



W.P. Nos.20714, 20872 and 20873 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P. Nos.20714, 20872 and 20873 of 2013 and
M.P. Nos.1, 1 & 1 and 2, 2 & 2 of 2013

1.S.Veni

2.V.Sunder Raj ... Petitioners in W.P. No.20714 of 2013

1.P.Chandra

2.G.Ramaraj ... Petitioners in W.P. No.20872 of 2013

1.Sumeetha Novelties,
rep. by its Proprietrix
P.P.Vijayakumari

2.P.P.Vijayakumari

3.V.Thilothaman ... Petitioners in W.P. No.20873 of 2013

Vs.

1.The Government of Tamil Nadu,
rep. by its Secretary to Government,
Commercial Taxes and
Registration (G) Department,
Secretariat, Chennai-600 009.



W.P. Nos.20714, 20872 and 20873 of 2013

2.The Chit Arbitrator,
District Registrar Office,
Coimbatore.

3.Sowdambika Finance Chits (P) Ltd.,
rep. by its Managing Director S.Manoharan,
No.113, Oppanakkara Street,
Coimbatore 641 001.

... Respondents

(R3 cause title amended vide order dated 13.06.2022 & 22.09.2022
made in W.M.P. Nos.25711 , 25712 & 25713 of 2018 in W.P. Nos.
20714, 20872 & 20873 of 2013 by MDIJ and NSKJ respectively.)

Prayer in all the cases: Writ petitions filed under Article 226 of the
Constitution of India, seeking a writ of Certiorari to call for the records
pertaining to the impugned order passed by the first respondent in G.O.
(D) Nos.308, 273 & 306 dated 17.06.2013 and 03.06.2013 respectively
confirming the order passed by the second respondent in I.A. Nos.16, 5
& 10 of 2010 in ARC Nos.16, 5 & 10 of 2010 respectively dated
15.09.2010 and quash the same.

For Petitioners in all W.Ps : Mr.A.E.Ravichandran

For Respondents in all W.Ps : Mr.E.Vijay Anand,
Special Government Pleader
for R1 and R2

Mr.S.Mukunth for
M/s.Sarvabhauman Associates for R3



W.P. Nos.20714, 20872 and 20873 of 2013

COMMON ORDER

WEB COPY

The Writ Petitions have been filed by the petitioners, challenging the impugned G.O. (D) Nos.308, 273 & 306 dated 17.06.2013 and 03.06.2013 respectively issued by the first respondent, confirming the order passed by the second respondent in I.A. Nos.16, 5 & 10 of 2010 in ARC Nos.16, 5 & 10 of 2010 respectively dated 15.09.2010.

2.The brief facts leading to the filing of the writ petitions are as follows:

The writ petitioners have joined the Chit Group Nos.1130 and 2784 under Chit Agreement Nos.36/98 and 284/97 respectively, registered in the office of the Joint Registrar of Chits, Coimbatore and the face value of the chit is Rs.1,00,000/- and the monthly subscription is Rs.2,000/-. As the writ petitioners and some of the subscribers have not paid the entire instalment amount, the third respondent Chit Company got into financial constraints from the year 2000 onwards. Therefore, based on the complaints lodged by some of the depositors, the Economic Offences Wing, Coimbatore filed Criminal Cases bearing Nos.7 to 11 of



W.P. Nos.20714, 20872 and 20873 of 2013

WEB COPY

2001 and 10 of 2002 before the TNPID Court, Coimbatore against the Management for non payment of deposits. Based upon the above complaints, the Government of Tamil Nadu issued G.O. Nos.182, 369 & 880 of 2002 and 569 of 2003, wherein the properties and bank accounts of the Management were attached. Thereafter, as per direction issued by this Court vide Crl.OP. Nos.23546 to 23551 of 2003, Mr.A.S.Muthusamy, District and Sessions Judge (retired) was appointed as an Interim Administrator to manage the affairs of the third respondent company and also to recover the dues to the Company. Pursuant to the said order, Mr.A.S.Muthusamy, as an Interim Administrator disbursed a sum of Rs.1,33,39,587/- for chit holders and thereafter, based on the subsequent order, Ms.R.Mala, then Registrar Vigilance, who took charge as the Interim Administrator, disbursed a sum of Rs.1,00,55,310/- to the fixed deposit holders. Subsequently, Mr.G.Chokalingam, Principal District Judge, Coimbatore, who was appointed as an Interim Administrator, disbursed a sum of Rs.13,93,32,057/- to the depositors. Based on the order dated 15.07.2008 passed by this Court, the present Administrator,



W.P. Nos.20714, 20872 and 20873 of 2013

WEB COPY

Mr. C.Franco Louis was appointed and entrusted with the task of recovering a sum of Rs.18,27,14,020/-, which remains outstanding from various parties advanced by the Company, including the writ petitioners. Based upon the notices issued by him, some of the defaulters have made payment and settled their accounts. As the writ petitioners have not made payment towards the dues, Mr. C.Franco Louis, the present Administrator has filed Applications in ARC Nos.16, 5 & 10 of 2010 along with I.A. Nos.16, 5 & 10 of 2010 in ARC Nos.16, 5 & 10 of 2010 for recovery of chit amount balance and for condonation of delay of 1802, 1450 and 2053 days in filing the ARC Nos.16, 5 & 10 of 2010 respectively before the Chit Arbitrator, Deputy Registrar Office/the second respondent herein. The learned Chit Arbitrator, after considering the facts and circumstances of the entire case and the claim and counter claim made by both sides, has allowed the above Interim Applications stating that the reasons assigned for condoning the delay have been properly explained. Challenging the same, when the writ petitioners filed Appeals before the Government of Tamil Nadu, confirming the order passed by the second



W.P. Nos.20714, 20872 and 20873 of 2013

respondent, the first respondent herein, dismissed the Appeals filed by the writ petitioners holding that the appeals cannot be entertained at the juncture, since only an interim order has been passed. Challenging the same, the writ petitioners filed W.P. Nos.1426, 1390 and 1402 of 2011 before this Court and this Court by Order dated 11.10.2012, while allowing the writ petitions, has directed the first respondent to consider the issue once again, on merits and set aside the impugned orders passed by the first respondent. Thereafter, the first respondent passed the above Government Orders in G.O. Nos.308, 273 and 306 dated 17.06.2013 and 03.06.2013 respectively, confirming the order passed by the second respondent Arbitrator of Chits, Coimbatore in I.A. Nos.16, 5 and 10 of 2010 in ARC. Nos.16, 5 and 10 of 2010 dated 15.09.2010, condoning the delay, admitting the case filed by the third respondent and rejecting the appeals filed by the writ petitioners. Challenging the above Government Orders passed by the first respondent, the writ petitioners are before this Court.

3.The learned counsel for the petitioners would submit that there



W.P. Nos.20714, 20872 and 20873 of 2013

were no sufficient reasons for condoning such huge delay. When Mr.A.S.Muthusamy, District and Sessions Judge (retired) was appointed as first Interim Administrator to manage the affairs of the third respondent company and also to recover the dues to the Company, he had issued notices under Section 33 of the Chit Funds Act, which prescribes Foreman to demand future subscriptions by written notice. Thereafter, Ms.R.Mala, then Registrar Vigilance and Mr.G.Chokalingam, Principal District Judge, Coimbatore were appointed as Interim Administrators. Subsequently, the present Administrator, Mr. C.Franco Louis, who was appointed as fourth Administrator on 15.07.2008, again issued notices under Section 33 of Chit Funds Act and filed Applications in ARC Nos.16, 5 & 10 of 2010 along with I.A. Nos.16, 5 & 10 of 2010 in ARC Nos.16, 5 & 10 of 2010 seeking for recovery of chit amount balance and for condonation of delay of 1802, 1450 and 2053 days in filing the ARC Nos.16, 5 & 10 of 2010 respectively before the Chit Arbitrator, Deputy Registrar Office/the second respondent herein. As he has not taken steps to file a claim petition within a period of three years as contemplated



W.P. Nos.20714, 20872 and 20873 of 2013

under Section 65 of the Chit Funds Act, the delay applications could not be condoned by the Deputy Registrar of Chits, Coimbatore. Though the Deputy Registrar has exercised his power under Section 65 Sub Clause 3 of the Chit Funds Act, 1982, such power has not been exercised judiciously and the same has been exercised against the public policy. When the limitation itself is for the period of three years, the claim beyond the period is not sustainable in law. It is the further contention of the learned counsel for the petitioners that several Advocates have also been appointed in these matters, but they have not diligently filed Applications to secure the interest of the company. Therefore, such a delay cannot be condoned. In support of his contention, learned counsel for the petitioners, referring to judgments of the Hon'ble Apex Court reported in 2012 (5) SCC 157 in the case of Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai in Civil Appeal Nos.2970-71 of 2012 dated 09.04.2012 and this Court reported in CDJ 2010 MHC 4861 in the case of Shri Nithya Kalyani Chit Funds (P) Limited, Madurai vs. Government of Tamil Nadu in W.A. No.1927 of 2001 dated



W.P. Nos.20714, 20872 and 20873 of 2013

03.08.2010, submitted that law of limitation may harshly affect a particular party, but it has to be applied with all its rigour, when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.

4.Learned counsel for the third respondent submitted that the learned Deputy Registrar has considered all the circumstances applied to the case and taken note of the fact that the original Foreman has been prosecuted under the Tamil Nadu Protection of Interest of Depositors Act and all the bank accounts and properties have been attached and all the Administrators appointed by this Court. Therefore, the delay has been condoned by exercising the jurisdiction properly. Hence, he prays for dismissal.

5.Heard the learned counsel appearing on either side and perused the entire materials available on record.

6.It could be seen from records that as the third respondent



W.P. Nos.20714, 20872 and 20873 of 2013

WEB COPY

company started delaying the repayment of deposit, the depositors lodged complaints before the Economic Offences Wing, Coimbatore for non payment of their deposits. Therefore, the Economic Offences Wing, Coimbatore, in turn, filed Criminal Cases bearing Nos.7 to 11 of 2001 and 10 of 2002 before the TNPID Court, Coimbatore against the Management for offence punishable under Sections 409 and 420 of IPC and Section 5 of TNPID Act for non payment of deposits even after the maturity date. Based upon the complaints received from the Depositors, the Government of Tamil Nadu had issued G.O. Nos.182, 369 and 880 of 2002 and 569 of 2003, wherein the properties and Bank accounts of the Management have been attached.

7.It is relevant to note that three Administrators, namely, Mr.A.S.Muthusamy, District and Sessions Judge (retired), Ms.R.Mala, then Registrar Vigilance and Mr.G.Chokalingam, Principal District Judge, Coimbatore were appointed by this Court as Interim Administrators to manage the affairs of the third respondent company



W.P. Nos.20714, 20872 and 20873 of 2013

and also to recover the dues to the Company. Pursuant to the same, they have disbursed the sum of Rs.1,33,39,587/- Rs.1,00,55,310/- and Rs.13,93,32,057/- respectively to chit holders and depositors. Based on the direction issued by this Court in W.A. No.800 of 2006 and W.P. Nos.4590, 5105 and 5146 of 2005, the present Administrator Mr. C.Franco Louis, was appointed on 15.07.2008 and entrusted with the task of recovering a sum of Rs.18,27,14,020/- from various parties advanced by the Company including the writ petitioners.

8.It could be seen that only based on such directions issued by this Court, the above Administrators have been appointed. Immediately after his appointment, the present Administrator Mr. C.Franco Louis issued notices and proceeded to recover the dues payable by the various subscribers to the company. In the meanwhile, he had filed Applications in ARC Nos.16, 5 & 10 of 2010 along with I.A. Nos.16, 5 & 10 of 2010 in ARC Nos.16, 5 & 10 of 2010 for recovery of the chit balance amount and for condonation of delay of 1802, 1450 and 2053 days in filing the



W.P. Nos.20714, 20872 and 20873 of 2013

ARC Nos.16, 5 & 10 of 2010 respectively before the Chit Arbitrator, Deputy Registrar Office/the second respondent herein stating that as three Administrators have also made an attempt to recover various payments and deposits and also distributed amount to the depositors, the delay were occurred.

9.It is admitted that Administrators were appointed only for the sake of interest of the depositors, who have lost their money in the company, which has been admittedly prosecuted under the Tamil Nadu Protection of Interest of the Depositors Act. When the company was prosecuted and assets have been attached and various Administrators also have been appointed to distribute the debts to various depositors, the delay of such acts is bound to be happened only to recover the money payable to the company. Therefore, it cannot be said that the Company has to act promptly to take steps to recover the dues payable to the company and that the delay in filing the Applications have to be rejected in toto. What is sufficient cause, has to be seen only based on the facts



W.P. Nos.20714, 20872 and 20873 of 2013

and circumstances of each case. In order to advance the substantial justice, normally, the Court will lean towards the party to recover the money. Therefore, the Deputy Registrar has taken note of all the circumstances and adopted liberal approach in condoning the delay.

10.Though the above judgments of the Hon'ble Apex Court and this Court have been cited by the learned counsel for the petitioners, the same are not applicable to the facts and circumstances of these cases, in which, the delay has been properly explained. Considering the various circumstances and the manner in which the Company was prosecuted and various other Administrators have been appointed, this Court is of the view that the judgment of the Apex Court cannot be applicable to the facts of the present cases.

11.In this regard, it is relevant to extract Section 65 of the Chit Funds Act as under:

'65.Period limitation (1)Notwithstanding anything contained in the Limitation Act, 1963(36 of 1963), but subject to the



W.P. Nos.20714, 20872 and 20873 of 2013

specific provisions contained in this Act, the period of limitation in the case of a dispute referred to the Registrar under Section 64, shall -

(a)if the dispute relates to the recovery of any sum, including interest thereon, due to a foreman from a deceased subscriber, be three years, computed from the date on which such subscriber dies or ceases to be a subscriber, or

(b)if the dispute is between a foreman and a subscriber or a past subscriber, or the nominee, heir or legal representative of a deceased subscriber and the dispute relates to any act or omission on the part of either party to the dispute, be three years from the date on which the act or omission with reference to which the dispute arose, took place.

(2)the period of limitation in the case of any dispute other than those referred to in sub-section (1)which are required to be referred to the Registrar under Section 64 shall be regulated by the provisions of the Limitation Act, 1963 (36 of 1963), as if the dispute were a suit and the Registrar, a Civil Court.

(3)Notwithstanding anything contained in sub-section (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



W.P. Nos.20714, 20872 and 20873 of 2013

WEB COPY

referring the dispute within such period.'

12.A perusal of Section 65 sub clause 3 would show that 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, notwithstanding contained in sub-sections (1) and (2) of Section 65 of the above Act. As the above special clause prevails and gives the power to the Registrar to admit a dispute after the expiry of the period of limitation and the applicant has shown the sufficient cause, the second respondent has exercised his power judiciously and the same has been confirmed by the first respondent. Therefore, this Court does not find any infirmity in the orders of the Deputy Registrar of Chits, Coimbatore and the Appellate Authority.



WEB COPY



W.P. Nos.20714, 20872 and 20873 of 2013

N.SATHISH KUMAR,J.

vga

13.Let the Deputy Registrar of Chits, Coimbatore shall entertain the claim, decide the dispute and award interest, taking into consideration the facts and circumstances of each case. The Registrar, take into consideration of the delay, may hold that the interest cannot be applicable for the delayed period.

14.With the above observation, these writ petitions are dismissed
Consequently, connected M.Ps are closed. No costs.

29.09.2022

Index: Yes/No

Speaking order/Non speaking order

vga

To

- 1.The Government of Tamil Nadu,
rep. by its Secretary to Government,
Commercial Taxes and Registration (G) Department,
Secretariat, Chennai-600 009.
- 2.The Chit Arbitrator,
District Registrar Office,
Coimbatore.

W.P. Nos.20714, 20872 and 20873 of 2013 and
M.P. Nos.1, 1 & 1 and 2, 2 & 2 of 2013