

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

W.P.s 7158 to 7161 of 2010
and
M.P.s 1 of 2010

M.Balan Petitioner in all W.P.s
Versus

1. Registrar of Chits,
Central Madras,
Chennai-1.
2. Sree Gokulam Chits & Finance Co.,
No.49, Arcot Road,
Kodambakkam,
Chennai-24.
- 3 The Secretary to Government
of Tamil Nadu,
Commercial Taxes Department,
Secretariat,
Chennai-9.
4. A.Ravindran,
No.229, Thambu Chetty Street,
Chennai-1.

R4 impleaded as per order
dated 02.08.2010 in M.P.
No.2 of 2010

... Respondents in all W.P.s

PRAYER in W.P. 7158 of 2010 : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records in Order No.7334/G/2009-1, on the file of 3rd respondent dated 15.10.2009 and quash the same and direct the 3rd respondent to number the appeal.

PRAYER in W.P. 7159 of 2010 : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records in Order No.7331/G/2009-1, on the file of 3rd respondent dated 15.10.2009 and quash the same and direct the 3rd respondent to number the appeal.

PRAYER in W.P. 7160 of 2010 : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records in Order No.7333/G/2009-1, on the file of 3rd respondent dated 15.10.2009 and quash the same and direct the 3rd respondent to number the appeal.

PRAYER in W.P. 7161 of 2010 : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records in Order No.7335/G/2009-1, on the file of 3rd respondent dated 15.10.2009 and quash the same and direct the 3rd respondent to number the appeal.

For Petitioner : Mr.C.Shreetharan

For Respondents : Mr.P.P.Purushothaman,
Govt. Advocate for R1 & R3

Mr.G.Ramachandran for R2

C O M M O N O R D E R

The prayer sought in the above Writ Petitions are one and the same, these Writ Petitions are disposed of by way of a common order.

2. These Writ Petitions have been filed challenging the orders passed by the 3rd respondent rejecting the petitioner's applications seeking to condone the delay of 737 days in filing appeals against the order passed by 1st respondent.

3. According to the petitioner, he is one of the subscribers of the chit conducted by the 2nd respondent, alleging that the petitioner has committed default in payment, three awards came to be passed against the petitioner. Challenging the awards, the petitioner has filed appeals before the 3rd respondent, under Sec.70 of the Chit Fund Act, with the delay of 1 year, 11 months and 18 days. The petitioner has filed petitions to condone the delay in filing the appeals, and those petitions have been dismissed by the 3rd respondent. Challenging the same, the present Writ Petitions have been filed.

4. Mr. C.Shreedharan, learned counsel appearing for the petitioner submitted that after passing of the award, the counsel for the petitioner was busy with his daughter's marriage, and failed to file necessary applications to obtain the certified copy of the award, and the petitioner was also not informed about the award. Hence, he was not in a position to file the appeals within time before the 3rd respondent. Thereafter, the petitioner has filed the applications for certified copies of the award passed by the 1st respondent. After obtaining the copies of the award, the petitioner has

filed the appeals along with the petitions to condone the delay. The petitioner filed a detailed affidavits explaining the reasons for the delay, but the 3rd respondent without considering the same in proper perspective, dismissed the applications in a cryptic and non-speaking order.

5. Per contra, Mr.G.Ramachandran, learned counsel appearing for the 2nd respondent submitted that, the delay is nearly two years, and the petitioner has deliberately kept quite, not even filed the applications for obtaining the certified copy of the award, and the reasons for the delay not properly explained by the petitioner. Considering all those circumstances, the 3rd respondent has rightly dismissed the applications to condone the delay.

6. I have considered the rival submissions made by the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents 1 and 2 and the learned counsel appearing for the 2nd respondent and perused the records carefully.

7. A perusal of impugned order, it could be seen that the 3rd respondent dismissed the applications in a cryptic manner, without considering the cause shown by the petitioner for the delay properly. The Limitation Act is founded on a public policy to prevent unscrupulous litigations, and to prevent stale claims. It is the duty cast upon the applicant to explain the reason, which prevented him from approaching the court within the period of limitation. If the Court found that the delay is due to negligent, or want of bonafide of the petitioner, and the petitioner has not acted diligently, then the Court is not justified in condoning the delay. However, if the petitioner is able to satisfy the court that he was prevented by any sufficient cause from prosecuting the case, and the cause shown by him is genuine, then the Court should consider the same, and allow the application.

8. The Hon'ble Supreme Court of India in (Basawaraj and another vs. The Special Land Acquisition Officer) reported in AIR 2014 SC P.746, explained "sufficient cause", as follows :-

"9. Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bonafide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances

of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously."

9. In the instant case, according to the petitioner, the Advocate, who was looking after the case, failed to follow the case, and not even informed the proceedings to the petitioner. In those circumstances, the petitioner was not aware of the awards passed against him, and not able to take effective steps to file the appeals in time. Considering the above circumstances, I am of the view that the petitioner cannot be said to be negligent or lacking bonafide in filing the appeals, and the cause shown by the petitioner is sufficient to condone the delay. The 3rd respondent without considering the facts and circumstances in proper perspective has dismissed the application. Hence, the impugned orders passed by the 3rd respondent vide Letter Nos. 7334/G/ 2009-1, 7331/G/2009-1, 7333/G/2009-1, and No.7335/G/2009-1, dated 15.10.2009 are liable to be set aside. Accordingly, it is set aside, and the 3rd respondent is directed to number the appeals and dispose the same after giving opportunity to the petitioner as well as the 2nd respondent within a period of six months from the date of receipt of the copy of this order.

10. In the result, the present Writ Petitions are allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpp

To

1. Registrar of Chits,
Central Madras, Chennai-1.

2. The Secretary to Government
of Tamil Nadu,
Commercial Taxes Department,
Secretariat, Chennai-9.

+4cc to M/s.P.Sidharthan, Advocate Sr.79519 to 79522

+1cc to the Government Pleader Sr.80214

+4cc to Mr.G.Ram chandran, Advocate Sr.80306 to 80309

W.P.s 7158 to 7161 of 2010

and

M.P.s 1 of 2010

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Sig 14/11/2019