IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4073 OF 2022

Shashi Raghu Shetty ...Petitioner

Versus

The State of Maharashtra
Through The Government Pleader & Ors. ...Respondents

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Mr. Nikhil Dixit a/w Ms. Jonica Thakor i/by Mr. Chinmay Gupte, for Petitioner.

Mr. Sunil Lahane a/w Ms. Rachana Karad, Ms. Mekhala More i/by The Juris Partners for Respondent No.2.

Mr. P. P. Pujari, A.G.P. for Respondent Nos 1, 3 & 4.

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CORAM : SANDEEP V. MARNE, J.
DATE : OCTOBER 31, 2023.

P.C.:

1. The challenge in the present Petition is to the order dated 8 May 2021 passed by the Minister-Finance rejecting Petitioner's Appeal No.4 of 2017. In his Appeal Petitioner had questioned correctness of the Award dated 10 February 2016 passed by the Joint Registrar of Chits, Mumbai. Under the Award, Petitioner is directed to pay the sum of Rs.7,00,000/- and interest of Rs.64,125/- towards interest till date of filing of the Reference. The Joint

Director of Chits has also awarded interest at the rate of 18% on the amount of Rs.7,00,000/- from the date of filing of Reference till the date of realization of the entire amount.

2. I have heard Mr. Dixit the learned counsel appearing for the Petitioner. He would draw my attention to the Certificate of Commencement of Chit, wherein to overwritings are noticed both in amount of Rs.10,00,000/- as well as in the Chit commencement number. Mr. Dixit would further draw my attention to the Judgment and order passed by the 6th Additional Chief Judicial Magistrate, Thane in Summary Criminal Case No.2094 of 2017 initiated by the Respondent-Company under provisions of Section 138 of the Negotiable Instruments Act, 1881. According to him, the findings recorded in Paragraph Nos.20 and 21 of the order passed by the learned Magistrate would leave no manner of doubt that the underlying document being the Certificate of Commencement of Chit itself is a forged document on account of overwritings made on the same. According to him the order passed by the learned Magistrate has attained finality and therefore the findings recorded by the learned Magistrate would prevail over the ones recorded by the Joint Registrar of Chits and by the Minister-Finance. He would submit that since

the very Certificate of Commencement of Chit is proved to be void, all the subsequent transactions based on the said certificate are also rendered ab initio void. Mr. Dixit would alternatively submit that as per the Chit Passbook issued by the Respondent-Company, Petitioner had paid an amount of Rs.4,25,000/-. Additionally and in accordance with the order passed by this Court on 15 July 2022, Petitioner has deposited amount of Rs.5,00,000/- in this Court. He would therefore submit that the total amount of deposit made by Petitioner till date is Rs.9,25,000/- as against the certificate for Rs.7,64,125/- issued by the Joint Registrar of Chits. That thus Petitioner has deposited excess amount. Mr. Dixit would further submit that the Respondent-Company has illegally shown amount of Rs.10,00,000/- being paid to Petitioner when in fact Promissory Note executed by the Petitioner is only for Rs.9,00,000/-. He would therefore submit that the orders passed by the Minister-Finance as well as the Joint Registrar of Chits are required to be set aside.

3. *Per contra* Mr. Lahane, the learned counsel appearing for Respondent No.2 would oppose the Petition and support the orders passed by the Joint Registrar of Chits and by the Minister-Finance. He would submit

that the Petitioner himself runs a chit business and is aware of all the nitty-gritties of the business. So far as the Chit Commencement Certificate is concerned, he would submit that what is placed on record at Exhibit-C to the affidavit-in-reply is a certified copy of the Certificate and that there is no manipulation in the same. Mr. Lahane would further clarified that the Chit value was actually of Rs.10,00,000/- which was repayable in installments over 40 months of Rs.25,000/- each. That Petitioner paid lump-sum amounts of Rs.70,000/- and 40,000/- in cash on 15-12-2012 and 05-02-2013. That he paid four installments of Rs.20,000/- each between 14.03.2013 to 26.08.2013 and further lump-sum amounts of Rs.36,000/- on 20.09.2013 and 24,000/- on 26.07.2014. That this is of Petitioner repaid total amount of Rs.2,50,000/-. Additionally dividend of Rs.50,000/- was generated in his account and this is how credit of Rs.3,00,000/- was given in the account of Petitioner giving the balance of Rs.7,00,000/- unpaid. That therefore though the chit value was of Rs.10,00,000/-, since Petitioner paid advance amount of Rs.70,000/- on 15.12.2012. The Promissory Note of Rs.9,00,000/- was obtained from him on 19.01.2013. He would pray for dismissal of the Petition.

4. Having considered the submissions canvassed by the learned counsels appearing for the parties, it appears that the chit value of Petitioner of

Rs.10,00,000/-. Respondent No.2 has produced a statement of account of Petitioner to prove balance amount of Rs.7,00,000/-. The statement is as under:

Sr. No.	Payment Date	Cheque No DD No	Instalment paid	Month & Year	Dividend		
1							
2	15.12.2012	Cash	70000	01-Oct-12			
3				02-Nov-12			
4				04-Dec-12	5000		
5	05.02.2013		40000	04-Jan-13	5000	BP Adj From VCTH-03/38	
				05-Feb 13	5000	BP Adj From VCTH-03/38	
6	14.03.2013	cheque	20000	06-Mar-13	5000		
7	13.04.2013	cheque	20000	07-Apr-13	5000		
8	14.06.2013	cheque	20000	08-May-13	5000		
9	26.08.2013	cheque	20000	09-Jun-13	5000		
10	20.09.2013	Agent	36000	10-Jul-13	5000	adj From Shashi Shetty Commission	
11	26.07.2014	cheque	24000	11-Aug-13	5000		
12				12 Sep-13	5000		
			250000		50000		300000

Total amount Pay

5. As against the above statement, Petitioner contends that the Chit Passbook issued by Respondent No.2 shows total payment of Rs.4,25,000/-. If this was the case, Petitioner ought to have raised the defence to that effect both before the Joint Registrar of Chits as well as in his Appeal before the Minister-Finance. However, it appears that Petitioner never raised a specific contention either before the Joint Registrar of Chits or before the Minister-Finance that the amount repaid by him to Respondent No.2 is Rs.4,25000/- and not Rs.3,00,000/-. Therefore, merely on the basis of a photocopy of handwritten document placed at Page 46 of the paper book and in absence of

any specific defence being raised before the Joint Registrar of Chits or Minister-Finance, it is difficult to accept the contention of the Petitioner that the repaid amount is Rs.4,25,000/-.

6. Reliance of Mr. Dixit, the Promissory Note executed for Rs.9,00,000/- again does not assist the case of the Petitioner. Respondent No.2 has successfully demonstrated before this Court that Promissory Note of lessor amount was obtained on account of some advance payment is made by Petitioner before execution of the Promissory Note.

7. So far as the defence of manipulations in the Certificate of Commencement of Chit is concerned, Mr. Dixit has contended that the figure 1,00,000/- has been illegally manipulated by showing the same as Rs.10,00,000/-. He would further submit that the Chit Certificate number is also manipulated in the certificate. He would contend that both the corrections/manipulations are not countersigned by any Authority. Heavy reliance is placed on the Judgment and order of the learned Magistrate to contend that the said manipulations would render the entire transactions based on the said Commencement Certificate *ab inito* void. The learned Magistrate in his Judgment and order dated 8 June 2022 has recorded following findings.

“20] It is significant to note that by perusing the Certificate of Commencement of Chit (Exh.46), it appears that complainant company Visible Chits (M) Pvt./Ltd, is authorized to commence and conduct business of chit. However, there is overwriting made in the Certificate (Exh.46) on the amount of Rs.10,00,000/-. It further appears that the amount mentioned in the said Certificate (Exh.46) appears to be Rs.1,00,000/-, but by making overwriting in the Certificate, it is made Rs.10,00,000/- by making figure of Rs.1 as 0 and by putting figure 1 before 0. However, the complainant has not produced on record original Certificate (Exh.46) Further, it is mentioned in the said Certificate (Exh.46) that Chit Agreement (Exh.17) in respect of Group No.VCTH-03, which was registered in his office as Chit No.RCB 285/2012 on 25.09.2012. However, there is also overwriting in the numerical number VCTH-02 by making it 03. Further, the complainant has not produced on record the original copy of the registered agreement to find out the overwriting in the Group No.VCTH-03 is registered as per Chit No.RCB 285/2012 on 25.09.2012. In this regard, Mr.Vinod Walkimi (CW1) has unequivocally admitted during his cross-examination (Exh.14) that he has not produced on record any document to show that his company is authorized to conduct chit funds of Rs.10 lakhs. Further, Mr.Navin Augustine Chakalakal (CW2) has also unequivocally admitted during the cross-examination (Exh.40) that there is overwriting in the certificate (Exh.46) in respect of amount of Rs.10 lakhs in figure 10 and also overwriting made on figure 3 in VCTH-03 instead of figure 2. He has also admitted that there is no signature made on the correction of the certificate by issuing Authority. Hence, under such facts and circumstances it is doubtful as to whether the Certificate of Commencement of Chit (Exh.46) is true and genuine. Therefore, under such facts and circumstances, defence of the accused appears to be probable.

21] It is pertinent to note that as per the provision of section 13 of the said Act, 1982, it is crystal clear that aggregate amount of chit is fixed and it is clear that no foreman, other than a firm or other association of individuals or a company or a co-operative society, shall commence or conduct chits, the aggregate of which at any time exceeds Rs.1 lakh. But after the amendment of 2019, the said amount of Rs.1 lakh is increased to Rs.3 lakh. It is further pertinent to note that as per the provision of sub section 2 of the section 13 of the said Act, 1982, where the foreman is a firm or other association of individuals, the aggregate of the chits conducted by the firm or other association shall not at any time exceed, where the number of partners of the firm or the individuals constituting the association is not less than four, a sum of Rs.6 lakhs. But amount of Rs.6 lakhs was enhanced and increased by way of amendment 2019 to the amount of Rs.18 lakhs. Hence, it is crystal clear that before 2019 the aggregate amount of chits was Rs.1 Lakh and the said Certificate (Exh.46) is issued on 31st day of October 2012 which was prior to the amendment and therefore, naturally the amount of chits must have been Rs.1 lakh. But by making overwriting on numeral 1 as 0 and by putting figure 1 before 0, it was made 10. Hence, value of chit of Rs.1 lakh was altered without any authority to the value of Rs.10 lakhs. Therefore, it creates reasonable doubts in the Certificate (Exh.46) of the complainant company and therefore, it is doubtful as to whether the complainant company is authorized to conduct the chit fund to the value of Rs.10 lakh. It is pertinent to note that as per the provision of section 4 of the said Act, 1982, no chit can be commenced or conducted without obtaining previous sanction of the State Government and if, there is contravention of the provision of section 4 of the said Act, 1982, then penalties in terms of imprisonment and fine is provided under section 76 of the said Act. Further, if the offence is committed by a company, then every person who was in charge of and responsible for the conduct of the business of the company is

> deemed to be guilty of the offence as per provision of section 79 of the said Act, 1982. Hence, by virtue of the doubtful Certificate of Commencement of Chit (Exh.46) of the complainant company which complainant could not explained about the alteration made in the contents of the said Certificate and by virtue of the unregistered Agreement for Chit (Exh.17), possibility of unauthorized conduct of business of chit by the complainant company cannot be ruled out. Hence, under such facts and circumstances and in my considered opinion the said facts are sufficient to rebut the statutory presumption against accused."

8. However, the present proceedings relate to recovery of amounts due from the Petitioner under the Chit Agreement. What the learned Magistrate was concerned while delivering the Judgment and order dated 8 June 2022 was criminal liability arising out of the transaction. Petitioner do not dispute nor have they ever disputed Chit amount of Rs.10,00,000/-. Even the Chit Passbook relied upon by the Petitioner clearly shows chit amount of Rs.10,00,000/-. Once the chit amount of Rs.10,00,000/- is not disputed and the contention of Respondent No.2-Company that amount of Rs.3,00,000/- was repaid was also not disputed in any of the proceedings either before the Joint Registrar of Chits or before the Minister-Finance, the Petitioner cannot now permitted to raise the issue of alleged manipulations in the Certificate of Commencement of Chit. These defences are clearly taken at a belated stage

purely as an afterthought. It is also required to be borne in mind that Petitioner is seasoned player in a field and are aware all the rules and regulations relating to the Chit as he himself runs a separate Chit Fund by company named Katteleshwari Chit Fund Pvt. Ltd. I therefore do not find any merit in the contention raised by the Petitioner that since the underlying Certificate of Commencement of Chit itself is found to be manipulated, all the subsequent transactions are also rendered automatically void.

9. There is only one area where some relief can be granted to the Petitioner. In the recovery certificate, the Joint Registrar of Chits has awarded interest at the rate of 18 % to Respondent No.2 from the date of filing of reference till the date of realization. According to Mr. Lahane, the interest rate of 18% is awarded in pursuance of a specific clause in the Agreement of Chit. The Agreement of Chit was executed in the year 2012, after which the rates of interest have fallen down substantially. In that view of the matter, the rate of interest awarded by the Joint Registrar of Chits can be reduced to some extent. In my view, considering the facts and circumstances of the present case, the rate of interest on amounts due and payable by the Petitioner can be reduced to 10% per annum as a special case. The same shall however not be treated as precedent in any other case.

10. Accordingly the present Petition is partly allowed by modifying the Recovery Certificate issued by the Joint Registrar of Chits by reducing the rate of interest from 18% to 10% per annum. The Respondent No.2 is permitted to withdraw the amount of Rs.5,00,000/- deposited in this Court along with interest generated thereon. The said amount along with interest be adjusted towards the liability of Petitioner. The Respondent No.2 shall communicate the exact liability of Petitioner after withdrawal of amount of Rs.5,00,000/- with interest from his Court and after applying the reduced rate of interest of 10% per annum. If Petitioner fails to pay such amount, it will be open for Respondent No.2 to recover the same from Petitioner. It is clarified that reduction of rate of interest is directed in the present Petition in view of facts and circumstances of the case and that the same shall not be treated as a precedent.

11. With the above directions, the Writ Petition is disposed of.

(SANDEEP V. MARNE, J.)