IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.11537 of 2019
and
W.M.P.No.11791 of 2019

1.N.Padmanabhan
2.P.Tamizh ... Petitioners

Vs

1.The Principal Secretary to Government,
Commercial Taxes and Registration (G) Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2.The Arbitrator – cum- Deputy Registrar,
Chennai – 600 001.
Presently at
Guindy SIDCO Industrial Estate,
Electronics Complex 2nd Floor,
Guindy, Chennai – 600 032.

3.Sree Gokulam Chits & Finance Co (P) Ltd,
No.49, Arcot Road,
Kodambakkam,
Chennai – 600 024. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertains to G.O.(D).No.167 dated 23.07.2018 (Commercial Taxes and Registration (G) Department) on the file of the 1st respondent set aside the same and consequentially direct the 1st respondent to decide the appeal dated 12.04.2018 on merits filed by the petitioners in respect of ARC No.631 of 2016 on the file of the 2nd respondent.

For Petitioner	: Mr.B.Manimaran
For Respondents	: Mr.K.Tippu Sulthan Government Advocate for R1 & R2 No Appearance for R3

ORDER

In these writ petitions the petitioners have challenged in the impugned order passed by the 2nd respondent, whereby, the appeal filed by the petitioner against the award passed by the 2nd respondent on 22.06.2017 in ARC.No.631 of 2016 was dismissed on the ground of limitation.

2.The petitioners appears to be a subscriber of chit with the 3rd respondent herein. It appears that the petitioners have subscribed a chit for a sum of Rs.50,00,000/- and had paid the dues for the first 17 instalments, by the due date or thereafter. Thereafter, the petitioners appears to be have defaulted.

Thus, proceedings came to be initiated by the 3rd respondent before the 2nd respondent in ARC.No.631 of 2016 in the proceedings before the 2nd respondent. Though notice was not served on the petitioner, the service of notice was effected by making a paper publication in "Malai Sudar". The petitioner thereafter received a certified copy of the award passed by the 2nd respondent in ARC.No.631 of 2016 on 14.02.2018. Thereafter, the petitioner filed a Statutory Appeal before the 1st respondent under section 70 of the Chit Funds Act, 1982 with a delay of about 62 days in filing the Appeal. The Appeal was rejected by the 1st respondent on the ground that the delay was beyond the statutory period of limitation.

3.The learned counsel for the petitioners would submit that yet another case of the petitioner against the order passed in ARC.No.631 of 2016 dated 06.07.2013 has been numbered and is proposed to be taken up for final hearing. It is submitted that the impugned order dismissing the Statutory Appeal on the ground of limitation cannot be countenanced, as the appeal was filed in time within the period prescribed under Section 70 of the aforesaid Act.

4.The first respondent in the counter affidavit filed, has been stated that paper publication was made in "Malai Sudar" on 20.05.2017. However, the petitioners failed to appear and therefore the ex-parte award came to be passed on 22.06.2017. It is submitted that appeal against the award was filed by the petitioner on 24.08.2017 i.e., after the expiry of 62 days. It is submitted that the petitioners ought to have been aware that the time for filing the appeal is 60 days and since the appeal was not filed beyond the statutory period of limitation, the appeal was rightly rejected by the respondent.

5.I have considered the arguments advanced by the learned counsel for the petitioners and the respondents.

6.The third respondent has not entered appearance, though notice has been served in this proceedings. The third respondent remained ex-parte. At the time of admission of the writ petition, the petitioners was directed to deposit 25% of the award amounts to the third respondent within a period of two weeks from the date of receipt of a copy of this order. As per the award, an amount of Rs.7,28,000/- was due. However, the petitioners have paid a sum of Rs.5,00,000/- which has been acknowledged by the 3rd respondent in their letter to the petitioner dated 06.05.2019.

7.Considering the fact that the petitioners have shown bonafide, I am inclined to quash the impugned order by directing the petitioners to pay another sum of Rs.2,50,000/- within a period of 30 days from the date of receipt of a copy of this order. On payment of the aforesaid amount and production of the proof, the first respondent shall take up the petitioner's appeal and dispose the same on merits and in accordance with law. Liberty is given to the third respondent to settle the dispute independently under a private mediation.

8.This writ petition stands dismissed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

09.11.2022

Index: Yes/ No
Internet : Yes/No
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To

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C. SARAVANAN, J.

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