IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.18898 OF 2014

Mr.E.Chandrasekar ... Petitioner

.Vs.

1. Sriram Chits Tamilnadu (P) Ltd.,
   Reptd by its Foreman
   No.1, Anna Pillai Street,
   1st Floor, Kothawal Bazzar,
   Chennai - 600 001.

2. The Secretary to Government of Tamil Nadu,
   Commercial Taxes & Registration (G) Department,
   Fort St.George,
   Chennai - 600 009.

3. The Arbitrator,
   Chennai North & South,
   Madras District Registrar of Chit Funds Cases,
   No.26, Rajaji Salai (First line Beach),
   Chennai - 600 001.

... Respondents

PRAYER:-

Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent dated 17.6.2013 made in G.O.(D) No.309 and quash the same and consequentially direct the 2nd respondent to entertain an Appeal against the Exparte Order dated 21.4.2009 made in ARC No.1046 of 2008 on the file of the third respondent.

For Petitioner : Mr.P.Prakash Paul

For Respondents : Mr.C.Jayaprakash
Government Advocate
[For R1 and R2]

Mr.M.Devendran [For R3]

ORDER

The order passed by the second respondent in G.O.(D).No.309 dated 17.06.2013 is under challenge in the present writ petition.

2. The petitioner subscribe in the first respondent/Sriram Chits Tamilnadu (P) Limited. The chit amount was a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only). The petitioner admits that due to certain developments, he has not paid the monthly installments. The first respondent initiated arbitration proceedings in A.R.C.No.1046/2008. Exparte award has been passed against the writ petitioner.

3. The grievance of the writ petitioner is that no proper notice was sent by the third respondent in A.R.C Proceedings. The writ petitioner preferred an appeal under Section 70 of the Chit Funds Act, 1982. The Government considered the appeal on merits and made a finding that the Arbitrator passed an order in A.R.C.No.1046/2008 on 21.04.2009 and however, the appeal itself has been filed only on 23.04.2013 with a delay of 3 years 10 months and 3 days. Under the provisions of the Act, 2 months time limit is prescribed. However, the Appellate authority, Secretary to Government, Commercial Taxes and Registration Department, decided to give an opportunity to the petitioner and it was decided to conduct an inquiry on 05.06.2013 at 04.30 p.m. regarding the petition filed for condonation of delay in filing the appeal and the same was communicated to the petitioner on 15.05.2013. But, the notice was returned. The postal authority has stated that the petitioner is "always not found". On the day of enquiry, the petitioner or his counsel did not appear before the Appellate authority. Thus, the Appellate authority perused the original records of the chit Arbitrator and found that the notice was sent to the petitioners. However, the petitioner had not appeared before the Arbitrator. The notice was returned by the postal authorities, stating that he has left. Thereafter, paper publication was made in "Maalai Chudar" on 15.11.2008. The petitioner was served notice properly by the Chit Arbitrator and was well aware of the proceedings. The petitioner has not furnished adequate reason to condone the huge delay of 3 years 10 months and 3 days in filing the appeal. Thus, the appellate authority rejected the appeal on the ground of delay.

4. The counter filed by the second respondent/Secretary to Government of Tamil Nadu, Commercial Taxes and Registration (G) Department, reveals that the exparte award was passed, after taking sincere effort by the third respondent to serve the summon. The third respondent has given six hearing dates i.e., 13.11.2008, 11.12.2008, 21.01.2009, 11.02.2009, 17.03.2009 and 21.04.2009 to the petitioner to contest the case. On perusal of

the documents, it is found that private notice was sent by the third respondent.

5. This being the factum established, the petitioner was not diligent in pursuing the proceedings before the Arbitrator and filed an appeal before the Appellate authority under Section 70 of the Act after a delay of 3 years, 10 months and 3 days. In the event of considering such a long delay after this length of time, the lapse of the other side would be prejudiced.

6. This being the factum, this Court is of an opinion that no further consideration is required and accordingly, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kak

To

1. The Secretary to Government of Tamil Nadu,
Commercial Taxes & Registration (G) Department,
Fort St.George,
Chennai - 600 009.

2. The Arbitrator,
Chennai North & South,
Madras District Registrar of Chit Funds Cases,
No.26, Rajaji Salai (First line Beach),
Chennai - 600 001.

+1cc to Mr.M.Devendran, Advocate, S.R.No.57820
+1cc to the Government Pleader, S.R.No.57898

W.P.NO.18898 OF 2014

AD(CO)
PBS/26/11/2021