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W.A.No.683 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:13.09.2023

Delivered on: 27.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.683 of 2020

The Foreman
M/s. Sriram Chit Funds
Tamilnadu Branch 3
No.2, Main Bazar Road
Collector Nagar
Mugapair East
Chennai-600 050

.. Appellant

Vs.

1.D.Balaraman

2.The Commissioner and Secretary
Department of Commercial Tax
Appellate Authority under Chit Funds Act
Govt. of Tamil Nadu
Secretariat, Chennai-600 009

3.The Registrar of Chit Funds
North and South Chennai
Chennai-600 001

.. Respondents



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Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside the order passed by this Court in W.P.No.18381 of 2007 dated 30.12.2019.

For Appellant : Mr.K.V.Ananthakrushnan

For Respondents : Mr.D.Govindha Reddy for R1

Mrs.Geethathamaraiselvan,
Spl.G.P for R2 and 3

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

1. The 3rd respondent in the writ petition viz., The Foreman, M/s Sriram Chit Funds Tamil Nadu Ltd, is the appellant before us, aggrieved by the order of the Writ Court, allowing the writ petition in W.P.No.18381 of 2007, by an order dated 30.12.2019.

2. The 1st respondent herein as writ petitioner sought for issuance of a writ of certiorarified mandamus to quash the proceedings, partially confirming the award passed by the Chit Funds Registrar, North Madras in ARC.No.905 of 2000 dated 08.10.2001, with a consequential prayer to remit the matter to the Registrar, Chit Funds.



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3. The case of the writ petitioner before the Writ Court was that he joined a chit Scheme canvassed by the appellant for a total chit value of Rs.3,00,000/-. According to the writ petitioner, he paid Rs.10000/- every month, as monthly subscription from 23.07.1998 and in the interregnum period as there was an urgent requirement for money to purchase a tractor and trailer, for agricultural purposes, he participated in a chit auction and prized the chit at Rs.2,10,000/-, thereby forgoing Rs.90,000/-. The grievance of the writ petitioner is that despite forgoing a sum of Rs.90,000/-, the appellant did not pay even the prized amount and released only a sum of Rs.86,900/-. According to the writ petitioner, the appellant ought to have disbursed a sum of Rs.2,10,000/-. To his shock and surprise the appellant issued a lawyer's notice on 13.02.2000, claiming Rs.1,35,791/-, together with interest, in pursuance of which the writ petitioner admittedly paid Rs.9,500/- on 08.03.2000, Rs.8500/- on 23.05.2000, Rs.8500/- on 04.11.2000 and another sum of Rs.8,500/- on 20.02.2001. The lawyer's notice was followed-up with an arbitration case in ARC.No.905 of 2000, claiming a sum of Rs.1,24,537/-. According to the petitioner, subsequent to the receipt of the said notice, he did not engage any Advocate and he only represented that he has sustained loss as the



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entire prize amount was not released to him and that he would repay the balance amount within 1 year. Despite his representation, the Registrar, Chit Funds passed an award on 08.10.2001, directing the writ petitioner to pay a sum of Rs.1,24,537/-, together with interest. An appeal filed under Section 70 of the Chit Funds Act,1982 was partly allowed reducing the interest awarded from 24% to 12%. Thereafter, the writ petition has been filed, challenging the said order on the grounds that the appellant ought to have paid Rs.2,10,000/- and that retaining the bid amount, by way of fixed deposit was amounting to unlawful enrichment, causing loss to the subscriber.

4. A detailed counter affidavit was filed by the appellant as 3rd respondent, justifying their action in adjusting a sum of Rs.1,00,000/- to fixed deposits as security to cover future liability apart from the current instalments due. According to the appellant, the petitioner defaulted in payments from the 20th instalment only and thereafter the notice was issued and followed-up with the arbitration case. According to the appellant, the Appellate Authority has already taken a sympathetic view by reducing the rate of interest from 24% to 12% per annum. According to the appellant,



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the arbitrator as well as the Registrar, Chit Funds have considered all the contentions raised by the writ petitioner in a judicious manner and no interference is warranted under Article 226 of the Constitution of India and thereby the appellant sought for dismissal of the writ petition.

5. The Writ Court, in and by an order dated 30.12.2019, allowed the writ petition holding that the sum of Rs.1,00,000/- withheld by the appellant was illegal and the said money was held only in a group company and that the Chit Registrar as well as the Appellate Authority have failed to follow the mandate of Section 31 of the Chit Funds Act, 1982, whereby the writ petitioner ought to have received the entire prize money. The Writ Court, by allowing the writ petition, remitted the matter back to the file of the Registrar, Chit Funds, for fresh disposal in accordance with law.

6. The appellant has preferred the present writ appeal challenging the order of the Writ Court on the grounds, namely, when the writ petitioner had not denied or disputed his liability, he was liable to pay future instalments and especially after having received the prize money and subsequently enjoyed the benefits, without payment of subscription of



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future instalments, the writ petitioner was estopped from even contending that the prize money was not paid to him; the order of the Writ Court would send a wrong signal to every defaulting chit holder who receives the prize money and challenges the manner of payment of the prize money at the time of recovery proceedings; the Writ Court failed to see that judicial review is not permissible, exercising jurisdiction under Article 226 of the Constitution of India; the prize money was disbursed as early as in 1998 and even the balance prize money was held only in fixed deposits in the name of the writ petitioner, that too with his consent and for all these grounds the appellant prayed for the writ appeal being allowed, thereby dismissing the writ petition.

7. We have heard Mr.K.V.Ananthakrushnan for the appellant, Mr.D.Govinda Reddy, for the 1st respondent/ writ petitioner and Mrs.Geetha Thamaraiselvan for 2nd and 3rd respondent. We have perused the records and also the order of the Writ Court.

8. At the outset, the admitted facts are that the writ petitioner subscribed to a chit value of Rs.3,00,000/- to be payable in instalments of



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Rs.10000/-, every month, for a period of 30 months. It is also not in dispute that the writ petitioner participated in the chit auction and agreed to prize the chit at sum of Rs.2,10,000/-. Therefore, even on the said date, the writ petitioner was fully aware of the fact that he was voluntarily forgoing a sum of Rs.90,000/-, though he attributes several financial reasons for accepting the same. The writ petitioner has chosen to receive the amount offered by the appellant way back on 03.12.1998. He was put on notice that the balance amount of Rs.1,00,000/-, after adjusting current instalments would be held in fixed deposits in his name for a period of 12 months. The writ petitioner never objected to the said action of the appellant at that relevant point of time. The writ petitioner has chosen to wake-up only at the time of preferring an appeal against ARC proceedings that were initiated by the appellant in ARC.No.905 of 2000, pursuant to the final award passed on 08.10.2001. The appeal preferred before the Chit Funds Registrar was only in November, 2004. We are able to see from the records that not only has the writ petitioner not objected to the manner of deduction of the current instalments and Rs.1,00,000/- as security, which too was held only in fixed deposits in the name of the writ petitioner, but on the contrary we also find that subsequent to the lawyer's notice issued by the appellant, the writ



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petitioner has made payments of Rs.9,500/- on 08.03.2000 and Rs.8500/- each in May 2000, November 2000 and February 2001. Even before the arbitrator, these contentions that are now being canvassed by the counsel for the 1st respondent were never taken and infact only a year's time was sought for the amount to be paid for the appellant. Only when an appeal came to be filed before the Registrar, Chit Funds under Section 70 of Chit Funds Act,1982, legal contentions have been put forth as if the entire prize money was not paid to the writ petitioner and that it was in violation of the provisions of the Chit Funds Act,1982 etc. Even the Appellate Authority did not agree with the contentions of the writ petitioner and only chose to modify the rate of interest from 24% to 12% and in all other aspects the award was confirmed.

9. We are able to see force in the contentions advanced by the counsel for the appellant for the following reasons:

- i) The writ petitioner received the prize money without any demur or protest.
- ii) When a demand was made for paying-up the defaulted instalments, the writ petitioner chose to make part payments, spread across



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almost 11 months and the said payments were also not under protest.

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iii) Even before the arbitrator in the ARC proceedings, the writ petitioner chose to only seek one year time to clear the dues.

iv) The amount of Rs.1,00,000/-, withheld also was not in any way denied to the writ petitioner, but was only kept as a security for future payment of instalments and that too, in fixed deposit only, in the name of the writ petitioner and not in the name of the appellant or any other 3rd party.

10. Having consented to all the acts of the appellant, the writ petitioner is clearly estopped from pleading a contrary stand that the writ petitioner was deprived of the entire prize money and that the entire exercise carried out by the appellant was in violation of principles of natural justice.

11. As already discussed above, nothing prevented the writ petitioner from putting forth his objections at all relevant points of time, commencing from the date on which he received the prize money till the date of award being passed by the arbitrator in ARC proceedings. Thus, it is clearly an



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afterthought, in choosing to file an appeal on the grounds that the appellant was not justified in withholding the sum of Rs.1,00,000/- in fixed deposits and the entire prize money Rs.2,10,000/- should have been released to the writ petitioner at the first instance itself. Unfortunately, the Writ Court has not factored all these relevant circumstances and voluntary actions of the writ petitioner into consideration before choosing to remit the matter back to Registrar, Chit Funds. When the amount due and demanded by the appellant was never disputed by the writ petitioner at the first instance, the exercise of remitting the matter back to the Registrar, Chit Funds does not arise and it would only prolong the agony of the parties. At this juncture, the counsel for the appellant Mr.K.V.Ananthakrushnan very fairly submitted that the appellant was even willing to waive the interest component, provided the writ petitioner pays the admitted original amount, within a reasonable time.

12. Considering the concession shown by the appellant and also in view of the findings we have already arrived at, we proceed to dispose of the Writ Appeal, in the following manner:-

1. The order of the Writ Court in W.P.No.18381 of 2007 dated



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30.12.2019 is set-aside.

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2. The writ petitioner shall pay a sum of Rs.1,24,000/- in full and final settlement within 4 months, either in two instalments or in one lump-sum, in any event not later than 4 months from the date of the receipt of copy of this order. If the writ petitioner pays the said amount within the said time limit of 4 months, then the appellant shall forego the claim of interest in toto. However, in the event of the writ petitioner defaulting in payment of the said sum of Rs.1,24,000/- within 4 months from the date of receipt of a copy of this order, then it shall be open to the appellant to proceed against the writ petitioner not only for the principal amount, but also for interest at 12% p.a. on the principal sum.

With the above directions the writ appeal is allowed. There shall be no order as to costs.

(D.K.K.J) & (P.B.B.J)
27.09.2023

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D.KRISHNAKUMAR, J.,
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(kpr)

Pre-delivery judgment in
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