



W.P.Nos.14892 & 14886 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.08.2023

Pronounced on : 11.08.2023

CORAM: JUSTICE N.SESHASAYEE

WP.Nos.14886 & 14892 of 2023

and

WMP.Nos.14456, 14458, 14463 & 14466 of 2023

T.Somasundaram

...Petitioner

-Vs-

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

2.The Registrar of Chits (Chit Arbitrator)
Registration Department Office,
R.S.Puram, Coimbatore.

3.M/s.Sri Ram Chits Tamilnadu Ltd.
Saibaba Colony,
Coimbatore.

...Respondents



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Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records in ARC 182/18 and ARC 183/18 dt.4.8.2020 of the 2nd respondent as confirmed by orders in GO(D)246 & GO(D)249 dated 25.11.2022 and 29.11.2022 respectively on the file of 1st respondent and quash the same.

For Petitioner : Mr.M.Kalyanasundaram,
Senior Advocate
Asst. by R.Vasudevan

For R1 & R2 : Mr.V.Manoharan,
Additional Government Pleader

For R3 : Mr.Adarsh Subramanian

ORDER

The Facts are:

- a) A certain Murugesan and his wife Vijayalakshmi were subscribers of one of the registered chits run by the third respondent. They both prized one of the installments, and when the prize amounts were disbursed to the subscribers, the petitioner herein stood as a guarantor for the same and offered his immovable property as a security.
- b) While so, both the subscribers defaulted in making their future subscription amount, and hence, the third respondent moved the



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Arbitrator under the Chit Funds Act both against the defaulted subscribers and their guarantor with separate proceedings. The Arbitrator had passed awards both against the subscribers and also the petitioner herein Vide separate awards dated 29.11.2022 and 25.11.2022.

c) These awards were challenged in separate appeals by the petitioner/guarantor before the Government within the frame work of Chit Funds Act, and Vide the impugned proceedings dated 04.08.2020, his appeals were dismissed. They are now challenged.

2. The learned counsel for the petitioners submitted that as per Sections 31 and 32 of the Chit Funds Act, the primary obligation is on the subscriber to pay all future installments, and in terms of Section 128 of the Contract Act, the liability of the surety though is coextensive with the principal debtor but, yet it is subject to contract to the contrary. The learned counsel would further submit that Section 32 of the Chit Funds Act itself provides an exclusion to indicate that the liability of the guarantor under the Chit Funds Act is not coextensive.

3. Per contra, the learned counsel for the third respondent would submit that



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the petitioner was given ample opportunity by the Arbitrator, when he was even allowed to cross-examine the representative of the third respondent and this fact was also taken into account while passing the award. He also brought to the notice of the Court a Memorandum of deposit of title deeds executed by the petitioner, wherein it is indicated that he has undertaken to extend guarantee for the amount due to the third respondent.

4. After weighing rival contentions, this Court does not find that the contention of the petitioner is sustainable. Sections 31 and 32 of the Chit Funds Act essentially deal with the obligation of a principal debtor, and they do not deal with the obligation of a guarantor of a defaulted subscriber of a chit. The obligation of the guarantor is governed by Sec. 128 of the Contract Act and it makes the liability of the guarantor coextensive with that of the principal debtor.

5. It is true that Section 128 of the Contract Act carves an exception where the creditor and the guarantor may agree not to make the contract of guarantee coextensive with that of the principle debtor. In this case, there is no such contract which is contrary to the coextensive nature of contract of guarantee.

Here the petitioner's contention is that Sec. 32 carves out that exception, but



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this Court finds that the very expression employed in Sec. 32 no where carves out any such statutory exception for the purpose of Sec. 128 of the Contract Act.

6. In conclusion, both the Writ Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

11.08.2023

Index : Yes/No
Internet : Yes/No
Tsg



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N.SESHASAYEE, J.,

Tsg

Pre-delivery order in
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