

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION NO. 725 OF 2018**

Ravji Laxman Patel

....Petitioner

V/s.

Shree Gokulam Chit & Finance Co. (P) Ltd.

....Respondent

Mr. Mayur Khandeparkar a/w Mr. Vikram Garewal and Jugal Haria i/b
Neeta Solanki for petitioner.

None for respondent.

CORAM : K.R.SHRIRAM, J.

DATED : 5th APRIL 2021

P.C. :

1 Heard Mr. Khandeparkar.

2 This is a petition under Section 34 of the Arbitration and Conciliation Act 1996 (the Act), by which, petitioner is seeking to set aside the award of Arbitral Tribunal passed on 29th December 2017, on the grounds, inter alia, the issue of jurisdiction of the Arbitrator.

3 Petitioner had filed an application under Section 16 of the Act, challenging the jurisdiction of the Arbitrator to act in the matter. Reply and rejoinder were filed. The Learned Arbitrator after hearing both the parties passed an order on 20th March 2017, thereby rejecting the application under Section 16 of petitioner and holding that the Arbitral Tribunal has jurisdiction. It was petitioner's case that dispute should have been referred

to the Registrar for Arbitration under the Chit Funds Act 1982 and hence the Tribunal has no jurisdiction. The Learned Arbitrator rejected the application on the ground that there was a valid agreement between the parties, there was a relationship between petitioner and respondent and petitioner has not disputed the existence of the arbitration clause and arrangement under the agreement entered into between the parties.

4 Mr. Khandeparkar submitted that under Section 64(1) of Chit Funds Act, there is non obstante provision, as it says, notwithstanding anything contained in any other law for the time being in force, any dispute touching the management of chit business shall be referred by any of the parties to the dispute, to the Registrar for arbitration if each party thereto fall under category provided under clauses (a) and (b) of sub-Section (1) of Section 64. Mr. Khandeparkar also submits that under Section 64(3) of the Chit Funds Act, there is a bar on civil courts entertaining any suit or other proceedings in respect of any dispute referred to in sub-section (1) of Section 64.

Section 64 of Chit Funds Act reads as under:

“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 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)."

5 In the statement of claim filed before the Arbitral Tribunal, respondent has described petitioner as 'member / subscriber / surety of claimants'. Therefore, petitioner would certainly fall under the category mentioned under Section 64(1) of the Chit Funds Act and this issue has been dealt with by a Learned Single Judge of this Court in ***Dinesh Jaya Poojary Vs. Malvika Chits India Pvt Ltd.***¹ The Learned Single Judge (R.D.Dhanuka J.) has held that dispute between the subscriber and chit fund company would be a dispute touching the management of chit business and such dispute has to be referred to the Registrar for arbitration. It will be useful to reproduce paragraphs 27, 28, 29, 33, 34, 37, 38 and 39 of the judgment. The said paragraphs read as under:

27. A perusal of the record indicates that the petitioner has disputed

¹ 2019 SCC Online Bom 1121

the alleged Agreement of Guarantee dated 13th August 2012 between the petitioner and the respondent in the letter dated 19th July 2013 addressed by the petitioner through his advocate to the respondent's advocate. The finding of the learned arbitrator that there is no dispute about execution of the said Agreement of Guarantee is thus ex facie contrary to the pleadings and documents on record.

28. Even if any such Agreement of Guarantee was executed between the petitioner and the respondent as sought to be canvassed by the respondent before the learned arbitrator and also in this proceeding, question that arises for consideration of this Court is whether such Agreement of Guarantee between the petitioner and the respondent would fall under the provisions of the Chit Funds Act and thus the dispute having arisen between the petitioner and the respondent under such agreement could be referred only to the Registrar under Section 64(1) of the Chit Funds Act for Arbitration or not. The question also arises for consideration of this Court is whether statement of claim filed by the respondent for recovery of the amount under the said letter of guarantee was arising out of dispute touching the management of chit business and was between the parties described in Section 64 (1)(a) and (b) read with the explanation to the said provision or not.

29. A plain reading of Section 64 clearly indicates that Sub-section (1) of Section 64 provides for non obstante provision i.e. notwithstanding anything contained in any other law for the time being in force, any dispute touching the management of 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 parties mentioned in Section 64(1)(a) and (b). The expression "any dispute touching the management of chit business" is explained in the explanation to the said Section 64(1). Section 64(1)(b) clearly refers to a surety of a subscriber, past subscriber or a deceased subscriber. It is thus clear beyond reasonable doubt that even if the said Harish Pujary was considered as past subscriber, surety of such past subscriber or a foreman or vice-versa could be referred only to the Registrar for arbitration.

33. In my view, dispute between the petitioner and the respondent was relating to chit business between a surety of a subscriber and a foreman. Even if the petitioner would be considered as a surety of past subscriber i.e. Harish Pujary, it would still fall under Section 64(1) (b) of the said Chit Funds Act and thus such dispute arising out of and relating to chit business could be referred only to the Registrar for Arbitration by the respondent and not to the learned arbitrator by invoking clause 6 of the alleged Agreement of Guarantee.

34. In my view, statement of claim filed by the respondent against the petitioner before the learned arbitrator for resolution of the dispute arising out of chit business was a dispute touching the management of the chit business and thus this condition also was fully attracted to the facts of this case. Filing a claim for recovery of alleged dues under a Chit under a Chit Funds Act by a foreman amounts to a dispute touching the management of chit business.

37. A conjoint reading of the aforesaid provisions clearly indicates that the said Chit Funds Act, 1982 is a self-contained Code. The provisions of the Arbitration and Conciliation Act, 1996 thus would not apply to the disputes relating to the chit business. Under Sub-section (3) of Section 64 of the said Chit Funds Act, a Civil Court is barred from entertaining any suit or other proceedings in respect of any dispute referred in Sub-section (1) of Section 64 of the said Chit Funds Act. This provision also clearly indicates that if a Civil Court is barred from entertaining any suit or other proceedings, arbitral proceedings initiated by the respondent for recovery of the amount arising out of disputes relating to chit business touching the management of chit business also cannot be entertained. Such disputes could be referred only to the Registrar for Arbitration provided in Section 64 of the said Chit Funds Act. The judgment of the Madras High Court in the case of Vimala(supra) relied upon by Mr.Purohit, learned counsel for the petitioner would assist the case of the petitioner.

38. A perusal of the findings rendered by the learned arbitrator on the issue of jurisdiction clearly indicates that the same are totally contrary to the plain reading of Section 64 of the said Chit Funds Act read with Section 3 thereof read with definition of “foreman” under Section 2(j) and definition of “subscriber” under Section 2(r). The findings rendered by the learned arbitrator being perverse thus deserves to be interfered with. In my view, learned arbitrator has clearly acted beyond the jurisdiction in entertaining the claims made by the respondent and allowing the said claims. Even if the petitioner had allegedly entered into any such Agreement of Guarantee with the respondent, such Agreement of Guarantee recording arbitration agreement was contrary to Sub-section (1) of Section 64 read with Section 3 of the said Chit Funds Act.

39. In my view, the exclusive remedy of the arbitration before the Registrar under Section 64 of the said Chit Funds Act being statutory arbitration can not be varied by an agreement of parties by referring the dispute to private arbitral forum contrary to Section 3 of the said Chit Funds Act. Such agreement even if entered into between the petitioner and the respondent recording an arbitration agreement and substituting the remedy under Section 64 by private arbitration is inconsistent and contrary to the said provision and thus could not be acted upon. The decision of the learned arbitrator on this issue itself is totally perverse and is in conflict with the public policy.

6 In the circumstances, when petitioner has been described in the statement of claim as member / subscriber etc., this judgment in Malvika Chits (supra) will squarely apply. Therefore, in my view, the conclusions arrived at by the Learned Arbitrator in the application under Section 16 of

the Act filed by petitioner has to be interfered with.

7 The award is set aside. It is open to respondent to take such steps as advised in accordance with law.

8 Petition accordingly stands disposed.

(K.R. SHRIRAM, J.)