IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.10906 of 2014
and MP No.1 of 2014

1.S. Srinivasan
2. S. Umamaheswari ... Petitioners

Vs

1. State of Tamil Nadu,
Rep. By its Secretary to Government,
Commercial Taxes and Registration
Department,
Secretariat,
Chennai – 600 009.

2. Arbitrator for Central Chennai,
Chit Funds Cases Court,
Singaravelar Building,
Chennai – 600 001.

3. Sri Gokulam Chits Finances &
Company (P) Ltd.,
No.49, Arcot Road,
Kodambakkam,
Chennai – 600 024. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent pertaining to impugned proceedings The Commercial Taxes and Registration (G) Department, G.O.(D) No.404, dated 01.08.2013 and to quash the same and consequently direct the 3rd respondent to release the original Title Deed, Partition deed bearing Doc. No.764/1998 the petitioners and to pass such further order and other order as this Court.

For Petitioners : Mr.M.Vivekanandan
For Respondents : Mr.B.Kannan
Government Advocate
for Registration
for R1 and R2
Mr.G.Ramachandran for R3

ORDER

Heard Mr.M.Vivekanandan, learned counsel for the petitioners, Mr.B.Kannan, learned Government Advocate for Registration and Mr.G.Ramachandran, learned counsel for the third respondent.

2.This writ petition has been filed challenging the order dated 01.08.2013 passed by the first respondent and consequently direct the third respondent to release the original title deed viz., partition deed bearing document No.764 of 1998.

3. It is the case of the petitioners that the first petitioner joined as a Subscriber of the third respondent chit Company in a Chit Series G3J-73 as Ticket No.10 for the value of Rs.10,00,000/- per chit payable at the rate of Rs.40,000/-per month for a period of 25 months.

4. It is the case of the petitioners that the first petitioner became the successful bidder in the 4th auction held on 14.12.2005 and received the prize money and he had also executed a promissory note in favour of the third respondent on 06.01.2006 along with surety as the second petitioner for the said chit transaction.

5. It is also the case of the first petitioner that he had also deposited the original title deed viz., partition deed bearing document No.764 of 1998 with the third respondent for the said chit transaction. In view of the default committed by the first petitioner, the third respondent made a claim against the first petitioner for a sum of Rs.8,03,880/- together with interest at 18%p.a. before the second respondent under Section 65(1) (a) of the Chit Funds Act, 1982 in ARC No.1180 of 2010.

6. The second respondent by its order dated 16.12.2011 allowed the claim petition filed by the third respondent with interest at 18% p.a. from the date of filing of the petition till the date of realisation.

7. Aggrieved by the same, the petitioners filed an appeal before the first respondent and the first respondent also confirmed the findings of the second respondent and dismissed the appeal by the impugned order, dated 01.08.2013.

8. Aggrieved by the aforesaid order, dated 01.08.2013 passed by the first respondent, this writ petition has been filed. This writ petition has been filed on the ground that the claim filed by the third respondent in A.R.C. No.1180 of 2010

against the first petitioner is barred by the law of Limitation. According to the petitioners, sufficient reasons have not been given by the third respondent for filing the claim beyond the period of limitation and no notice was given to the petitioners before allowing the condone delay application filed by the Registrar of Chits under Section 65(3) of the Chit Funds Act. In such circumstances, this writ petition has been filed.

9. A counter affidavit has been filed by the third respondent, wherein, they have stated that under Section 65(3) of the Chit Funds Act, 1982, the Registrar of Chits has got power to condone the delay, even if the claim is filed beyond the period of limitation, prescribed under the Limitation Act.

10. The learned counsel for the third respondent has also produced the affidavit filed by the third respondent before the Registrar of Chits, seeking for condonation of delay in filing the claim beyond the prescribed period under the Limitation Act. According to the third respondent, the reason for the delay in making the claim is that the petitioners sought time to settle the claim and only on that score, the claim was filed belatedly. It is also their case, as seen from their counter that the said Chit Fund company is dealing with public money and if the prized subscribers fail to pay the remaining instalments, it will be impossible for them to pay the amount due to the other subscribers whenever they get the prized chit and that is the reason why Section 65(3) of the Chit Funds Act, 1982 was introduced by the Legislature. Since, the Registrar has condoned the delay according to the respondents, the petitioners cannot challenge the same in this writ petition.

> Section 65(3) of the Chit Funds Act, 1982 reads as follows :
>
> (3) Notwithstanding anything contained in sub-sections (1) and (2), the Registrar may admit a dispute after the expiry of the period of limitation specified therein, if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period.

11. As seen from Section 65(3) of the Chit Funds Act, 1982, it is clear that the Registrar of Chit Funds may admit a dispute even after the period of limitation, if the applicant satisfies the Registrar that they have a sufficient cause for not referring the dispute within such period.

12. In the case on hand even though, the learned counsel for the third respondent has produced an affidavit filed by the

third respondent before the Registrar seeking for condoning the delay in making the claim against the petitioners, the said affidavit discloses that the petitioners had requested the third respondent not to take any legal action against the first petitioner and he promised to remit the arrears in two or three instalments. But, since he failed to keep up the promise they were forced to make a claim against the first petitioner. The relevant portion of the affidavit filed in support of the condone delay application by the third respondent before the Registrar of Chits reads as follows:-

> 3. Party has requested against taking any legal action against him and promised to remit the arrears in equal two three instalments. But he failed to take his promise, hence we could not file the suit in time. So kindly allow this plaint and render justice.

13. However, no supporting evidence has been produced before the Registrar of Chits or before this Court with regard to the statement made by the third respondent that only at the request of the first petitioner that he will be making the payment, the third respondent lodged a claim against the first petitioner belatedly. It is also not recorded by the Registrar of Chits as to whether any supporting document was filed by the third respondent before the Registrar of Chit Funds along with the application for condonation of delay.

14. Under Section 65(3) of the Chit Funds Act, 1982 the Registrar of Chits will have to satisfy himself that sufficient reasons are given by the third respondent for condonation of delay.

15. In the case on hand, since, no supporting evidence has been produced by the third respondent before the Registrar or before this Court, the contention of the petitioners that without sufficient reasons the delay in lodging a claim was condoned by the Registrar of Chit Funds has to be accepted.

16. In the case of hand, the Promissory Note was allegedly executed by the petitioner in favour of the third respondent on 06.10.2006. The claim was filed by the third respondent against the petitioner only on 05.07.2010. In the affidavit filed in support of the condone delay application, there is no reference to any dates as to when the petitioner has made a request for settlement of the dispute with the third respondent.

17. Considering all these factors, this Court is of the considered view that principles of natural justice have been

violated by the respondents under the impugned orders by not affording sufficient opportunity to the petitioners to put forward his submissions with regard to the question of limitation. Despite the petitioners taking the defence of limitation, the authorities below have also not considered the question of limitation and no finding has been given with regard to the same.

18. In the result, the impugned order dated 01.08.2013 passed by the first respondent is hereby quashed and the matter is remanded back to the second respondent for fresh consideration and the second respondent is directed to pass final orders on the claim made by the third respondent against the petitioners on merits and in accordance with law after affording sufficient opportunity to the petitioners as well as the third respondent, within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that the second respondent shall also consider the question of limitation in the final orders to be passed by him pursuant to the orders passed by this Court today.

19. With the aforesaid directions, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
State of Tamil Nadu,
Commercial Taxes and Registration Department,
Secretariat, Chennai - 600 009.

2.The Arbitrator for Central Chennai,
Chit Funds Cases Court,
Singaravelar Building,
Chennai - 600 001.

+1cc to Mr.M.Vivekanandan, Advocate SR.No.9380
+1cc to Mr.G.Ramachandran, Advocate Sr.No.9362
+1cc to The Government Pleader, SR.No.10393

AKM/16.03.2020 /5P-5C/

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