

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 18.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.23894 of 2022
and
W.M.PMD)No.17965 of 2022

1.N.Ganesan

2.G.Selvakumari

3.N.Paramanatham

4.N.Arumugam

..Petitioners

Vs

1.The Principal Secretary to the Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai.

2.The Assistant Registrar of Chits,
Assistant Chits Registrar Court,
Tirunelveli.

3.Sivasanthi Chits Funds Private Limited,
represented by its Managing Director,
A.Narayanan,
No.22, Salai Street,
Sindupoondurai,
Tirunelveli – 627 001.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records on the file of the first respondent in his proceedings in G.O(D)No.425, dated 24.09.2009 and to quash the same as illegal.

For Petitioners :Mr.M.Sankar

For Respondents:Mr.C.Satheesh
1 and 2 Government Advocate

ORDER

The Petitioners have prayed for issuance of a Writ of Certiorari calling for the records on the file of the first respondent in his proceedings in G.O(D)No.425, dated 24.09.2009 and to quash the same as illegal.

2.Mr.C.Satheesh, learned Government Advocate takes notice for the respondents 1 and 2. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3.The case of the Petitioners is that the third respondent had filed a claim petition before the second respondent that they have joined a Chit group No.2 of 2004 for two ticket Nos.9 and 10, each value at Rs. 50,000/- payable at Rs.2000/- for every month for each ticket in 25 instalments. On 12.2.2004, an auction was conducted by the respondents 3 and 4, in which, the Petitioners are the successful bidders and was paid Rs.35,000/- each for the third and fourth auction respectively and that the Petitioners have to jointly execute a pronote for the due payment of the balance instalments. Stating that the Petitioners have defaulted in payment of instalments 5 to 14, third respondent has proceeded against them for recovery of arrears of due and has filed ARC No.6 of 2005 for

instalments 5 to 14 and the same was decreed by the Assistant Registrar of Chits, Tirunelveli and subsequently the third respondent filed E.P.No. 220 of 2006 to execute the same. The third respondent has also filed ARC.No.100 of 2006 before the above said authority claiming payment of balance instalments 15 to 25 of Chit No.2 of 2004. The third respondent had erroneously stated in ARC.No.100 of 2006 that the Petitioners have paid the amount covered in decree made in ARC.No.6 of 2005. Subsequently, the third respondent filed an amendment petition to rectify the said mistake, in which, the fourth respondent filed a detailed counter. But the second respondent without giving an opportunity to the Petitioners, had disposed of the amendment petition and ARC.No.100 of 2006 and has passed an erroneous award on 27.2.2007 and aggrieved by the same the Petitioners have filed an appeal before the first respondent. The third respondent made his objections in the appeal and the first respondent without going into the merits and not properly analyzing the facts, passed the impugned order in his proceedings in G.O(D)No.425, dated 24.09.2009. Challenging the same, the Petitioners have filed W.P(MD)No.12139 of 2009 seeking for the same relief and has withdrawn the same making an endorsement as not pressed. Hence the Petitioners have filed the present Writ Petition for the relief stated supra.

4. On going through the Arbitrators award made against A.R.C.No. 100 of 2006, dated 22.7.2007, it is seen that the Advocates have

appeared in the amendment petition and counter affidavit filed by the fourth respondent, wherein, it is stated that Petitioners 1 to 3 have not filed any counter and based on the above said counter filed, the Arbitrator considering the same, passed an ex parte order directing the Petitioners to pay Rs.44,000/- with interest at the rate of 24% pa., from 12.2.2005 to 27.2.2007 at Rs.21560/- and a cost of Rs.2260, totalling to Rs.67820/-. The Petitioners filed an appeal before the first respondent and the said authority had passed an award in G.O(D)No.425, dated 24.09.2009, who has considered the contentions of the Petitioners and has given a finding that the appellant received the prize money and furnished the pronote for Rs.44000/- signed by him and the sureties and before passing the award, has considered the counter affidavit filed and 20 days time was given to the appellants to file counter from 23.1.2007 to 13.2.2007 and on 27.2.2007. Neither the appellants nor their counsel present and the respondent in this case and disputant in the arbitration case alone appeared and hence the appellants were set ex parte and an award was passed by the Arbitrator, confirming the award passed by the Deputy Registrar of Chits, Tirunelveli in ARC.No.100 of 2006.

5. The Petitioners have not put forth any materials before this Court that they have paid the remaining instalments by way of documents in proof of the same. It is seen that E.P has been filed by the respondents for recovery of the said amount. The Petitioners without having paid the

said amount, has filed this Writ Petition. Moreover, the Writ Petition filed earlier for the very same relief was withdrawn by the Petitioners. The Petitioners have filed the present Writ Petition for the second time for the very same relief and hence this Court is not inclined to entertain the present Writ Petition and the same is liable to be dismissed.

6. The learned counsel for the Petitioners submit that wrong instruction has been given by the Petitioners for the withdrawal of the earlier writ Petition in the year 2009. Now the Petitioners, all of a sudden wake up and filed this Writ Petition in the year 2002 for the very same relief as sought for in the earlier Writ Petition, for the claim which is of the year 2004, which contention is not acceptable by the Court.

7. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

18.10.2022

Index : Yes/No

Internet: Yes/No

vsn

To

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2.The Assistant Registrar of Chits,
Assistant Chits Registrar Court,
Tirunelveli.

V.BHAVANI SUBBAROYAN,J

vsn

ORDER MADE IN

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