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W.P. No.22967 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.22967 of 2014

and

M.P.Nos.1 & 2 of 2014

M.Perumal

... Petitioner

Vs

1.The Secretary to Government,
Commercial Tax & Registration Department,
Chennai – 600 009.

2.The arbitrator of Chits,
North and South Chennai,
Chennai – 600 001.

3.Shriram Chits Tamil Nadu (P) Ltd,
Rep by its Managing Director,
78, Usman Road,
T.Nagar, Chennai – 600 017.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records relating to the proceedings of the 1st respondent in G.O(D).No.285 Commercial Taxes and Registration (G) Department dated 14.07.2014, quash the same.



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For Petitioner : Mr.A.Maheshnath
for Mr.R.N.Amarnath

For Respondents : Mr.K.Tippusulthan
Government Advocate for R1
No Appearance for R2
Mr.K.V.Ananthakrishnan for R3

ORDER

The petitioner has challenged the impugned order passed by the 1st respondent in his proceedings dated 14.07.2014 vide G.O.(D).No.285, Commercial Taxes and Registration (G) Department.

2.The specific case of the petitioner is that in respect of a chit amount of Rs.5,00,000/- (Rupees five lakhs only) subscribed by a subscriber namely S.Chandrasekar, the petitioner name has been wrongly shown as a surety for the bid amount. It is submitted that the award came to be passed on 22.6.2012, wherein, the petitioner address has given as No.10, Kamaraj Street, Vijayalakshmiapuram, Ambattur, Chennai – 600 053. It is submitted that the petitioner was unaware of the proceedings initiated under the Provisions of the Tamil Nadu Chit Funds Act, 1982. E.P.No.3128 of 2013 has been filed by the 3rd respondent before the X Assistant City Civil Court, Chennai. It is further submitted that only when the respondents came to attach the property of the



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petitioner by serving the notice to the petitioner's official address, the petitioner came to know that an award had been passed by the 2nd respondent on 22.06.2012.

3.It is the further case of the petitioner that the petitioner has also given a complaint before the Commissioner of Police to the jurisdictional Police Station wherein the petitioner has stated that he has been wrongly made liable as a surety in the proceedings before the 2nd respondent.

4.Under these circumstances, the petitioner had filed an Appeal before the 1st respondent on 13.01.2014 together with an application to condone the delay of 511 days in filing an Appeal against the award dated 22.06.2012 of the 2nd respondent. The 1st respondent vide impugned order as declined to condone the delay by holding that the notice sent to the petitioner had remain un-served and it was returned with an endorsement "no such person". Hence, the paper publication was made in "Malai Sudar" on 08.06.2012. It is pursuant to the aforesaid award came to be passed by the 2nd respondent. The impugned proceedings is defended by the learned counsel for the 3rd respondent stating that the petitioner has not denied that he knew the subscriber namely



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S.Chandrasekar for whom he stood as a guarantor.

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5.That apart, it is submitted that notice was sent to the petitioner in the address given by the petitioner at the time, when the petitioner along with two others, offered to stand as a sureties for the said S.Chandrasekar who defaulted in repayment. Thus, proceedings came to be initiated before the 2nd respondent to recover the bid amount against the said S.Chandrasekar, the petitioner and two others. It is further submitted that an award was passed after in the paper publication in “Malai Sudar” on 08.06.2012 and therefore there is no irregularity in the impugned order passed by the 1st respondent declining to condone the delay of 511 days in filing the Appeal before the 1st respondent. It is therefore submitted that long after the award was passed and after initiation of the execution proceedings in E.P.No.3128 of 2013 in ARC.No.412 of 2012 interference at the stage will cause prejudice to the 3rd respondent to recover the award amount and therefore that the writ petition is liable to be dismissed.

6.The learned counsel for the 3rd respondent further submits that the impugned order passed by the 1st respondent is well reasoned and requires no interference.



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7. It is submitted that it is after enquiry and perusing the document filed by the 3rd respondent, the detailed award came to be passed on 22.06.2012, whereby, a sum of Rs.4,62,000/- together with future interest cost was ordered to be paid to the 3rd respondent herein. It is further submitted that there is a enormous delay in approaching the 1st respondent and that there are no convincing reasons for condoning the delay and therefore the 1st respondent has correctly rejected the application filed for condoning the delay in filing the appeal. Hence, he prayed for dismissal of the writ petition.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

9. The facts on record indicates that the notice issued to the petitioner had remain unserved on the petitioner. It is the specific case of the petitioner that the petitioner is residing at No.10, Kamaraj Street, Vijayalakshmipuram, Ambattur, Chennai – 600 053. The award in ARC. No.412 of 2012 dated 22.06.2012 passed by the 2nd respondent/Registrar of Chits, the address of the petitioner has been given as No.10, Kamarajar Street, Vijayalakshmipuram,



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Ambattur, Chennai – 600 053. However, the notice on the petitioner had remain unserved.

10.The admitted facts of the case is that notice was ordered on the petitioner and the borrower (subscriber) and the other co-sureties remained unserved. Therefore, paper publication was effected on 08.06.2012 in “Malai Sudar”. This paper is not in wide circulation. A person against whom proceedings have been initiated is not expected to have a notice of the pending proceedings against him based on such paper publication. Publication in such paper publication which are merely thriving on such paper publication is not sufficient as they are not expected to be ready by ordinary readers.

11.Under these circumstances, I am of the view that the petitioner has made out a reasonable cause for interference with the impugned order passed by the 1st respondent declining to condone the delay in filing an Appeal against the award dated 22.06.2012 of the 2nd respondent. The delay is therefore condoned and the matter is remitted back to the 1st respondent to number the Appeal and dispose the same on merits and in accordance with law. It is left open to the 1st respondent to come to a conclusion as to whether the petitioner



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should be put in terms or not. Considering the fact that the amount that was borrowed by the subscriber S.Chandrasekar for which the petitioner had allegedly given surety is of the year 2011, it is expected that the above Appeal of the petitioner shall be disposed on merits and in accordance with law within a period of six months from the date of the receipt of a copy of this order after due notice to all the parties. It is made clear that the relief that has been granted to the petitioner will not ensure to other notice/co-surety and the borrower.

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

11.10.2022

Index: Yes/ No
Internet : Yes/No
jas

To

The Deputy Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance, Department of Revenue,
3rd Floor, C Block, Murugesu Naicker Complex,
84, Greaves Road, Chennai – 600 006.



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C.SARAVANAN, J.

This case is listed under the caption “for being mentioned”.

2.The learned counsel for the petitioner submits that there is a typographical mistake has crept in the order. In Paragraph 9, 3rd line **No.01** has been wrongly typed as **No.10**.

01.12.2022

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Note:Registry is directed to carryout the necessary corrections and issue a fresh order copy to the parties.