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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

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THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P. NOS.38876, 38877 AND 38878 OF 2015
AND M.P.NOS.1 TO 1 OF 2015

S.Kavitha

... Petitioner
in W.P.No.38876 of 2015

U.Sasidharan

... Petitioner
in W.P.No.38877 of 2015

S.Antony Joseph

... Petitioner
in W.P.No.38878 of 2015

Vs.

1. The Principal Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Chepauk, Chennai - 600 009.
2. The Arbitrator,
Chit Funds Cases,
Before the Registrar of Chits,
Chengalpet, Chengalpet District.
3. The Foreman,
Shriram Chits Tamilnadu (P) Ltd.,
No.10-F, Rangan Street,
Mathuranthagam, Chengalpet.

4. M.Vetrivel

... Respondents
in all Writ Petitions

COMMON 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 relating to the proceedings of the first respondent in G.O.[2D] No.72, dated 14.10.2015 confirming the award passed in ARC No.134/2007, dated 10.09.2008 on the file of the second respondent herein and quash the same.

For Petitioner
in all W.Ps. : M/s.D.Balachandran

For Respondent : M/s.Arun
Nos.1 & 2 in all W.Ps. Additional Advocate General



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Assisted by
M/s.R.P.Murugan Raja
Government Advocate (Taxes

For Respondent : M/s.K.V.Anantha Krishnan
No.3 in all W.Ps. for M/s.T.S.Gopalan & Co.

C O M M O N O R D E R

The present Writ Petitions have been filed for issuance of Writ of Certiorari, to call for the records relating to the proceedings of the first respondent in G.O.[2D] No.72, dated 14.10.2015 confirming the award passed in ARC No.134/2007, dated 10.09.2008 on the file of the second respondent herein and quash the same.

2. This is yet another case of passing awards in Chit Fund Cases mechanically, without application of mind and the authority acting as a paid servant of the Chit Fund Company. Still worse is the situation, where the Secretary to Government sitting on appeal signs the order as put up by the semi literate Clerks without any application of mind.

3. In the instant case, the petitioners were arrayed as guarantors/sureties to a chit transactions between third and fourth respondents. For the default of payment made by the fourth respondent, the third respondent chit referred the dispute to the second respondent - the Deputy Registrar of Chits. Notice for first hearing was served on the petitioners and they appeared for hearing on 11.09.2007. The matter was adjourned to 11.10.2007. For some administrative reason, it was adjourned to 26.10.2007. The second respondent ordered notice to be sent to the parties for hearing dated 26.10.2007 by an order dated 12.10.2007.

4. On 26.10.2007, the petitioners, who are respondent Nos.2, 4 and 5 entered appearance through a counsel. The third respondent appeared in person and filed a petition to delete his name claiming that he has nothing to do with the claim. From the records produced before the Court, it is noted that the third respondent therein filed an application under Right to Information Act for supply of copy of promissory note, proposal document, chit agreement and other connected documents. The matter was taken by the Tamil Nadu State Information Commission and it was closed after supply of required information.

5. It is noted that on 17.07.2008, the second respondent passed an order to the following effect:-

"Since Mr.M.V.Ravi (3rd respondent therein) failed to submit the required documents as directed



11. The petitioners were not served with the copy of the Award also. The records does not reveal any entry or evidence to show that it was sent to the petitioners. However, the petitioners preferred an appeal to the first respondent. It was rejected on the grounds of delay, even though it was filed within the time limit from the date of receipt of the award. The appeal was entertained after the intervention of this Court by its order dated 24.02.2014 in W.P.Nos.3606 to 3608 of 2010.

12. Still worse the procedure adopted by the first respondent. The writ petitioners/as appellants have specifically raised grounds over the jurisdiction of the second respondent with regard to failure to issue notice non-adherence of procedure laid down under Rule 50 and jurisdiction and powers to effect News Paper publication. But, unfortunately the first respondent received the remarks from the Inspector General of Registration, who has nothing to do with the appeal. Most unfortunate thing is that the first respondent has failed to apply his mind to the grounds raised in the appeal, failed to discuss the legal issue, but appeared to have subscribed his signature to the order prepared by a semi literate dealing hand.

13. The second respondent in proceedings dated 17.07.2008, no where recorded that notice was served for the hearing. There was no hearing after 26.10.2007. But the first respondent had recorded that the appellants failed to appear or file any reply before the Arbitrator to conduct the case. In order to give another opportunity paper publication was ordered. But no such adjudication is found in the records. It is also wrongly observed that on 10.09.2008, the case was posted again and after considering the documents award was passed on 10.09.2008 on merits. Such observation is absurd. In fact on 12.08.2008 itself the petitioners were set ex parte. Though it was posted for orders on 10.09.2008, no orders were passed as per the entries in the records produced before this Court. The sub-ordinate had put up the draft award for approval on 11.09.2008. Apart from this, it is noted that the chit agreement, proposal document, letter of guarantee executed by the petitioners were not at all produced and marked before the Registrar for consideration. That too, even after an application filed under Right to Information Act by M.V.Ravi, one of the so-called guarantors. Mere marking of promissory note will not be enough to prove the liability of the petitioners. But it shall be proved that they have actually executed the same.

14. It is also pertinent to note that respondent Nos.2, 4 and 5 were represented by a counsel on record. Nothing prevented the Chit Registrar/ second respondent to put the advocate on notice. Even without notifying the counsel appearing



for the respondent, the News Paper publication had been effected contrary to the Rules. The appellate authority has absolutely failed to apply his mind, on this aspect, so also the intervening proceedings under Right to Information Act before the Tamil Nadu State Information Commission and no proceedings had taken place in the interregnum.

15. Therefore, it is clearly inferred that the first and second respondents have passed the impugned orders without serving notice on the petitioners and followed their own procedures contrary to the Statutory Rules. In the process, failed to consider relevant materials but passed orders based on irrelevant materials. The impugned orders passed by the first and second respondents do not stand the test of scrutiny of law and accordingly, set aside as unsustainable.

16. Accordingly, the impugned proceedings of the first respondent in G.O.[2D] No.72, dated 14.10.2015 confirming the Award passed in ARC No.134/2007, dated 10.09.2008 on the file of the second respondent are set aside.

In fine, the Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Chepauk, Chennai - 600 009.
2. The Arbitrator,
Chit Funds Cases,
Before the Registrar of Chits,
Chengalpet, Chengalpet District.

+3cc to Mr.K.V.Anantha Krishnan, Advocate, S.R.No.15716, 15717, 15718

+3cc to Mr.D.Balachandran, Advocate, S.R.No.15820

+1cc to the Government Pleader, S.R.No.16297

W.P. NOS.38876, 38877 & 38878 OF 2015
AND M.P.NOS.1 TO 1 OF 2015

SR-II (CO)

SB(01/06/2022)