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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.6979 to 6983 of 2013
and
MP.Nos.2,2,2,2,2 of 2013

K.Manoj Kumar

... Petitioner
in All WPs

.Vs.

1.The Secretary to Government
Commercial Tax and Department
Fort St.George, Chennai 600 009.

2.The Arbitrator of Chits
Central Chennai
No.26, Rajaji Salai
1st Line Beach
Chennai 600 001.

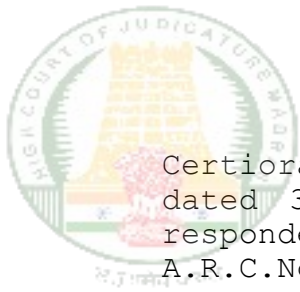
3.The Gokulam Chit and Finance Company Pvt.Ltd.,
No.49, Arcot Road,
Kodambakkam,
Chennai 600 024.

... Respondents
in All WPs

Prayer in W.P.No.6979 of 2013 : Writ Petition under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the order dated 3.1.2013 made in G.O.(D) No.7 on the file of the 1st respondent confirming the order dated 20.9.2010 made in A.R.C.No.784 of 2009 on the file of the 2nd respondent quash the same.

Prayer in W.P.No.6980 of 2013 : Writ Petition under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the order dated 3.1.2013 made in G.O.(D) No.4 on the file of the 1st respondent confirming the order dated 20.9.2010 made in A.R.C.No.815 of 2009 on the file of the 2nd respondent quash the same.

Prayer in W.P.No.6981 of 2013 : Writ Petition under Article 226 of the Constitution of India praying to issue a Writ of



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Certiorari, calling for the records pertaining to the order dated 3.1.2013 made in G.O.(D) No.5 on the file of the 1st respondent confirming the order dated 20.9.2010 made in A.R.C.No.808 of 2009 on the file of the 2nd respondent quash the same.

Prayer in W.P.No.6982 of 2013 : Writ Petition under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the order dated 3.1.2013 made in G.O.(D) No.6 on the file of the 1st respondent confirming the order dated 20.9.2010 made in A.R.C.No.806 of 2009 on the file of the 2nd respondent quash the same.

Prayer in W.P.No.6983 of 2013 : Writ Petition under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the order dated 3.1.2013 made in G.O.(D) No.8 on the file of the 1st respondent confirming the order dated 20.9.2010 made in A.R.C.No.812 of 2009 on the file of the 2nd respondent quash the same.

For Petitioner : Mr.B.Goapalakrishnan,
(in All Wps)

For Respondents : Mr.U.Bharanidharan
(in All Wps) Additional Government Pleader
for R1 and R2

Mr.G.Ramachandran
for R3

COMMON ORDER

The issue involved in all these writ petitions are common and hence, they are taken up together, heard and disposed off through this common order.

2.The subject matter of challenge in all these writ petitions pertains to the order passed by the 1st respondent in appeal under Section 70 of the Chit Funds Act, 1982 [herein after referred as "the Act"], confirming the award passed by the 2nd respondent directing the petitioners to pay the principal amount along with interest and costs to the Chit Company.

3.The proceedings against the petitioners were initiated on the ground that they have defaulted in the payment of the balance amount while participating in the auction sale conducted by the Chit Company.



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4. Heard Mr.B.Goopalakrishnan, learned counsel for the petitioners, Mr.U.Bharanidaran, learned Additional Government Pleader for R1 and R2 and Mr.G.Ramachandran, learned counsel for R3.

5. It is an admitted case that there was a substantial delay in referring the disputes for recovery of money in each writ petition and for easy reference, the delay that occasioned in each case is explained through a tabular column hereunder:

S.No.	Writ Petition No.	No.of days delay
1	6979 of 2013	1220
2	6980 of 2013	1975
3	6981 of 2013	1710
4	6982 of 2013	1220
5	6983 of 2013	1975

6. The common ground that has been taken in all these writ petitions is that the inordinate delay in referring the dispute against the petitioners was condoned even without issuing notice to the petitioners inspite of the fact that the claim was barred under Section 65 of the Act.

7. The further grievance of the petitioners is that both the 1st and 2nd respondents without dealing with the issue of delay, straightaway went into the merits of the case and passed orders against the petitioners and the same has been made as a subject matter of challenge in all these writ petitions.

8. Section 65(1)(d) of the Act, specifically provides that the dispute should be referred to the Registrar for Arbitration, within three years from the date on which the Act or omission with reference to which the dispute arose, took place. Section 65(2) of the Act, makes it clear that the dispute referred to the Registrar shall be regulated by the provisions of the Limitation Act and the dispute will be considered to be a suit and Registrar will be deemed to be a Civil Court. Section 65(3) of the Act, provides for the condonation of delay if the dispute is referred beyond the



period of limitation.

9. In all these writ petitions, the petitioners were not put on notice before the delay was condoned by the Registrar in exercise of powers under Section 65(3) of the Act. The main question that is involved is as to whether the petitioners ought to have been put on notice and given an opportunity before the delay was condoned by the Registrar.

10. The issue involved in these writ petitions is no longer res integra and it is covered by the earlier orders passed by this Court.

11. This Court in G. Krishnamurthy .Vs. The Arbitrar in W.P.No.20673 of 2012, order dated 21.02.2017, held as follows:

4. The first respondent, even without looking into the contents of the affidavit and without providing an opportunity to the petitioner as contemplated under the provisions of the law, on the very same day, condoned the delay and the main case was taken on file and number was assigned as A.R.C.1350/2010. Therefore, the first respondent allowed the condone delay application and taken on file in the aforesaid A.R.C. 4 proceedings is illegal and without following the procedures, as contemplated under the Act. Aggrieved by the said order, the petitioner has filed the present petition before this Court.

5. According to the petitioner, in similar circumstances, this Court, by Order dated 19.08.2011 in W.P.No.21711 of 2010, in the case of N.C.Ravindra Kumar V. The Registrar of Chits, Central, Chennai, wherein in paragraph 10, it is held as follows:

"10. It has to be held that if any order is to be passed under Section 65 (3) of the Act, it cannot be done automatically and notice is required to be given to the opposite side. It is true that under Section 70 of the Act an appeal has been provided to the State Government against the decision of the Registrar or its nominee. As stated above the order itself is in violation of principles of natural justice. When this Court finds that the order has been passed mechanically



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without application of mind violating the principles of natural justice, availability of alternative remedy is not an absolute bar for maintaining the writ petition.

It has been held by the Apex Court in Harbanslal Sahana vs. India Oil Corporation Ltd. reported in (2003) 1 CTC 189 that availability of alternative remedy is not a bar for maintaining writ petition. If the order has been passed in violation of principles of natural justice, lack of jurisdiction, it is to be held that for violation of principles of natural justice and the alternative remedy available under Section 70 is not a bar for maintaining the writ petition. The Writ Petition is maintainable, the impugned order is set aside and the same is quashed. The Writ Petition is allowed. No costs. Consequently, the connected M.P.No.1 of 2010 is closed."

6.In the light of the above, the present case is also squarely covered by the order passed by this Court in W.P.No.21711 of 2010 dated 19.08.2011 and therefore, the petitioner prays for setting aside the order passed by the first respondent dated 12.08.2010.

12.In yet another case in S.Srinivasan .Vs. State of Tamil Nadu in W.P.No.10906 of 2014, by order dated 06.02.2020, this Court held as follows:

11. As seen from Section 65(3) of the Chit Funds Act, 1982, it is clear that the Registrar of Chit Funds may admit a dispute even after the period of limitation, if the applicant satisfies the Registrar that they have a sufficient cause for not referring the dispute within such period.

12.In the case on hand even though, the learned counsel for the third respondent has produced an affidavit filed by the third respondent before the Registrar seeking for condoning the delay in making the claim against the petitioners, the said affidavit discloses that the petitioners had requested the third respondent not to take any legal action against



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the first petitioner and he promised to remit the arrears in two or three instalments. But, since he failed to keep up the promise they were forced to make a claim against the first petitioner. The relevant portion of the affidavit filed in support of the condone delay application by the third respondent before the Registrar of Chits reads as follows:-

3. Party has requested against taking any legal action against him and promised to remit the arrears in equal two three instalments. But he failed to take his promise, hence we could not file the suit in time. So kindly allow this plaint and render justice.

13. However, no supporting evidence has been produced before the Registrar of Chits or before this Court with regard to the statement made by the third respondent that only at the request of the first petitioner that he will be making the payment, the third respondent lodged a claim against the first petitioner belatedly. It is also not recorded by the Registrar of Chits as to whether any supporting document was filed by the third respondent before the Registrar of Chit Funds along with the application for condonation of delay.

14. Under Section 65(3) of the Chit Funds Act, 1982 the Registrar of Chits will have to satisfy himself that sufficient reasons are given by the third respondent for condonation of delay.

15. In the case on hand, since, no supporting evidence has been produced by the third respondent before the Registrar or before this Court, the contention of the petitioners that without sufficient reasons the delay in lodging a claim was condoned by the Registrar of Chit Funds has to be accepted.

16. In the case of hand, the Promissory Note was allegedly executed by the petitioner in favour of the third respondent on 06.10.2006. The claim was filed by the third respondent against the petitioner only on 05.07.2010. In the affidavit filed in support of the condone



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delay application, there is no reference to any dates as to when the petitioner has made a request for settlement of the dispute with the third respondent.

17. Considering all these factors, this Court is of the considered view that principles of natural justice have been violated by the respondents under the impugned orders by not affording sufficient opportunity to the petitioners to put forward his submissions with regard to the question of limitation. Despite the petitioners taking the defence of limitation, the authorities below have also not considered the question of limitation and no finding has been given with regard to the same.

13. It is clear from the above orders that while condoning the delay in exercise of powers under Section 65(3) of the Act, the Registrar is bound to issue notice to the party against whom the reference is made and he should be heard before the delay is condoned, failing which, the order will be vitiated due to non-compliance of the principles of natural justice. This Court has further held that once an order suffers from violation of principles of natural justice, a writ petition is maintainable before this Court and this Court can exercise its jurisdiction and interfere with the order.

14. In the present case, it can be seen from the above tabular column, there is an inordinate delay in referring the dispute to the Registrar. This delay has been condoned without issuing notice to the petitioners. The petitioners have specifically raised a ground in the appeal to the effect that the Registrar condoned the delay without issuing notice to the petitioners. The authorities seem to be under the impression that there is a power to condone the delay under Section 65(3) of the Act and hence, the delay has been condoned after considering the explanation given by the Chit company. Both the authorities lost sight of the fact that the delay can be condoned only after issuing notice to the petitioners and affording them an opportunity to contest the reasons assigned for the inordinate delay in raising the dispute. The 1st and 2nd respondents proceeded to deal with the merits of the case without considering this fundamental issue. On that ground alone, the orders passed by the 1st and 2nd respondents are liable to be interfered by this Court and accordingly, the same is set aside in each writ petition.

15. In the result, all the writ petitions are allowed and the impugned order passed by the 1st and 2nd respondents in each



writ petition is hereby set aside and the matter is remanded back to the file of the 2nd respondent. The 2nd respondent is directed to issue notice to the petitioners along with the affidavit and application filed by the Chit Company justifying the inordinate delay in making the claim. The petitioners on receipt of the same, will be entitled to file their reply and contest the applications. Thereafter, the condone delay applications shall be dealt with on its own merits and in accordance with law. This process shall be completed by the 2nd respondent within a period of 12 weeks from the date of receipt of a copy of this order. Depending upon the decision taken in the condone delay applications by the 2nd respondent, the further proceedings will follow suit.

16. The writ petitions are allowed in the above terms. No costs. Consequently, all the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Secretary to Government
Commercial Tax and Department
Fort St.George, Chennai 600 009.

2.The Arbitrator of Chits
Central Chennai
No.26, Rajaji Salai
1st Line Beach
Chennai 600 001.

+1cc to the Government Pleader, S.R.No.38948

W.P.Nos.6979 to 6983 of 2013

VG-II (CO)
SB(06/07/2022)