



W.P.No.13633 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.13633 of 2017

M/s. Shriram Chits T.N.(P) Ltd
rep by its
Senior Manager (Legal)
No.145, Santhome High road
Mylapore
Chennai-600 004

... Petitioner

Vs.

1.The Registrar General
High Court
Madras

2.The Hon'ble District Judge
Nagapattinam

3.The Hon'ble Subordinate Judge
Nagapattinam

4.The Hon'ble District Judge
Trichy

5.The Hon'ble Sub-ordinate Judge
Trichy-1

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India
praying to issue a Writ of mandamus or an administrative
direction/instruction to the Subordinate Courts to adhere to Rule 161 and



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162 of Civil Rules of practice for the payment out cheque and order for issue of payment out cheques in the name of the Decree Holder/Petitioner in the payment out petition.

For Petitioner : Mr.K.V.Ananthakrushnan

For Respondents : Mr.C.T.Mohan

ORDER

Writ Petition has been filed seeking a direction to the Subordinate Courts to follow the rule 161 and 162 of Civil Rules of Practice for the payment out cheques and order for issue of payment out cheques.

2. It is the grievance of the petitioner that the petitioner being the Chit Fund filed various case in various Subordinate Courts in Tamilnadu. Whenever payment out petition is filed the Courts make payment in the name of the advocate by issuing the cheques. It is his contention that a huge amount has been misappropriated by the advocates and therefore issuance of cheque in the name of the advocate itself is contrary to the Civil Rules of Practice and therefore seeks a general directions.

3. Heard Mr.C.T.Mohan appearing for the Registry.



4. Though the Registry had filed a counter stating that cheque can be issued only in favour of the Decree Holder and not in favour of the petitioner being a head office and 4th respondent has filed a counter to the effect that since the Form-12 has been filed authorising the advocate to receive the cheques.

5. At the outset on perusal of the general directions contained for payment of money to the Decree Holder R.161 and 162 of Civil Rules of Practice be normally followed. R.161 and 162 read as follows:

“ 161. The order may be for payment o the applicant or his duly authorized agent provided that no order for payment of money shall be made to the pleader of the applicant, unless specifically authorized by the applicant by an affidavit and if such payment is directed the full name of the pleader shall be inserted in the order of the Judge.

162..Payment schedule to be brought in:-

A person desirous of obtaining payment of money out of court, hereinafter called the payee, shall bring into court a payment schedule in Form No.59, headed with the cause title of the suit, appeal or matter and the particular account, if any, to which the payment is to be debited/and stating



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the decree or order authorizing the payment and the serveral sums and the total amount to be paid out of court and also a receipt for the said amount signed by the payee. If the payee is the agent of the person entitled to receive the money he shall also file power of attorney duly stamped authorizing him to receive a payment. The court shall, before making an order for payment out, verify from the weekly statements received from the treasury that the amount, of which payment is sought, is supported by the necessary credits in the account and is available for payment out. An order for payment and counterfoil receipt in Form No.60, stating the date of issue, the amount to be paid and the account to which the payment is to be debited shall then be issued to the payee.”

6. The combined reading of the above both Rules makes it clear that unless the advocate is specifically authorized either by an affidavit or by Power of Attorney the cheques cannot be issued in the name of advocate. On the other hand the cheques will be issued only in the name of Decree Holder concerned. Now it is argued that based on the general authorization contained in the vakalat nama certain Courts are issuing the cheques in the name of advocates.

7. According to the learned counsel for the petitioner as well as



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Mr.C.T.Mohan, learned counsel appearing for the Registry there are some

cases of misuse of money by few advocates. To avoid such misappropriation

Subordinate Courts can be directed to follow the Rules 161 and 162 strictly

as far as payment out other than Motor Vehicles compensation. Since the

Motor Vehicle compensation the payment has to be made as per the direction

of this Court in various other petitions. In any other Civil deposits Civil

Court decree amount the cheque should be issued only in the name of the

Decree Holder unless specifically authorized by the Decree Holder by way

of an affidavit or by way of Power of Attorney no cheques could be issued in

the name of the advocates.

8. With the above directions, this Writ Petition is disposed of.

Registry is directed to circulate this order to all the Subordinate Courts in

Tamil Nadu after obtaining order from The Hon'ble Acting Chief Justice. No

costs.

10.10.2022

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N. SATHISH KUMAR, J.

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To

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