



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.27377 OF 2013

AND

M.P.NOS.1 AND 2 OF 2013

1. D.Horlicks
2. H.Divya
3. C.Chellappan

... Petitioners

Vs.

1. The Secretary to Government,
Commercial Tax and Registration Department,
Secretariat, Chennai - 600 009.
2. The Deputy Registrar of Chits,
District Registrar's Office,
Salem West.
3. Margadarsi Chits Private Limited,
7/54, 3rd Floor,
Ideal Garden Complex,
Five Roads, Salem - 636 004.

... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the order vide G.O.(D) No.520, dated 27.11.2012 issued by the first respondent and to quash the same.

For Petitioner	:	M/s.Dalit Tiger C.Ponnusamy
For Respondent Nos.1 & 2	:	M/s.Murugan Raja Government Advocate
For Respondent No.3	:	M/s.D.Shivakumaran



O R D E R

The present Writ Petition has been filed for the issuance of a Writ of Certiorari, to call for the records pertaining to the order vide G.O.(D) No.520, dated 27.11.2012 issued by the first respondent and to quash the same.

2. The petitioner joined as a Subscriber in a Chit Group run by the third respondent on 22.06.2004. The bid value was Rs.15,00,000/- and monthly installment was Rs.50,000/- and duration of the Chit was 30 months. During the 8th auction, the first petitioner became a successful bidder and prize money was Rs.10,50,000/-. The second and third petitioners stood as sureties for payment of future installments. On 15.03.2005, the petitioner received a sum of Rs.5,11,575/- as prize money and invested the balance sum of Rs.5,00,000/- in a Fixed Deposit with the third respondent. The petitioner claims that the payment of Rs.5,00,000/-, which was invested in the Fixed Deposit also stands in his name. Since it was not paid, he lodged a police complaint and the same is still pending. Thereafter, the petitioner has not remitted any installment and it appears that the third respondent raised an arbitration before the second respondent - Registrar of Chits. Before the second respondent, the petitioner as well as the sureties appeared on all hearings and after conducting enquiry, an Award came to be passed on 11.03.2008. However, the petitioner filed a copy application on 10.05.2010 and it was made ready for him on 14.05.2010 and he filed an appeal on 21.06.2011. Between 11.03.2008 and 21.06.2011, there occurred a delay of 1198 days. He filed an appeal and it was rejected on the ground of delay. Therefore, he approached this Court by way of a Writ Petition in W.P.No.21314 of 2011. This Court, considering violation of principles of natural justice, set aside the order passed in appeal and directed the first respondent to consider him after affording an opportunity to the petitioner by order dated 16.09.2011. Thereafter, the parties were represented through counsel before the first respondent and by order dated 18.02.2013, the appeal filed by the petitioner was rejected. Challenging the same, the petitioner is before this Court.

3. Mr.Dalit Tiger C.Ponnusamy, learned counsel for the petitioner would vehemently contend that the total prize money was Rs.10,50,000/- and the amount paid to the first petitioner was Rs.5,11,575/- and remaining Rs.5,00,000/- was withheld by the third respondent, which amounts to cheating. Therefore, he filed a complaint before the Deputy Superintendent of Police, Salem. Since the third respondent cheated the first petitioner, he refused to pay the future installments. The first petitioner is an innocent person. The third respondent has cheated him and



therefore, the appellate authority should have considered the issue and condoned the delay. He specifically stated that due to his financial position and health condition, he could not file the appeal in time and these reasons should have been accepted and the delay should have been condoned. Therefore, the order passed by the first respondent appellate authority is liable to be set aside.

4. Resisting the submissions, Mr.D.Shivakumaran, learned counsel appearing for the third respondent / Chit Company would contend that the first petitioner has joined the Chit as Subscriber through an application dated 22.06.2004 and has signed the Chit Agreement, which contained all the details of terms and conditions of the Chit. According to him, the monthly installment was Rs.50,000/- and total number of installments was 30 and every Subscriber shall pay till the end. Whereas, the petitioner has not paid after having become the successful bidder in the 8th auction . As per Clause (2) of the Chit Agreement, if the future liability exceeds Rs.3,00,000/-, he shall furnish a security in the form of mortgage of immovable urban property, the value of which should exceed by one and half times of the amount due from the Prized Subscriber. Since the petitioner could not give the surety, he invested a sum of Rs.5,00,000/- by way of Fixed Deposit on 11.03.2005. After having deposited the money by following proper procedures, the complaint made by the first petitioner is illegal and amounts to suppression of material facts.

5. He would also draw the attention of this Court to the Chit Agreement as well as promissory note dated 15.03.2005 signed by all the three petitioners as Subscriber and Sureties. He would also contend that the second respondent has considered all the aspects and passed a detailed Award and after the direction issued by this Court to provide an ample opportunity, the appellate authority also considered all the 12 grounds raised by the first petitioner and passed the detailed order both on merits as well as on the point of condonation of delay. Therefore, according to him, the order need not be interfered with.

6. I heard the submissions made by the learned counsel appearing on either side.

7. Admittedly, the first petitioner joined the Chit run by the third respondent as Subscriber on 22.06.2004. It is not in dispute that he has also signed in the Chit Agreement on the same day. He also paid 11 installments without default and became a successful bidder in the 8th auction conducted by the third respondent. He was paid a sum of Rs.5,11,575/- and instead



of giving security of immovable urban property, he invested the balance sum of Rs.5,00,000/- in the Fixed Deposit with the third respondent. Thereafter, it is also admitted that the first petitioner has not paid the future installments, having grievance that the money invested in the Fixed Deposit was not given to him. He made a police complaint in this regard. Therefore, the third respondent raised an arbitration before the second respondent / Deputy Registrar of Chits against the petitioner and the other sureties.

8. From the order of the appellate authority, it could be noted that the second respondent conducted hearings on 09.04.2007, 11.06.2007, 16.07.2001, 20.08.2007, 17.09.2007, 29.10.2007, 26.11.2007, 14.01.2008, 11.02.2008 and 11.03.2008. On all hearings, all the parties viz., all the three petitioners and the Foreman of the third respondent / Chit Company were all present and that the petitioners have submitted their written arguments before the Arbitrator. After affording fullest opportunity and after considering the written statement, an Award came to be passed on merits.

9. The crucial issue, which has to be decided by this Court is as to whether the order passed by the appellate authority rejecting the request to condone the delay of 1198 days in filing an appeal is correct or not? Admittedly, the Award was passed on 11.03.2008 and the petitioner made a copy application on 10.05.2010 that is almost after period of two years. It was made ready for him on 14.05.2010. Had he filed within a period of 60 days from the date of receipt of the Award passed, the authority might have considered the issue favourably. But, the appeal was filed only on 21.06.2001 that is to say after a period of one year. It was taken on file on 23.06.2011. As directed by this Court in W.P.No.21314 of 2011, dated 22.11.2001, the petitioner was given an opportunity by the appellate authority and they were represented by the counsel engaged by them. The reasons stated by the appellant in his affidavit filed in support of condone delay petition was that due to his financial position and his health reasons, he was not able to file an appeal immediately and it was also due to inadvertence and therefore, it should be considered. Absolutely, there is no explanation for day-to-day delay, much less, as to why there was delay between the date of the Award viz., 11.03.2008 and filing of the copy application on 10.05.2010.

10. It is also required to be noted that after receiving the copy of the Award on 14.05.2010, the petitioner has not filed the appeal within a period of 60 days. But, it was filed only after a period of one year and one month. This delay also was not at all explained. Even on the merits of the case,



admittedly, the petitioner has committed default after he became a successful bidder in the 8th auction held on 23.02.2005. The second and third petitioners stood as sureties for payment of the prize money as well as the future installments. Once the first petitioner admits that he has not remitted any future installment, it goes without saying that he committed default and that he is liable to pay the money, which involves the subscription of other 30 members. After the issuance of the legal notice under Section 33 of the Chit Funds Act, having acknowledged the same and after having appeared before the Arbitrator in all the hearings, he does not have any legal grounds for challenging the Award. In fact, he has not raised any substantial legal ground on merits of the case. Therefore, I do not find any reason for condoning the delay of 1198 days in filing the appeal and also on merits.

In such circumstances, the Writ Petition merits no consideration and accordingly, the same is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Commercial Tax and Registration Department,
Secretariat, Chennai - 600 009.
2. The Deputy Registrar of Chits,
District Registrar's Office,
Salem West.

+1cc to M/s.D.Shivakumaran, Advocate, S.R.No.15391
+1cc to the Government Pleader, S.R.No.16296

W.P.No.27377 of 2013
and M.P.Nos.1 and 2 of 2013

AJS (CO)
RLP (30/03/2022)