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W.P.No.31292 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2022

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.31292 of 2016
and W.M.P.No.27156 of 2016
and W.M.P.Nos.34322 and 32701 of 2019

P.Elango (Died)

2.E.Solai

3.E.Madhan

(P2, P3 substituted as LR's of deceased sole
petitioner vide order dt.25.08.2022 made
in W.M.P.20907/2022 in WP.31292/2016
by RSMJ)

... Petitioners

Vs.

1.The Additional Chief Secretary to Government
Commercial Taxes and Registration Dept.,
Chennai – 9.

2.Margadarsi Chits Pvt. Ltd.
Kumaran building
No.AA-152, 3rd avenue
Chennai – 40

3.A.R.Satish Kumar
4.S.Chandramohan



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5.P.Senthil Kumar

6.Priya Satish Kumar

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the 1st respondent in G.O.(D) No.280 dated 29.07.2016 and quash the same.

For Petitioners : Mr.N.Suresh

For Respondents : Mr.K.Tippu Sulthan
Govt. Advocate for R1

Mr.D.Shivakumaran for R2

ORDER

The Writ Petition is filed, challenging the impugned order of the 1st respondent passed in G.O.(D) No.280 dated 29.07.2016, rejecting the petition filed for condonation of delay in preferring the appeal against the award passed by the Arbitrator in A.R.C.No.44 of 2012 .

2.The writ petition has been filed mainly on the ground that the appellate authority has not properly appreciated the grounds, reasons assigned for such delay in preferring the appeal. Therefore, it is the contention of the learned counsel for the petitioners that opportunity should



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be given to the petitioners to contest the appeal on merits. It is also stated that the reasons for the delay is due to non availability of information by the counsel. Further, the original writ petitioner (deceased) acquired knowledge about the Arbitration proceedings only when the notice was served in the execution proceedings. Therefore, he seeks to quash the order of the Appellate Authority.

3.Learned counsel for the petitioner would submit that only from the date of knowledge, he had filed the appeal within sixty days and the delay has also been properly explained, however, the same was not considered properly and opportunity may be given to the petitioners to contest the appeal on merits.

4.Learned counsel for the respondents would submit that, the contention that the petitioner acquired knowledge only during execution proceedings is not correct. In the Arbitration proceedings he appeared and filed counter, therefore, the contention of the petitioner cannot be accepted. According to the respondent, the delay has not been properly explained.



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The 1st respondent has considered the entire aspects and dismissed the application. Hence opposed the writ petition.

5.Perused the entire material. The Arbitration proceedings were initiated against the petitioner and four others. This petitioner originally arrayed as the 4th respondent in A.R.C.No.44 of 2012 and the proceedings had been initiated for default of subscription of the chit amount. Originally, the writ petitioner stood as surety to the subscriber who became the successful bidder in the action. As there was a default in payment, proceedings had been initiated.

6.On a perusal of the records, particularly the Arbitration Award, the same clearly shows that only the 4th respondent viz. the writ petitioner (deceased) contested the matter, infact, filed his counter. Thereafter, it appears that the matter has been adjourned from 08.03.2012 till 27.02.2015. Thereafter, an award has been passed on 12.06.2015. Several adjournments have been granted, despite filing the counter, the petitioner did not contest the matter from the year 2012 to till the date of passing of the award, which



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was clearly captured in the order of the 1st respondent. Therefore, the contention of the petitioner that he had no knowledge about the award till he received the notice in execution proceeding itself is false and the same has been pressed into service only for the purpose of filing condone delay application.

7.It is also relevant to note that the award was passed on 12.06.2015. When the award is passed, statutory appeal ought to have been preferred within the period of sixty days under Section 70 of the Chit Funds Act. A copy application was filed on 28.09.2015. In the meanwhile, the execution proceedings have been initiated, notice served on 10.12.2015, the petitioner also appeared in execution proceedings initiated on 17.12.2015. Thereafter he has preferred an appeal on 25.01.2016 and the appeal was filed on 24.05.2016 with a huge delay.

8.From the records, it could be seen that from the stage of filing of a copy application and preferring an appeal and presenting the appeal, there was a huge delay which have not been properly explained. Therefore, now



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for the sake of condonation, a different stand has been taken as if the original writ petitioner (deceased) was not aware of the arbitration proceedings, cannot be countenanced. The delay has to be explained satisfactorily. Satisfactory explanation is required to condone the delay. When the false facts are stated contrary to the original happenings before the Arbitrator, the conduct of the petitioner cannot be condoned by this Court under the premise of liberal approach. Accordingly, I do not find any merits in this petition.

9.This Writ petition stands dismissed accordingly. Consequently, connected miscellaneous petitions are closed. No costs.

18.11.2022

Index : Yes / No
Internet : Yes / No
Speaking / Non speaking order

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To

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N.SATHISH KUMAR, J.

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