

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2019

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR**CRP.NPD.Nos. 1099 to 1101 of 2013**

M/s.Shriram Chits Tamil Nadu (P) Ltd.
Tondiarpet Branch,
No.365, T.H.Road,
Old Washermanpet,
Tondiarpet,
Chennai – 600 021

... Decree holder/ Petitioner
in C.R.P. Nos.1099 and 1100 of 2013

M/s.Shriram Chits Tamil Nadu (P) Ltd.
Anna Salai Branch,
4/289, I Floor, Pycrofts Road,
Triplicane,
Chennai – 600 005

... Decree holder/ Petitioner
in C.R.P. No.1101 of 2013

सत्यमेव जयते
Vs.

P.Ravikumar

... Judgement Debtor/Respondent in
C.R.P.No.1099 of 2013

C.Gajendran

... Judgement Debtor/Respondent in
C.R.P.No.1100 of 2013

T.J.Janani

... Judgement Debtor/Respondent in
C.R.P.No.1101 of 2013

COMMON PRAYER: Civil Revision Petitions filed under Section 115 of the Civil Procedure Code against the order and decretal dated 03.09.2012 passed in E.P.S.R.Nos.18720, 18724 and 18711 of 2012 in A.R.C.Nos.302, 746 and

1288 of 2008 (North Chennai), (Central Chennai), on the file of X Assistant City Civil Court at Chennai.

For Petitioner in all CRPs : Mr.K.V.Ananthakrushnan

For Respondent in all CRPs : Mr.P.Valliappan
Amicus Curiae

COMMON ORDER

The above civil revision petitions have been filed against the order of the trial Court rejecting the application filed by the decree holder to issue percepts under Section 46 of the Civil Procedure Code.

2. The brief facts leading to file the above revisions are as follows:

The revision petitioner has referred the dispute relating to chit business before the Registrar under the Chit Funds Act, 1982. In pursuant to such dispute, the Registrar has passed an award under Section 58 of the Chit Funds Act. In pursuant to such award, the Registrar has issued a certificate to execute decree by the City Civil Court. Based on such certificate, Execution Petitions were filed before the Court below. The decree holder took an application to issue percepts to other Court for seeking attachment of property belonged to the judgment debtor. However, the Court below has dismissed the application held that percepts could be issued only by the Court which passed the decree not by the transferee Court.

3. The learned Judge took a view that since the award passed by the Registrar has been transmitted to the City Civil Court, the transferee Court has no power to issue percepts and dismissed the applications. Similarly, in C.R.P.No.1099 of 2013, apart from the ground of jurisdiction of the Court to issue percepts, the Court also took note that the value of the award is only Rs.18,000/-. The Court being the Sub-ordinate Court has no jurisdiction to execute such amount on the ground of pecuniary jurisdiction. Challenging the above orders, the present revision is filed.

4. Learned counsel appearing for the revision petitioner submitted that under the Chit Funds Act, when the award is passed, the Registrar has no power to execute the award. The award has to be necessarily sent to the Civil Court with necessary certificate as contemplated under Section 71 of the Chit Funds Act. Therefore, it is his contention that issuance of such certificate will not amounts to transfer of the decree for execution to the other Court. Further, he contented that the Court which has received certificate and award has a jurisdiction to issue a percepts under Section 46 of the Civil Procedure Code, the learned X Assistant City Civil Judge has not considered the Chit Funds Act and also the provisions of the Civil Procedure Code. Hence, prayed for allowing the revision.

5. Mr.Valliappan, Amicus Curiae has submitted that after the award passed under Chit Funds Act, the Registrar has no power to execute it, whereas, the Registrar has passed the award, he has no power to execute it.

It is his contention that the Court at first instance has ceased to exist or to have executed Civil Court has jurisdiction. Such being the position, the Court to which such award was sent along with certificate shall be construed as a Court of first instance which passed a decree. Hence, it is his contention that Section 37 of the Civil Procedure Code defines the court which passed the decree. According to him, when the Court of first instance have no jurisdiction to execute its order, the Court which received such order should be deemed to be the Court of first instance for execution. Further, he contented that Section 71 of Chit funds Act, it is only an enabling provision to send the award to the proper Court for execution. No provisions under the Chit Funds Act deals with transferring the award for execution. Hence, it is his contention that the Civil Court has received the award as contemplated under Section 71 of the Chit Funds Act. The Court which received the said award shall be construed as the Court of first instance and it has a jurisdiction to issue precepts under Section 46 of the Civil Procedure Code.

6. I have perused the entire order.

7. The dispute has been referred under Chit Funds Act. The Registrar has passed an award under Section 69 of Chit Funds Act.

Section 71 of the Chit Funds Act, 1982 reads as follows:

" 71. **Money how recovered:** - Every order passed by the Registrar or the nominee under Section 68

or Section 69 and every order passed by the State Government in appeal under Section 70 for payment of any money shall, if not carried out, -

(a) on a certificate issued by the Registrar, be deemed to be a decree of a Civil Court, and shall be executed in the same manner as a decree of such Court, or

(b) be executed in accordance with the provisions of any law for the time being in force for the recovery of amounts as arrears of land revenue:

Provided that no application for execution under clause (b) shall be made after the expiry of three years from the date fixed in the order, and if no such date is fixed, from the date of the order."

8. The above provisions makes it clear that if no appeal is filed under Section 70 of the Chit Funds Act, the Registrar shall issue a certificate along with the award, whereas, such certificate issued by the Registrar, the award passed by the Registrar shall be deemed to be a decree of the Civil Court and shall be executed under the same manner as a decree of such Court. Section 71 also gives an option for execution of the decree as a recovery of arrears of land revenue under Rule 55 of the Tamilnadu Chit Funds Rules, 1984, which reads as follows:

" 55. Procedure for execution of awards. - (1)

Every order or award passed by the Registrar, or his nominee under Section 68 or 69 shall be forwarded by the

Registrar to the foreman or to the party concerned with instructions that the foreman or as the case may be, the party concerned should initiate execution proceedings forthwith according to the provisions of Section 71.

(2) If the amount due under the award is not forthwith recovered, or the order thereunder is not carried out, it shall be forwarded to the Registrar with an application for execution along with all information required by the Registrar, for the issue of certificate under Section 71. The applicant shall state whether he desires to execute the award through a Civil Court or through the revenue authorities as provided under Section 71.

(3). On receipt of such application for execution, the Registrar shall forward the same to the proper authority for execution along with a certificate issued by him under Section 71 and a proclamation issued under Rule 54 in the manner prescribed therein.

(4) Every order passed in appeal under Section 70 shall also be executed in the manner laid down in sub-rules (2) and (3)."

9. Rule 55 of the Tamilnadu Chit Funds Rules makes it very clear that an option is given to the applicant whether to execute the award through Civil Court or through the Revenue authorities as provided under Section 71 and on such option is exercised, the Registrar shall forward the same to the proper authority along with the certificate issued by him under Section 71.

10. Plain reading of Section 71 and Rule 51 of Chit Funds Act makes it very clear that the Registrar has no power to execute the award. Only he can certify the award for execution by the Civil court or by the Revenue Authorities as decided by the parties. Section 71 further makes it clear that the award along with certificate sent to any Civil Court, such award shall be deemed to be a decree of the same Court.

11. In this regard, it is useful to refer Section 37 of the Civil Procedure Code. Section 37 reads as follows:

" 37. Definition of Court which passed a decree? *The expression "Court which passed a decree, or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include -*

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted, at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.]"

12. Section 37 (b) would makes it very clear that where the Court of first instance has ceased to exist or to have jurisdiction to execute its orders, the Court which the suit wherein the decree was passed was instituted, at the time of making the application of execution of the decree would have jurisdiction to try such suit. The above provisions makes it very clear that when the Court of first instance has no power to execute its order, such orders should be sent to some other civil Court. Such Court shall be construed as a Court which passed a decree as per Section 37. It is to be noted that entire chit transactions in the given case is within the jurisdiction of the City Civil Court, such Civil Court as if, the suit was entertained or maintainable before the same, certainly has a jurisdiction to entertain such suit. Therefore, any award passed by the Registrar under Chit Funds Act and sent to the City Civil Court, particularly, when the Registrar has no power to execute its award, such City Civil Court will be deemed to be a Court which passed a decree as per

13. Section 46 of C.P.C. Deals with the issue of precepts though the section states that the Court passed a decree may issue precepts to any other Court which would be competent to execute such decree to attach any property belonging to the judgment debtor and specified in the precepts. Wording of the Section 46 cannot be strictly construed to contend that since Civil Court has not passed a decree, it has no jurisdiction to issue precepts as already indicated the award has not been transferred to the Court under Section 71 of the Chit Funds Act which has been sent to the Court with a certificate for execution. Since the Registrar has no power to execute it as a Court of first instance, the Court which received such order or award would be deemed to be a Court which passed a decree as per Section 37 of C.P.C. Such being the position on receipt of the award with a certificate under Section 71 of Chit Funds Act, such civil Court shall be deemed to be a Court which passed a decree and has power to issue precepts under Section 46. The purpose of issuing the precepts to some other Court for attachment in order is to prevent any encumbrance over the property though property situated outside the jurisdiction of the Court which issues precepts.

14. Therefore, I am of the view that the Civil Court has a power to issue precepts to the Court which has jurisdiction to pass an attachment over the immovable property situated within the jurisdiction of such Court.

That being the position, the order of the trial Court rejecting the application is set aside.

N.SATHISH KUMAR,J.

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15. Other finding of the Court that one of the award is below Rs.18,000/-, the same cannot be executed in Sub-Court in view of the pecuniary jurisdiction under Section 19 of the Provincial Small Cause Courts Act. Section 19 of the Act deals with only the pecuniary jurisdiction of the Court to entertain the suits for trial, whereas, the above provisions cannot be pressed into service in the above proceedings. There is no bar to the higher court which has power to try any suit which is more than Rs.21,000/- to entertain such execution proceedings. Hence, such view is also not proper.

16. Accordingly, the above civil revision petitions are allowed. No costs. The City Civil Court shall consider the application and issue percepts on merits to the Court through which the property sought to be attached in execution proceedings.

16.04.2019

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Index:Yes/No

Internet: Yes/No

Speaking order: Non-Speaking order

To

The X Assistant City Civil Judge,

Chennai.

<http://www.judis.nic.in>**CRP.NPD.Nos. 1099 to 1101 of 2013**