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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decided on: 15th December, 2022*

+ RFA 316/2022 & CM APPL. 35468/2022

SH UMESH KUMAR Appellant

Through: Mr. S.P. Gairola, Advocate
versus

SH ABHAY RAJ PANDEY Respondent

Through: None.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA
[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

1. The present appeal has been filed seeking prayer for setting aside the judgment and decree dated 31.08.2020 passed by Ld. ADJ, North-West District, Rohini Courts Delhi in suit bearing No. 671/17.
2. The case on behalf of the appellant, who was the plaintiff in the suit, is that the appellant was engaged in the business of transportation under the name and style of M/s Vishal Golden. The father of the respondent herein was running a chit fund. The appellant was a member in chit fund of the respondent and made payments for the said purpose. It is the case of the appellant that the respondent demanded Rs. 3 Lakhs from the appellant herein on 23.06.2016 for treatment of his wife for a short period. The respondent assured that he will return the same after taking next chit in his name. Thus, it is submitted on behalf of the appellant that the appellant gave a friendly loan of Rs. 3 Lakhs to the respondent. However, the respondent discontinued the

chit on 23.04.2016.

3. It is submitted on behalf of the appellant that he had deposited Rs. 2,05,675/- from 26.06.2015 to 23.04.2016 with the defendant as his share in the chit. Thus, an amount of Rs. 5,05,675/- was due and payable by the respondent as on 23.04.2016. Ld. Counsel appearing for the appellant submits that the appellant demanded the said amount from the respondent, however, the appellant was beaten by the respondent and his brothers. Hence, appellant informed the police and MLC of the appellant was prepared by the doctors. It is submitted on behalf of the appellant that investigation officer (I.O) recorded the statement of the appellant as well as the respondent herein, in which the respondent admitted that he had to pay Rs. 3 Lakhs to the appellant.

4. It is the case of the appellant that on his request, respondent gave a cheque in second week of April 2017 for a sum of Rs. 30,000/- to the appellant and the same was encashed on 03.05.2017. Thereafter, appellant sent a legal notice dated 26.07.2017 to the respondent, but the respondent did not make payment to the appellant. It is in these circumstances that the appellant filed a suit for recovery for a sum of Rs. 6, 18,377/- against the respondent herein.

5. Despite service, no one appeared on behalf of respondent before the Trial Court and the respondent was proceeded ex parte vide order dated 14.12.2017.

6. By the impugned judgment dated 31.08.2020, the learned ADJ, North-West District, Rohini Courts Delhi dismissed the suit of the plaintiff. Perusal of the impugned judgment shows that the learned

Trial Court has held in categorical terms that the plaintiff did not file any documentary proof with respect to any amount having been given to the defendant. Even otherwise, the contract between the appellant and the respondent was not permissible in law and is clearly prohibited by the Chit Funds Act, 1982.

7. Reference may be made to Section 4 of the Chit Funds Act, 1982 which clearly stipulates that no chit shall be commenced or conducted without obtaining the previous sanction of the State Government within whose jurisdiction the chit is to be commenced or conducted. Section 4 of the said Act is reproduced as below:

“4. Prohibition of chits not sanctioned or registered under the Act.—(1) No chit shall be commenced or conducted without obtaining the previous sanction of the State government within whose jurisdiction the chit is to be commenced or conducted or of such officer as may be empowered by that Government in this behalf, and unless the chit is registered in that State in accordance with the provisions of this Act :

Provided that a sanction obtained under this sub-section shall lapse if the chit is not registered within twelve months from the date of such sanction or within such further period or periods not exceeding six months in the aggregate as the State Government may, on application made to it in this behalf, allow.

(2) An application for the purpose of obtaining a sanction under sub-section (1) shall be made by the foreman in such form and in such manner as may be prescribed.

(3) The previous sanction referred to in sub-section (1) may be refused, if the foreman,—

(a) had been convicted of any offence under this Act or under any other Act regulating chit business and

*sentenced to imprisonment for any such offence; or
(b) had defaulted in the payment of fees or the filing of any statement or record required to be paid or filed under this Act or had violated any of the provisions of this Act or the rules made thereunder; or*

(c) had been convicted of any offence involving moral turpitude and sentenced to imprisonment for any such offence unless a period of five years has elapsed since his release :

Provided that before refusing any such sanction, the foreman shall be given a reasonable opportunity of being heard.

(4) The order of the State Government, and, subject to the provisions of sub-section (5), the order of the officer empowered under sub-section (1), issuing or refusing previous sanction under this section shall be final.

(5) Any person aggrieved by the refusal to issue previous sanction by an officer empowered under sub-section (1) may appeal to the State Government within thirty days of the date of communication to him of such refusal and the decision of that Government on such appeal shall be final.”

8. Reference may also be made to Section 5 of the said Act which stipulates that no person shall issue or cause to be issued any notice, circular, prospectus, proposal or other document inviting the public to subscribe for tickets in any chit, without the previous sanction required under Section 4 of the Act. Section 5 of the Chit Funds Act, 1982 is reproduced as below:

“5. Prohibition of invitation for subscriptions except under certain conditions.—No person shall issue or cause to be issued any notice, circular, prospectus, proposal or other document inviting

the public to subscribe for tickets in any chit unless such notice, circular, prospectus, proposal or document contains a statement that the previous sanction required under Section 4 has been obtained and the particulars of such sanction.”

9. In view of the aforesaid, it is clear that the business of chit fund cannot be run unless the firm or company is registered with the State Government. During the course of hearing, categorical statement was made by Id. Counsel for appellant that the chit fund business of the respondent was not registered as per law. Thus, it is clear that the transaction between the appellant and the respondent was prohibited by law. Thus, any contract in this regard entered between the appellant and the respondent was void ab initio and the appellant was not entitled to recover the amount as alleged to have been given towards the chit fund.

10. The learned Trial Court has also rejected the claim of the appellant for recovery of Rs. 3,00,000/- which he allegedly gave to respondent for treatment of his wife. The said claim has rightly been rejected by the learned Trial Court, since there is a clear finding that the appellant has not placed on record any document to show that any such amount had been given by the appellant to the respondent. Even the complaint to the police, legal notice and the statements of the appellant and respondent to the police, were not proved as per law. There is a clear finding by the learned Trial court that even otherwise the said documents were not sufficient to prove the case of the appellant herein.

11. The appellant has also not been able to show any satisfactory

cause for delay in filing the present appeal. Resultantly, CM No. 35468/2022 for condoning delay of 455 days in filing the present appeal is dismissed.

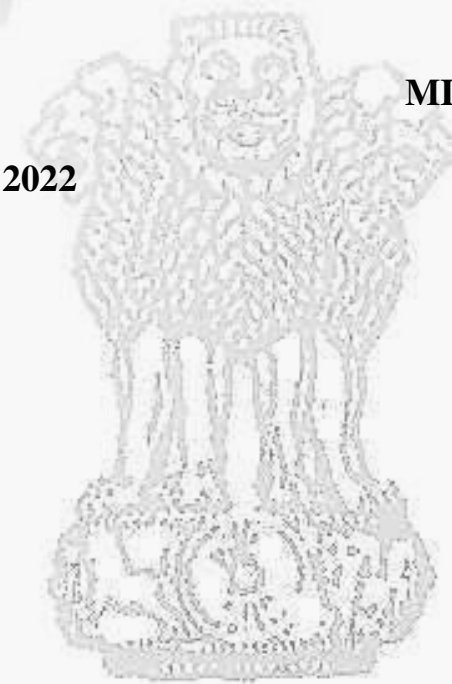
12. Considering the aforesaid facts and circumstances, this Court finds no merit in the present appeal and the same is dismissed.

13. No order as to costs.

MINI PUSHKARNA, J

DECEMBER 15, 2022

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