



W.P.No.20157 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	30.09.2022
Pronounced On	04.11.2022

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.20157 of 2016

and

W.M.P.No.17342 of 2016

A.Ramaiah

... Petitioner

Vs.

1. The Principal Secretary to Government,
Commercial Taxes and Registration (G) Dept,
Fort St.George,
Chennai – 600 009.
2. The Arbitrator for Central Madras Chit Fund Cases,
No.26, Rajaji Salai,
Chennai – 600 001.
3. M/s.Sree Gokulam Chit & Finance Company (P) Ltd.,
No.49, Arcot Road, Kodambakkam,
Chennai – 24.
4. B.Jayakumar

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records in G.O.(D).No.121 passed by the Principal Secretary to Government, first respondent herein on 13.04.2016 and quash the same as illegal.



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For Petitioner : Mr.S.Kadarkarai
For Respondents
For R1 : Mr.E.Sundaram
Government Advocate
For R2 to R4 : No Appearance

ORDER

The petitioner has challenged the impugned order dated 13.04.2016 passed by the first respondent vide G.O.(D).No.121, Commercial Taxes and Registration (G) Department, dated 13.04.2016, dismissing the appeal filed by the petitioner under Section 70 of the Chit Funds Act, 1982 against the award passed by the second respondent, the Arbitrator for Central Madras Chit Fund Cases on 24.03.2014 in ARC.No.107 of 2013.

2. The undisputed facts of the case is that the fourth respondent had subscribed to a chit with the third respondent chit company and that the fourth respondent had bid the chit amount and had taken a sum of Rs.3,50,000/- in advance. In connection with the amounts disbursed by the third respondent to the fourth respondent, the petitioner stood as a guarantor for the fourth respondent. It appears that upto a point, the



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fourth respondent had repaid the monthly chit subscription amount to the third respondent. Thereafter, he failed to pay the amount. Under these circumstances, proceedings were initiated by the third respondent in ARC.No.107 of 2013 before the second respondent, wherein the fourth respondent and the petitioner were arrayed as first and second respondents.

3. It is the specific case of the petitioner that the petitioner was not served with notice and therefore, he was unaware of the arbitration proceedings pending before the second respondent in ARC.No.107 of 2013. It is further case of the petitioner that the attachment made before judgment of his property, measuring an extent of 3936 sq.ft. in Periyakulam District, was without notice to the petitioner and that he was not aware of the same. It is further submitted that only when the petitioner approached the jurisdictional Sub Registrar, for getting encumbrance certificates to mortgage his property for obtaining loans, the petitioner became aware of the fact that the property was attached and an award came to be passed by the second respondent in ARC.No.107 of 2013 dated 24.03.2014. It is submitted that thereafter, the petitioner



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procured a copy of the award passed by the second respondent on 24.03.2014 in ARC.No.107 of 2013 and filed a petition under Section 70 of the Chit Funds Act, 1982, before the first respondent.

4. It is submitted that the first respondent has committed a grave error in dismissing the appeal filed by the petitioner under Section 70 of the Chit Funds Act, 1982. It is submitted that limitation for filing an appeal would commence from the date of communication of the award. It is submitted that neither the award nor the order attaching the petitioner's property was served on the petitioner. It is further submitted that, in fact, initiation of the proceedings before the second respondent by the third respondent in ARC.No.107 of 2013 was not intimated to the petitioner. That apart, it is submitted that as per the award, a sum of Rs.1,13,710/- was due from the fourth respondent and that the aforesaid amount consisted of Rs.1,24,220/- towards principal and Rs.89,416/- towards interest and that the fourth respondent has also paid the principal component on 20.12.2013 and 26.12.2013 in three installments of Rs.1,14,000/-, Rs.10,000/- and Rs.250/- in all Rs.1,24,250/-.



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5. It is submitted that the proceedings both before the first respondent as well as the second respondent are irregular. Therefore, it is liable to be quashed. It is prayed that the case may be remitted back to the first respondent to consider the petitioner's plea on merits.

6. There is no representation on behalf of the private respondents 3 and 4. Learned counsel for the respondents 1 and 2 stoutly defend the impugned order of the first respondent. It is submitted that the impugned order itself records the dates on which, the proceedings were fixed for being heard before the second respondent in ARC.No.107 of 2013. It is submitted that the award came to be passed by the second respondent after a paper publication effected by the third respondent on 14.03.2014 in "Malai Sudar" and therefore, it is not open for the petitioner to state that the petitioner was not aware of the proceedings before the second respondent.

7. Learned Counsel for the official respondents further relied on the decision of the Hon'ble Supreme Court in ***Benarsi Krishna Committee***



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and Others Vs. Karmyogi Shelters Private Limited, (2012) 9 SCC 496.

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8. By way of rejoinder, the learned counsel for the petitioner has relied on the very same decision of the Hon'ble Supreme Court and submits that the order passed by the first respondent rejecting the appeal under Section 70 of the Chit Funds Act, 1982, was liable to be interfered with. In this connection, a reference was made to Paragraph 15 and 16, which reads as follows:-

"15. Having taken note of the submissions advanced on behalf of the respective parties and having particular regard to the expression "party" as defined in Section 2(1)(h) of the 1996 Act read with the provisions of Sections 31(5) and 34(3) of the 1996 Act, we are not inclined to interfere with the decision of the Division Bench of the Delhi High Court impugned in these proceedings. The expression "party" has been amply dealt with in Tecco Trichy Engineers case and also in ARK Builders (P) Ltd. case, referred to hereinabove. It is one thing for an advocate to act and plead on behalf of a party in a proceeding and it is another for an advocate to act as the party himself. The expression "party", as defined in Section 2(1)(h) of the 1996 Act, clearly indicates a person who is a party to an arbitration agreement. The said definition is not qualified in any way so as to include the agent of the party to such agreement. Any



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reference, therefore, made in Section 31(5) and Section 34(2) of the 1996 Act can only mean the party himself and not his or her agent, or advocate empowered to act on the basis himself and not his or her agent, or advocate empowered to act on the basis of a vakalatnama. In such circumstances, proper compliance with Section 31(5) would mean delivery of a signed copy of the arbitral award on the party himself and not on his advocate, which gives the party concerned the right to proceed under Section 34(3) of the aforesaid Act.

16. The view taken in Pushpa Devi Bhagat case is in relation to the authority given to an advocate to act on behalf of a party to a proceeding in the proceedings itself, which cannot stand satisfied where a provision such as Section 31(5) of the 1996 Act is concerned. The said provision clearly indicates that a signed copy of the award has to be delivered to the party. Accordingly, when a copy of the signed award is not delivered to the party himself, it would not amount to compliance with the provisions of Section 31(5) of the Act. The other decision cited by Mr.Ranjit Kumar in Nilkantha Sidramappa Ningashetti case was rendered under the provisions of the Arbitration Act, 1940, which did not have a provision similar to the provisions of Section 31(5) of the 1996 Act. The said decision would, therefore, not be applicable to the facts of this case also."



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9. Learned Counsel for the petitioner submits that one opportunity may be given to the petitioner to met out his grievances either before the second respondent or before the first respondent.

10. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the first and second respondents.

11. Section 70 of the Chit Funds Act, 1982, deals with appeal against the decision of the Registrar or nominee, which reads as under:-

"70. Appeal against decision of Registrar or nominee:-

Any party aggrieved by any order passed by the Registrar or the nominee or the award of the Registrar or the nominee under Section 69, may within two months from the date of the order or award, appeal to the State Government."

12. Section 68 of the Chit Funds Act deals with attachment before Judgment and other Interlocutory Order, reads as under:-



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"68. Attachment before judgment and other interlocutory orders:-

(1). *Where a dispute has been referred under Section 64 and the Registrar or the nominee hearing the dispute is satisfied on enquiry or otherwise that a party to such dispute, with intent to defeat or obstruct the execution of any award or the carrying out of any order that may be made,--*

(a) is about to dispose of the whole or any part of his property; or

(b) is about to remove the whole or any part of the property from the jurisdiction of the Registrar, he may, unless adequate security is furnished, direct conditional attachment of the said property, and such attachment shall have the same effect as if it is made by competent civil court.

(2). *Where the Registrar or the nominee directs the attachment of any property under sub-section (1), he shall issue a notice calling upon the person whose property is so attached to furnish such security as he thinks adequate within a specified period, and if the person fails to provide such security, the Registrar or the nominee may confirm the order, and may, after the decision in the dispute, direct the disposal of the property so attached towards the claim, if awarded.*

(3). *Any attachment made under this section shall not affect the rights, subsisting prior to the attachment of the property, of persons who are not parties to the dispute, or bar any person holding a decree against the person whose property is so*



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attached from applying for the sale of the property under the attachement of such decree.

(4). The Registrar or the nominee may, in order to prevent the ends of justice being defeated, make such interlocutory order pending the award in a dispute referred to in sub-section (1) as may appear to be just and convenient."

13. Section 69 of the Chit Funds Act contemplates decision of Registrar or nominee, reads as under:-

"69. Decision of Registrar or nominee:-

When a dispute is referred to arbitration under this Chapter, the Registrar or the nominee, may, after giving a reasonable opportunity to the parties to the dispute to be heard, make an award on the dispute, on the expenses incurred by the parties to the dispute in connection with the proceedings and the fees and expenses payable to the Registrar or the nominee, and such an award shall not be invalid merely on the ground that it was made after the expiry of the period, if any, fixed for deciding the dispute by the Registrar, and shall, subject to appeal under Section 70, be final and binding on the parties to the dispute."

As far as the disputes and arbitrations are concerned, a complete code is prescribed in Chapter VI of the Chit Funds Act, 1982.



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14. Rule 50 of the Tamil Nadu Chit Funds Rules, 1984, deals with summonses, notices and fixing of dates, places etc. In connection with the dispute, it reads as under:-

"(50). Summonses, notices and fixing of dates, places etc., in connection with the disputes:-

(1) The Registrar or, as the case may be, his nominee, may issue summonses or notices at least fifteen days before the date fixed the hearing of the dipsute requiring.

(i) the attendance of the parties to the dispute and of witnesses, if any; and

(ii) the production of all books and documents relating to the matter in dispute.

(2) Summonses or notices issued by the Registrar or his nominee may be served through a Tahsildar or any employee of the Chit Department or by registered post with acknowledgment due.

(3) The Officer serving a summons or notice shall, in all cases in which summons or notice has been served, endorse annex or cause to be endorsed on or annexed to, the original summons or, notice as the case may be was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons or the notice.

(4) The Official issuing the summons or



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notice may examine the serving officer on oath or cause him to be so examined by the Officer through whom it is served and may make such further inquiry in the matter as he thinks fit; and shall either declare that the summons or, notice as the case may be, has been duly served or order it to be served in such manner as he thinks fit.

(5) The mode of serving summonses and notices as laid down in Sub-rules (1) to (4) shall mutatis mutandis apply to the service of summonses or notices issued by the Registrar or the person authorized by him when acting under Section 46."

15. Rule 52 of the Tamil Nadu Chit Funds Rules, 1984 deals with the procedure for custody of property attached under Section 68 of the Act and it reads as under:-

"52.Procedure for the custody of property attached under Section 6:-

(1) Where the property to be attached is movable property, other than agricultural produce in the possession of the debtor; the attachment shall be made by actual seizure and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, or of a Receiver, if one is appointed under sub-rule (2) and, shall be responsible for the due custody thereof:

Provided that, when the property seized is subject to speedy and natural decay, or when the expenses of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.



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(2) *Where it appears to the officer ordering conditional attachment under Section 68 to be just and convenient, he may appoint a Receiver for the custody of the movable property attached under that Section and his duties and liabilities shall be identical with those of a Receiver appointed under Order XL in the First Schedule to the Code of Civil Procedure, 1908.*

(3) (i) *Where the property to be attached is immovable, the attachment shall be made by an order prohibiting the debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.*

(ii) *The order shall be proclaimed at some places on, or adjacent, to such property by beat of drums or other customary mode, and a copy of the order shall be fixed on a conspicuous part of the property and upon conspicuous part of the village chavadi and where the property is land paying revenue to the State Government also, in the office of the Collector of the district, the Revenue Divisional Officer and Tahsildar within whose jurisdiction the property is situated."*

16. Rule 53 of the Tamil Nadu Chit Funds Rules, 1984 deals with the procedure for attachment and sale of property, which reads as under:-

"53. Procedure for attachment and sale of property for realization of any security given by person in course of execution proceedings:-

The procedure laid down in Rules 51 and 52 shall mutatis mutandis apply for attachment and sale of property for the realization of any security



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given by a person in the course of execution proceedings."

17. Rule 49 of the Tamil Nadu Chit Funds Rules, 1984 deals with procedure for hearing and decision or dispute, which reads as under:-

(49) Procedure for hearing and decision of disputes:-

(1) Registrar or his nominee shall record in the official language in vogue in the State, evidence of the parties to the dispute and the witnesses who attend. Upon the evidence so recorded and upon consideration of any documentary evidence produced by the parties, a decision shall be given by him in writing. Such decision shall be pronounced in the open Court, either at once or as soon as may be practicable on some future day, of which due notice shall be given to the parties.

(2) Where neither party appears when the dispute is called out for hearing, the Registrar or his nominee may make an order that it be dismissed for default.

(3) Where the opponent appears and the disputant does not appear when the dispute is called for hearing, the Registrar or his nominee may make an order that the dispute be dismissed, unless the opponent admits the claims or a part thereof, in which case the Registrar or his nominee, as the case may be, may make an order against the opponent upon such admission, and where, part only of the claim is admitted, may dismiss the



dispute in so far as it relates to the remainder.

(4) Where the disputant appears and the opponent does not appear when the dispute is called out for hearing, then if the Registrar or his nominee is satisfied from the record and proceeding that the summons was duly served, the Registrar or his nominee may proceed with the dispute ex parte. Where the summons is served by any officer of the Registrar or his nominee, he shall make his report of service on oath.

(5) The Registrar or his nominee may not ordinarily grant more than two two adjournments to each party to the dispute at his request. The Registrar or his nominee may, however, at his discretion grant such further adjournments on payment of such costs to the other side and such fees to the Registrar or his nominee, as the case may be, may direct.

(6) Any party to a dispute may apply for and obtain a certified copy of any order, judgment or award made by the Registrar or his nominee on payment of copying fees, at the rate prescribed Appendix II.

18. Section 68 of the Chit Fund Act, operates in the same manner like Order 38, Rule 5 of CPC (Code of Civil Procedure). The language almost *pari materia* in so far as it directs the defendant to furnish a security before the attachment. Before attachment is ordered a notice to furnish security ought to have been issued.



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19. There are no records to substantiate that before the property of the petitioner was attached, notice was issued to the petitioner. Before the award was passed, a notice of hearing calling upon a petitioner who was the guarantor/surety was to be issued.

20. There are also no documents to substantiate that there was a proper service of notice of hearing before award came to be passed by the second respondent under the Provisions of the Chit Fund Act, 1982, read with the Tamil Nadu Chit Fund Rules, 1984.

21. A publication in an unknown newspaper which is not having any readership cannot be said to put in compliance with the requirements of provisions of the Chit Fund Act, 1982 and Rule 50 of the Tamil Nadu Chit Fund Rules, 1984.

22. As per sub clause (2) to Rule 50 of the Tamil Nadu Chit Fund Rules, 1984, Summonses or notices issued by the Registrar or his



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nominee may be served through a Tahsildar or any employee of the Chit Department or by registered post with acknowledgment due.

23. As per Sub clause (3) to Rule 50 of the Tamil Nadu Chit Fund Rules, 1984, the Officer serving a summons or notice shall, in all cases in which summons or notice has been served, endorse annex or cause to be endorsed on or annexed to, the original summons or, notice as the case may be was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons or the notice.

24. As per sub clause (4) the Official issuing the summons or notice may examine the serving officer on oath or cause him to be so examined by the Officer through whom it is served and may make such further inquiry in the matter as he thinks fit; and shall either declare that the summons or, notice as the case may be, has been duly served or order it to be served in such manner as he thinks fit.

25. The proceeding before the second respondent also contemplates



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a proper notice before the second respondent under the provisions of the Chit Fund Rules. In this case, there are no records to substantiate a proper notice has been served on the petitioner.

26. Therefore, the award passed by the second respondent cannot be sustained, as far as the petitioner is concerned.

27. The Private Respondent No.3 has also not disputed that the borrower namely the fourth respondent has repaid the principal amount after the award was passed.

28. Considering the same, I am of the view the impugned order dismissing the appeal filed under Section 70 of the Chit Fund Act, 1982, on the ground of the limitation is liable to be quashed and is accordingly quashed and the case is remitted back to the first respondent.

29. The impugned order of the first respondent stands quashed and thus, the case is remitted back to the first respondent in so far as the petitioner is concerned, to pass a final order on merits and in accordance



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with law without reference to the question of limitation.

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30. Considering the fact that the issue pertains to the year 2016, the first respondent shall hear the petitioner and dispose the same appeal filed by the petitioner on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order.

31. With these observations, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

04.11.2022

Internet : Yes/No

Index : Yes / No

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To

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