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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.02.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

Writ Appeal No.689 of 2021

Yuvarajan

... Appellant

Vs

1.The State of Tamil Nadu,
Represented by its Additional chief Secretary to the Government,
Commercial and Registration Department,
Fort St.George, Chennai – 9.

2.Arbitrator of Chits,
North and South Chennai,
Chennai – 600 001.

3.Maragadarsi Chits Private Limited,
Adayar Sakthi Squire,
No.24, Sardar Patel Raod,
Adayar, Chennai – 600 020.

... Respondents

PRAYER: Writ Appeal has been filed under Clause 15 of Letter Patent to set aside the order dated 21.11.2019 passed by the learned Single Judge in W.P.No.6218 of 2018, allow the Writ Petition.



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For Appellant : Mr.A.Maheshnath

For RR1 & 2 : Mr.B.Vijay
Additional Government Pleader

For R3 : Mr.D.Shivakumaran

JUDGMENT

(Judgement of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Intra-Court Appeal had been preferred by the unsuccessful petitioner, wherein the Writ Petition challenging the order of the 1st respondent in rejecting his claim to condone the delay of 525 days in filing the Appeal under the Chit Funds Act, 1982.

2. Heard Mr.A.Maheshnath, learned counsel for the appellant, Mr.B.Vijay, learned Additional Government Pleader appearing on behalf of the respondents 1 and 2 and Mr.D.Shivakumaran, learned counsel appearing on behalf of the 3rd respondent.



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3. Mr.A.Maheshnath, learned counsel for the appellant would submit that the 2nd respondent herein, based upon a claim made by the 3rd respondent herein had passed an *ex-parte* award, wherein no notice had been served upon the appellant. It came to his knowledge only, when notice in the execution proceedings were served upon him. According to him, no notice had been served on him in the arbitration proceedings for him to effectively defend his case. He would further submit that even in the notice that was sought to be served upon him by the 2nd respondent, his address has been wrongly given. He would further contend that he had not executed the alleged promissory note upon which the joint liability has been fixed upon him. These factors have all not been considered while passing the award. The reason assigned by him for not filing the appeal within the period of limitation was that he had the knowledge of such an award only on receipt of notice in the execution proceedings and therefore, there was a bonafide delay on his part in filing the appeal. However, without considering these factors, the 1st respondent had rejected the claim of the appellant by holding that the appellant was at fault in giving the wrong address in the documents executed by him in favour of the 3rd respondent and therefore, his claim



seems to be not bonafide. The learned counsel would submit that such a reasoning arrived at by the 1st respondent is wholly contrary to the materials available on record and therefore, he would seek interference of this Court.

4. On the contrary, Mr.B.Vijay, learned Additional Government Pleader appearing on behalf of the respondents 1 and 2 would submit that the reasons given by the appellant is only to try and protract the proceedings to defeat the claim of the 3rd respondent. He would submit that the 1st respondent had correctly considered the entire issue in its proper perspective and had given a categorical finding that it was the appellant, who had given the address in the documents executed by him in favour of the 3rd respondent. Only to the said address given by the appellant, notice had been sought to be served. He cannot now plead that the address on which the notice was sent to an incorrect/ insufficient address. Therefore, he would submit that there was no interference that is required to be made by this Court.

5. Mr.D.Shivakumaran, learned counsel appearing on behalf of the



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3rd respondent would submit that it is always open to the appellant to raise all these issues before the Execution Court, even there also, such issues have not been raised and therefore, he would submit that the entire claim now made by the appellant before this Court is only an after thought to protract and defeat the right of the 3rd respondent.

6. We have considered the submissions made by the learned counsel appearing on both sides and perused the materials available on record before this Court.

7. The case of the appellant is that he had not been served with a notice in the arbitration proceedings. From the records it is seen that a specific finding had been given by the 1st respondent and also the learned Single Judge that the notice had been sent in the arbitration proceedings to the address that had been given by the appellant in the documents that had been executed in favour of the 3rd respondent. The appellant does not dispute that it was not the address which was given in the documents, but, was the correct address given by him. It is also to be seen that, as rightly



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held by the learned Single Judge, the appellant cannot now seek to contend that the notice that had been sent by the 2nd respondent in the arbitration proceedings was to a wrong address and therefore, there is no service of notice on the appellant. As the findings of both 1st respondent and the learned Single Judge is that the notice had been sent to the address given by the appellant in the documents executed by him.

8. Therefore, we do not find any infirmity in the order impugned before us seeking warranting interference by us. In view of the aforesaid findings, we are of the view that this Intra-Court Appeal lacks any merits and in fine, the same is dismissed. However, there shall be no order as to costs.

(R.S.K.,J.)

(K.B., J.)

14.02.2024

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

gba

To

1. The Additional Chief Secretary to the Government,
for The State of Tamil Nadu,
Commercial and Registration Department,
Fort St.George, Chennai – 9.

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R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

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