate sr74559

Pre Delivery order in
W.P.No.34973 of 2005 &
W.P.M.P.No.37919 of 2005

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