BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)Nos.8472 & 8611 of 2009
MP(MD) Nos.2,3 of 2009

S.Umayal ... Petitioner in WP(MD) No.8472/ 2009

1.S.Subha
2.C.T.Sundaram ... Petitioners in WP(MD) No.8611 of 2009

Vs.

1.The Secretary to Government,
Commercial Taxes and Registration (K) Department,
Fort St.George,
Chennai – 9.

2.The Deputy Registrar of Chits,
District Registration Office,
Trichy.

3.M/s.Samayapurathal Chits Pvt Ltd,
Rep by Dr.S.Jambunathan,
(Under protest),
SJN Complex,
No.7, Sannathi Street,
Thiruvanaikaval,Trichy – 5. ... Respondents in both WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned orders of the first respondent passed in G.O.Ms.(D) No.358, 357 Commercial Taxes and Registration (K) Department, and the orders of the second respondent in A.R.C.No.340 & 341 of 2007, dated 01.04.2008 and quash the same.

For Petitioner : Mr.S.Ramsundar Vijay Raj
for Mr.C.Jeganathan
For R1 & R2 : Mr.D.Gandhiraj
Special Government Pleader
For R3 : Ms.Maria Roseline
(In both Writ Petitions)

COMMON ORDER

These writ petitions are filed as against the orders of the first respondent/Principal Secretary to Government, Commercial Taxes Department G.O.Ms.(D) No.358, 357 Commercial Taxes and Registration (K) Department, on the appeal filed by these petitioners, under Section 70 of Chit Funds Act, 1982.

2.Since both the writ petitions are arising out of the orders of the first respondent/Principal Secretary to Government, Commercial Taxes Department, both the writ petitions are taken up together and disposed of by this common order.

3.The petitioner in WP(MD) No.8472 of 2009 and the petitioners in WP(MD) No.8611 of 2009 are wife, daughter and husband respectively. They were the members of Chit Fund, namely Samayapurathal Chits Pvt Ltd, Trichy/the third respondent herein. The petitioner in WP(MD) No.8472 of 2009, namely, Umayal joined in the chit group No.HX and Ticket No.37, for the value of Rs.1,00,000/- payable at Rs.2500/- per month for 40 months and she participated in an auction conducted on 25.05.2002 and received a price amount of Rs.70,000/- and also executed a promissory note for Rs.87,500/- along with one surety, namely C.T.Sundar, who is none other than the husband of the petitioner in W.P(MD) No.8472 of 2009 and also one of the petitioners in W.P(MD) No.8611 of 2009, for the due payment of future instalments.

4.In the same way, the first petitioner Suba in W.P(MD) No. 8611 of 2009 also joined in the same group as ticket No.2 participated in the auction on 07.12.2002, received the prize amount of Rs.70,000/- on 10.01.2002 and executed a promissory note for Rs.62,500/- along with her father C.T.Sundaram. Both the petitioners defaulted the payment on instalments after the 24th instalment. Therefore, the respondent company filed a case under Section 64 of the Chit Funds Act in ARC Nos.340 & 341 of 2007. Even though sufficient opportunity has been given to the petitioners, they did not appear before the authority and hence exparte awards were passed on 01.04.2008. As against those orders, appeals were preferred by these petitioners, under Section 70 of the Chit Funds Act, before the Secretary to Government, the first respondent herein. The first respondent, by the orders dated 30.07.2009 passed G.O(D) Nos.357 & 358, Commercial Taxes and Registration (K) Department, rejected the appeals filed by these petitioners and confirmed the orders of the Deputy Registrar. Aggrieved over the same, the present writ petitions have been filed.

5.The learned counsel appearing for the petitioners submits that the dispute raised by the third respondent, under Section 64 of the Chit Funds Act is barred by limitation, as per Section 65 of the Chit Funds Act. The period of limitation in any dispute referred to the Registrar under Section 64 shall be filed within a period of three years, from the date on which the act or omission with reference to which the dispute arose took place. However, in this case, the chit was defaulted on 06.10.2003, whereas the dispute was raised only on 12.04.2007, beyond the period of limitation and therefore the second respondent is not correct in entertaining the application. However, the same has not been considered by the Appellate Authority. The third respondent is a Private Limited Company and it became defunct in the year 2002 itself, whereas Dr.S.Jambunathan, in the capacity of Chairman of the Chit Fund Company has filed the dispute before the District Registrar, under Section 64 of the Chit Funds Act, without any proof such as any resolution or documents to that effect and the Deputy Registrar has mechanically entertained the application even without any materials placed before him. This point was also not considered by the first respondent/Secretary.

6.The learned counsel appearing for the petitioners further submits that one C.Chithsabesan, the brother of the second petitioner in WP(MD) No.8611 of 2009 and the brother-in-law of the petitioner in WPMD) No. 8472 of 2009 was the Director of the Samayapurathal Chits Pvt Ltd and there was no management dispute in the company. However, with the forged documents, one S.Jambunathan, claimed him as the Chairman/Managing Director of the the third respondent Company has moved the above disputes before the Deputy Registrar. He further submits that the third respondent has also lodged a complaint before the District Judge,Trichy, since the second petitioner in W.P(MD) No.8611 of 2009, namely, C.T. Sundaram is a court staff, working at District Court, Trichy. Based on the complaint, an enquiry was also contemplated and the District Judge/Enquiry Officer has filed a report that there is no material to connect the said C.T.Sundaram with the alleged complaint. The Officer has observed that the complaint is a malafide one. The learned counsel further submits that the third respondent has filed two criminal complaints against C.T.Sundaram and the same was taken on file in CC No.417 and 418 of 2005 before the Judicial Magistrate Court No.I, Trichy and those cases were dismissed for default. However, the third respondent has not taken any further steps on those orders of the Court. Therefore, according to the learned counsel for the petitioners, the Deputy Registrar ought not to have entertained the complaints under Section 64 of the Chit Funds Act. In the absence of the appearance of the petitioners exparte orders have been passed by the District Registrar and the same has been mechanically confirmed by the Secretary, without any observations on the grounds raised by these petitioners and therefore the impugned orders are liable to be set aside. The learned counsel has also relied upon the Judgment of the Honourable Division Bench of this Court in ***Shri Nithya Kalyani Chit Funds (P) Ltd, Madurai Vs. the Government of Tamil Nadu, Represented by the Secretary, Commercial Taxes & Religious Endowment Department and others***, reported in ***2010 4 LW 481,*** wherein, it has been held as follows, with regard to limitation.

> *14.Section 65(1) (b) clearly stipulates the period of limitation from the date on which the act or omission with reference to which the dispute arose took place. In the instant case, the subscriber defaulted from 27th instalment viz., on 10.12.1988. The claim filed on 24.08.1992 is beyond the three years and*

the second respondent as well as the Appellate Authority have rightly dismissed the claim application as barred by limitation. The learned single Judge observing that the Appellant's case squarely falls under Explanation (I) to Section 64(1) for which the period of limitation applicable is Section 65(1) for which the period of limitation applicable is Section 65(1) (b) dismissed the writ petition. There is no illegality or irregularity in the order passed by the learned single judge. Hence, the writ appeal is dismissed. However, there is no order as to costs."

7.The learned counsel appearing for the third respondent submits that one Dr.S.Jambunathan being the Chairman of Samayapurathal Chits Pvt Ltd is having every right to file the complaint as against the petitioners. She further submits that the grounds raised by the petitioners in these writ petitions have not been raised neither before the District Registrar nor before the first respondent. She further submits that limitation has to be reckoned only from the date of termination of the Company and not from the date of default. The complaint was duly filed after the termination of the third respondent Company on 06.01.2006. But it has been filed well within 12.04.2007, from the date of termination of the Company and therefore it cannot be found faulted. She also relied upon the judgment of the Honourable Division Bench of this Court in ***C.Dham Vs.A.M.Srinivasan and others***, in ***A.S.No.200 of 1988***, wherein, it has been held as follows:-

> 21.As per the plaint, the cause of action arose in the following circumstances:
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> "18.The cause of action for the suit arose on and from 01.02.1982 and 20.04.1982, the dates of commencement of the chit groups, on and from 01.06.1982, the date of default, on and from 30.09.1983 and 19.12.1983, the dates of termination of the chit groups and on and from 18.10.1984, when a demand was made for payment of amount due under the chits and on and from 27.10.1984 and 05.12.1984 the dates of repudiation to pay all at Trichy within the jurisdiction of this Hon'ble Court"

8. This Court considered the rival submissions made and also perused the materials placed on record.

9.The learned counsel appearing for the petitioners has taken a specific ground that the third respondent Company becomes defunct in the year 2002 itself and hence the third respondent is not having any *locus standi* to file the complaints as against the petitioners.

10.Since these writ petitions are pending from the year 2009 and in order to give quietus to this issue, this Court directed the learned Special Government Pleader to ascertain as to whether the third respondent Company is functioning or not. The learned Special Government Pleader produced a written submission received from the Deputy Registrar of Societies stating that Samayapurathal Chit Funds Private Limited was established in the year 1993, under the Companies Act with the Registration No.24421/1993 and was functioning at No.7, Sannathi Street, S.J.N Complex, Thiruvanaikovil, Trichy and at present no details were available in the Registers of the District Registrar Office that the Company is conducting any chit groups. The details furnished by the Deputy Registrar reveals that Samayapurathal Chits Private Limited was registered under the Companies Act as a private Limited Company and it is not functioning as on date. It is not known that when this Company becomes defunct. But, the learned counsel for the petitioner has relied on the proceedings of the District Registrar in 18615/ E3/2007, dated 03.12.2007 and information which he obtained under the RTI Act reveals that the Company filed its balance sheet only upto the year 2002 and it becomes defunct thereafter. No balance sheet has been filed thereafter and hence the petitioners' counsel claims that the Company was in existence till 2002 only. Admittedly, the complaints, under Section 64 of the Chit Funds Act were filed before the second respondent only on 12.04.2007 and the same was also disposed of by the second respondent as exparte. The third respondent is aware that the second petitioner C.T Sundaram, the husband of the petitioner in W.P(MD) No.8472 of 2009 and the father of the first petitioner in WP(MD)No.8611 of 2009 is a court staff working in the District Court, Trichy. He also lodged a complaint before the District Judge as against C.T. Sundaram, based on which, an enquiry was also contemplated by the District Judge, which has been concluded in the year 2010 that this complaint has been maliciously foisted as against C.T. Sundaram. The third respondent has also filed two private complaints as against C.T.Sundaram, under Section 138 of

Negotiable Instruments Act, before the learned Judicial Magistrate No.I, Trichy in CC Nos.417 & 418 of 2005 and those complaints were also dismissed for default by the order dated 20.08.2015. According to the learned counsel appearing for the petitioners, the third respondent has not prosecuted those complaints for several years and therefore the cases were dismissed for default. Though the third respondent is aware that the second petitioner C.T. Sundaram is a Court staff working in District Court, Trichy, he has not taken any effective steps to serve notice on the petitioners. The order of the first respondent was an exparte order that notice could not be served on the writ petitioners. Aggrieved over the same, appeals were filed under Section 70 of the Chit Funds Act, before the Appellate Authority. The Appellate Authority/ first respondent has also disposed the appeals without any discussion on the legal grounds raised by these petitioners.

11.The petitioner has also taken out a plea that one C.Chithsabesan, the brother of C.T.Sundaram was also a director of the Company and since there was a management dispute, the complaints have been foisted as against these petitioners. Also there is a specific plea in these writ petitions that the respondents have not disputed the same by filing any counter affidavit. The main ground relied upon by the petitioners is that the petitioners have participated in the chit and taken the money on 06.02.2002 and defaulted on 06.10.2003. However the application was filed after three years beyond the period of limitation. The learned counsel for the third respondent by relying upon the judgment of this Court submits that the period of limitation has to the calculated only from the date of termination of the Company and not from the date of default. The learned counsel for the third respondent relied upon the working sheet, which was filed in support of her complaint under section 64 of the Chit Funds Act, which reveals that the Company was terminated only on 06.01.2005. However, no materials have been placed before this Court. Though the learned counsel for the third respondent has raised a specific plea that one Dr.S.Jambunathan, being the Chairman of Samayapurathal Chits Pvt Ltd has every right to lodge a complaint as against the petitioners, she could not place any valid materials to substantiate the same.

12. In view of the foregoing reasons, the orders passed by the first respondent/Principal Secretary to Government, Commercial Taxes Department G.O.Ms.(D) No.358, 357 Commercial Taxes and Registration (K) Department are hereby set aside. These writ petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

12.04.2022

Index : Yes / No.
Internet: Yes / No.
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To

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(K) Department,
Fort St.George,
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2.The Deputy Registrar of Chits,
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B.PUGALENDHI, J.

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Common Order made in
W.P(MD)Nos.8472 & 8611 of 2009
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