IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos. 23451 of 2012, 31626 of 2013,
19315 of 2013 & 28071 of 2017
and M.P.Nos. 1 of 2012 and W.M.P.No.30156 of 2017

W.P.No.23451 of 2012

1.M/s.Daily Whole Sale Warehouse,
Sameer Kathuria,
Near Abbeels Francis Padma Junction,
M.G.Road, Ernakkulam,
Kerala.

2.Manmeeth Singh,
M/s.Royal Merchandises,
M.G.Road, Ernakkulam,
Kerala. .. Petitioners

vs

1.Foreman
Arjun Amaravathi Chits (P) Ltd.,
No.30, Kutcherry Road,
Mylapore, Chennai – 04.

2.The Secretary to Government of Tamil Nadu
Commercial Taxes & Registration (G) Department,
Fort St.George,
Chennai – 600 009.

3.The Arbitrator,
Central Madras District Registrar of Chit Fund Cases,
No.26, Rajaji salai (First line Beach),
Chennai – 600 001. .. Respondents

Prayer in W.P.No.23451 of 2012 : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the second respondent dated 16.03.2012 made in G.O.(D) No.122 and quash the same and consequentially entertain an appeal against the exparte order dated 01.03.2006 made in ARC No.1794 of 2005 on the file of the third respondent.

For Petitioner	:	Mr.S.Senthilnathan
For Respondents	:	Mr.Jaseem Mohd for R1 Mr.B.Vijay, Additional Government Pleader for R2 R3 Arbitrator

<u>W.P.No.31626 of 2013</u>

Kishore Kumar .. Petitioner

vs

1.The Secretary to Government of Tamil Nadu
Commercial Taxes & Registration (G) Department,
Fort St.George,
Chennai – 600 009.

2.The Arbitrator of Chits,
North & South Chennai Chit Fund Cases,
No.1, Moorthikal Lane,
Chennai – 600 001.

3.M/s.Shriram Chits Tamil Nadu Private Limited,
No.8A, Jayanthi Nagar,
6th Main Road, Nanganallur,
Chennai – 61. .. Respondents

Prayer in W.P.No.23451 of 2012 : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the second respondent dated 16.03.2012 made in G.O.(D) No.122 and quash the same and consequentially entertain an appeal against the exparte order dated 01.03.2006 made in ARC No.1794 of 2005 on the file of the third respondent.

For Petitioner : Mr.S.Senthilnathan

For Respondents : Mr.B.Vijay,
Additional Government Pleader
for R1
R2 Arbitrator
Mr.S.Prabhu for R3

W.P.No.19315 of 2013

1.M/s.Daily Whole Sale Warehouse,
Sameer Kathuria,
Near Abbeels Francis Padma Junction,
M.G.Road, Ernakkulam,
Kerala.

2.Manmeeth Singh,
M/s.Royal Merchandises,
M.G.Road, Ernakkulam,
Kerala. .. Petitioners

vs

1.Foreman
Arjun Amaravathi Chits (P) Ltd.,
No.30, Kutcherry Road,
Mylapore, Chennai – 04.

2.The Secretary to Government of Tamil Nadu
Commercial Taxes & Registration (G) Department,
Fort St.George,
Chennai – 600 009.

3.The Arbitrator,
Central Madras District Registrar of Chit Fund Cases,
No.26, Rajaji salai (First line Beach),
Chennai – 600 001. .. Respondents

Prayer in W.P.No.19315 of 2013 : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the second respondent dated 18.02.2013 made in G.O.(D) No.97 and quash the same and consequentially entertain an appeal against the exparte order dated 20.12.2005 made in ARC No.1795 of 2005 on the file of the third respondent.

For Petitioner	:	Mr.S.Senthilnathan
For Respondents	:	Mr.Jaseem Mohd for R1 Mr.B.Vijay, Additional Government Pleader for R2 R3 Arbitrator

W.P.No.28071 of 2017

M.Raja .. Petitioner

vs

1.The Secretary to the Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai – 600 009.

2.The Arbitrator
Chit Fund Disputes Court,
North and South Chennai District Registrar Office,
Chennai – 600 001.

3.M/s.Shriram Chits Tamil Nadu Pvt Ltd.,
No.1, Annapillai street,
Kothawal Bazaar, Chennai -600 001.

4.G.Sudhakar

5.G.Venkatesan

6.S.Viswanathan .. Respondents

Prayer in W.P.No.28071 of 2017 : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the entire records in pursuant to the impugned order in ARC No.1154 of 2013 dated 17.03.2014 passed by the 2nd respondent and the appeal made thereon in Appeal G.O.(D) No.236 dated 24.05.2017 passed by the 1st respondent and quash the same and consequently direct the second respondent herein to conduct a proper trial by affording an opportunity of being heard to the petitioner.

For Petitioner	:	Mr.A.Deivasigamani
For Respondents	:	Mr.B.Vijay, Additional Government Pleader for R1 & R2 Mr.S.Prabhu for R3 Ms.S.Sofia Madhavi for R6 No appearance for R3,R4 & R5

COMMON ORDER

A common order is passed in these matters seeing as the issue that arises for decision is one and the same.

2. All petitioners, barring the one in W.P.No.28071 of 2017, had availed financial facilities from Shriram Chits Tamil Nadu Private Limited (in short, 'company'). All petitioners challenge orders passed by the Appellate Authority being the Additional Chief Secretary to Government (FAC) passed on various dates returning the appeals filed by them on the ground that the appeals were belated, having been filed beyond the time set out under the provisions of the Chit Funds Act, 1982 (Act) and the Tamil Nadu Chit Fund Rules, 1984 (Rules).

3. There is no dispute on the factual position that the appeals have been filed belatedly. In the case of the petitioner in W.P.No. 31626 of 2013, the appeal was filed with a delay of one year five months and eight days, in the case of the petitioner in W.P.No.19315 of 2013, with a delay of six years and ten months, in the case of petitioner in W.P.No.23451 of 2012, with a delay of five years nine months and eight days and in the case of the petitioner in W.P.No.28071 of 2017, with a delay of two years nine months and two days.

4. Though learned counsel for the petitioners would make an attempt to put forth various submissions in relation to conduct of arbitration and erroneous reconciliation of the repayments of loans, this Court does not intend to consider those arguments as admittedly in these cases final awards have been passed.

5. The only question that arises for determination is a legal one, as to whether delay in adhering to limitation for filing of an appeal against the Arbitration Award may be condoned by the appellate authority.

6. Section 70 provides for appeals against decision of the Registrar and states that any party aggrieved by an order passed by the Registrar under Section 69 may, within two months from the date of the said order or award, appeal to the State Government.

7. Rule 49 set outs the procedure for hearing and decision of disputes by the Registrar and reads thus:-

> *"(1) The Registrar or his nominee shall record in the official language in vogue in the State, the evidence of the parties to the dispute and the witnesses who attend. Upon the evidence so recorded and upon consideration of any documentary evidence produced by the parties, a decision shall be given by him in writing. Such decision shall be pronounced in the open Court, either at once or as soon as may be practicable on some future day, of which due notice shall be given to the parties.*
> *(2) Where neither party appears when the dispute is called out for hearing, the Registrar or his nominee may make an order that it be dismissed for default.*
> *(3) Where the opponent appears and the disputant does not appear when the dispute is called out for hearing, the Registrar or his nominee may make an order that the dispute be dismissed, unless the opponent admits the claims or a part thereof, in which case the Registrar or his nominee, as the case may be, may make an order against the opponent upon such admission, and where, part only of the claim is admitted, may dismiss the dispute in so far as it relates to the remainder.*

(4) Where the disputant appears and the opponent does not appear when the dispute is called out for hearing, then if the Regsitrar or his nominee is satisfied from the record and proceedings that the summons was duly served, the Registrar or his nominee may proceed with the dispute ex parte. Where the summons is served by any officer of the Registrar or his nominee, he shall make his report of service on oath.
(5) The Registrar or his nominee may not ordinarily grant more than two adjournments to each party to the dispute at his request. The Registrar or his nominee may, however, at his discretion grant such further adjournments on payment of such costs to the other side and such fees to the Registrar or his nominee, as the case may be, may direct.
(6) Any party to a dispute may apply for and obtain a certified copy of any order, judgment or award made by the Registrar or his nominee on payment of copying fees, at the rate prescribed in Appendix II "

8. Thus on 31.01.2023, the following order was passed by this Court:-

"Heard
2.Mr.B.Vijay, learned Additional Government Pleader, along with the learned counsel appearing for the Finance Company in all four writ petitions will prepare a tabulation in each case as to whether the petitioners have responded to notices issued during arbitration.
3.Proof of service of notices upon the petitioners will also be indicated and copies of acknowledgment cards will be placed on file.
4.That apart, if counsel had entered appearance for the petitioners in arbitration, service of notice under Section 70 of the Chit Funds Act, 1982 will also be indicated along with proof of service of the same.
5.List on 06.02.2023.

6.Registry is directed to print the name of Mr.Prabhu, learned counsel for R3 and Mr.S.Ravichandran, learned counsel for R6. Vakalath be filed by the learned counsels forthwith."

9. Today, learned Additional Government Pleader has filed a tabulation setting out the details of service of summons on the petitioners. He also confirms that none of the petitioners have engaged counsel before the arbitrator, but have chosen to appear in the matter themselves.

10. In W.P.No. 31626 of 2013, the tabulation of details of notices and service thereof is as follows:-

S.No	Dates	Events
1	24.03.2011	Chit arbitration court summon has been acknowledged as served on the petitioner - postal acknowledgment is available on file.
2	02.05.2011	No appearance of the petitioner.
3	24.05.2011	
4	14.06.2011	
5	06.07.2011	
6	26.07.2011	
7	11.08.2011	Paper publication. The original of the advertisement is produced before the Court which contains the name of the petitioner.
8	30.08.2011	The foremen was asked to file declaration in regard to confirmation of service which was filed on 14.09.2011 On the same date the Chit Arbitrator had passed the decree adverse to the petitioner.

11. In W.P.No. 19315 of 2013, the tabulation of details is as follows:-

S.No	Dates	Events
1	31.08.2005	Chit Arbitration Court first summons have been issued to the petitioner
2	05.10.2005	Chit arbitration Court second summons have been issued to the petitioner.
3	07.11.2005	Second Summons had been returned by the postal authorities. The matter was adjourned to 12.12.2005. Publication was directed to taken in the mean while.
4	12.12.2005	Paper publication was effected. Original advertisement is produced before this Court. Upon receipt of declaration of service, an award was passed on 12.12.2005.

12. In W.P.No. 23451 of 2012, the tabulation of details is as follows:-

S.No	Dates	Events
1	31.08.2005	First summons issued. Postal acknowledgment received.
2	05.10.2005	Second summons that was served was returned by postal authorities.
3	07.11.2005	One more summons sent
4	29.11.2005	Summons was returned by the postal authorities. Original records have been produced before the Court. Paper publication effected on 01.03.2006. Original file is produced before the Court which contains the name of the petitioner.

13. In W.P.No.28071 of 2017, the petitioner is a surety. Though the file produced contains several notices sent to the debtors, the surety has been issued a summon that was received on 3.1.2014 by him. Hence service is complete on him as well. Admittedly, paper publication in this case does not contain the name of the surety.

14. The question that arises for determination has thus to be decided in light of Section 70 and Rule 69 both extracted supra.

15. The respondents have relied on *S.Venkatachalam v Secretary to Government, Commercial Tax and Religious Endowment Department and Others (*AIR 1998 Mad 232). That is a case, where a learned Single Judge of this Court dealt with a prayer for quashing of an order similar to the order impugned before me.

16. That petitioner had also sought a direction to the appellate authority to take on file the appeal that was filed by him belatedly and to dispose the same on merits. The appeal in that

case too been returned as non-maintainable in terms of Section 70 of the Act.

17. This Court held that the proceedings before the Registrar assumed the nature of institution of civil proceedings. In that case the petitioner had not been put to notice of the pronouncement of award by the Registrar and thus he was unaware that such award had come to be pronounced.

18. The Court thus opined that in circumstances where the aggrieved party is unaware of the date of pronouncement of the order it would be an impossibility to expect him to apply for a certified copy of the award and proceed to file an appeal thereafter. Thus, the principle that is adumbrated in Section 12 of the Limitation Act was called into assistance in computing of limitation for filing of appeal under Section 70 of the Chit Funds Act as well.

19. The learned Judge noted that the provisions of the Limitation Act had neither been impliedly nor expressly excluded in computing limitation for the purpose of filing an appeal under the Act. At paragraph 21, he held as follows:-

> *"21. The principle of Section 12 has to be necessarily applied even though there is no statutory provision in the Chit Funds Act or the Rules made thereunder prescribing that the time taken for obtaining certified copy of the judgment or award has to be excluded. Without a certified copy of the award or judgment, no appeal could be filed and without securing a certified copy of the judgment, the disputant may not be in a position to know as to what had been held against him and what are the points which he has to raise. The disputant cannot be prejudiced for under Section 70 in a case where the Registrar takes more than 60 days to furnish certified copy of the judgment or award."*

20. In conclusion, the impugned order was quashed and the matter remitted to the appellate authority with a direction to take the same on file and dispose it on merits.

21. The second decision cited by the respondents has been relied on by the petitioners as well. In that case, the petitioner had succeeded in a challenge similar to that before me now, and a series of directions had been issued by learned Single Judge as below:-

> *".....*
> *Before parting with the case, this Court deems it essential to issue directions as number of identical petitions are being filed since there is no rule to communicate the award nor there is a rule, which provides for intimation of passing of the award. Hence, every time there is a controversy, the parties moved this Court. To*

avoid such circumstances, this Court directs the State Government to issue the following directions to all the Registrar of Chits who act as Arbitrators:-
(i) to intimate the date on which the award is passed;
(ii) to communicate the copy of the award with necessary endorsements as to date of award, date of despatch by Registered Post Acknowledgement Due; and
(iii) towards expenses incurred in this respect, the claimant before the Arbitrator may be required to provide the cost in advance for forwarding the copy of the award by Registered Post Acknowledgement Due and the said cost could be included in the award for being reimbursed by the judgment debtors.
Such a course alone avoid circumstances of the present nature."

22. The financial institution had not been a party in the writ petition and thus filed an appeal after seeking leave of the Division Bench in W.A.No.1342 of 2003. In a decision reported in AIR 2009 MAD 68, *Sriram Chits Tamil Nadu (P) Ltd v The State of Tamil Nadu rep. By its Secretary to Government Commercial Taxes Department and others*, a Division Bench of this Court allowed the appeal holding that the directions given by the Single Judge were not sustainable.

23. They expressed the view that the limitation contained in Section 70 of the Act is to be maintained scrupulously and thus there was no provision or leeway for the appellate authority to

interpret the provision such as to expand the same in any manner whatsoever.

24. The Bench noted the judgments of the Supreme Court in the case of (i) *Sm.Hira Devi and others v District Board, Shahjanhanpur,* AIR 1952 SC 362, (ii) *The Commissioner of Sales Tax, Uttar Pradesh v M/s.Parson Tools and Plants, Kanpur* AIR 1975 SC 1039, (iii) *The Commissioner of Income Tax, Central Calcutta v National Taj Traders*, AIR 1980 SC 485, (iv) *M/s Unique Butyle Tube Industries Pvt Ltd v U.P.Financial Corporation and others* AIR 2003 SC 2013, (v) *Union of India v Rajiv Kumar* AIR 2003 SC 2917, (vi) *Commissioner of Income Tax, Kerala v Tars Agencies* (2007) 6 SCC 429, (vii) *Union of India v Deoki Nandan Aggarwal* (1992) Supp (1) SCC 233, (viii) *State of Kerala v Mathai Verghese* (1986) 4 SCC 745, (ix) *Gwalior Rayons Silk Mfg (Wvg.) Co.Ltd v Custodian of Vested Forests,* (1990) Supp SCC 785 and (x) in the *House of Lords in Pinner v Everett* (1961) 1 WLR 1266 to bring home the proposition that statutory provisions and Rules which convey the intention of Legislature for a particular purpose must be taken at face value.

25. Such intention has to be gathered from the language

used and one cannot, by inserting additional Rules, direct the authorities to issue orders contrary to that stipulated under the Act and Rules. At paragraph 17 they state as follows:-

> *"17. A survey of the above judgments would make it clear that this Court cannot by its order direct the Government to issue orders which would rather amount to legislating something into the Chit Funds Rules without there being an amendment to the very rules themselves, framed in exercise of the powers conferred under Section 89 of the Chit Funds Act. So far as the direction contained in (i) of paragraph – 28 of the order is concerned, as observed by us, in terms of rule 49(1) of the Chit Funds Rules, it is mandatory for the Registrar or his nominee to pronounce the award in the open court either at once i.e., immediately after consideration of the evidence, both oral and documentary, and such pronouncement of the award should be in writing, or on some future date which is notified and intimated to the parties so as to enable the parties to be present on the date when the award is to be pronounced."*

26. The petitioners have, for their part, relied upon paragraph 12 of the same decision, emphasising the position that the procedure set out under Rule 49 requires the parties to be intimated of the date on which the matter was listed before the Registrar for pronouncement of orders. In the present case, admittedly, the parties have not been so informed, specifically.

27. However, in my considered view, reliance on paragraph

12 is of no assistance to the petitioners because in the three cases of petitioners who are the lonees, service has been established and thus there is no further necessity for the parties to be again informed when the matter is listed for pronouncement of orders.

28. It would have been an entirely different matter had the parties appeared at least a single date, extending compliance with procedure or cooperation in the matters. However, admittedly none of the petitioners have appeared even on a single occasion.

29. As far as W.P.No.28071 of 2017 is concerned, the petitioner is a surety. In this case, two summons have been issued one to the residence and the other to his work-place, and latter has been received by him on 03.01.2004 which indicates that he has been put to notice. The signature on the acknowledgement card produced as part of the original records is admittedly his. He has not appeared on 3.1.2004 and in my considered view, there is no necessity for repeated issuance of notices.

30. In light of the discussion as above, the impugned orders are confirmed and all writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

06.02.2023

Index:Yes
Neutral Citation:Yes
ssm

To

1.The Secretary to Government of Tamil Nadu
Commercial Taxes & Registration (G) Department,
Fort St.George,
Chennai – 600 009.

2.The Arbitrator,
Central Madras District Registrar of Chit Fund Cases,
No.26, Rajaji salai (First line Beach),
Chennai – 600 001.

3.The Arbitrator
Chit Fund Disputes Court,
North and South Chennai District Registrar Office,
Chennai – 600 001.

DR. ANITA SUMANTH,J.

ssm

W.P.Nos. 23451 of 2012,
31626 of 2013,
19315 of 2013 & 28071 of 2017

06.02.2023