IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.04.2024

Pronounced on : 23.05.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.13266 of 2020

Shriram Chits Tamilnadu
(P) Limited, Rep. By its Senior Manager(Legal)
Cuddalore Branch,
P.R.Complex, Barathi Road,
Cuddalore 607 001 ... Petitioner

Vs.

1.The Additional Chief Secretary to Government(FAC),
Commercial Taxes & Registration (G) Dept,
Secretariat, Fort St.George,
Chennai 600 009
2.The Deputy Registrar of Chits,
Cuddalore
3.C.Lakshmi ... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the impugned order GO(D) No.353, Commercial Taxes & Registration (G) Dept dated 26.09.2016 passed by the first respondent confirming the order of the second respondent dated 10.01.2014 made in ARC No.1181 of 2013 and quash the same as illegal against law.

For Petitioner : Mr.K.V.Ananthakrishnan

For Respondents

For R1 & 2 : Mr.T.Chandrasekaran, Special Government Pleader

For R3 : Mr.D.Padmanabhan

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 26.09.2016 thereby dismissed the appeal and confirming the order passed by the second respondent dated 10.01.2014 in ARC.No.1181 of 2013 thereby directed the petitioner to pay a sum of Rs.3,09,325/- with interest.

2. The third respondent had joined as a subscriber at Cuddalore Branch of the petitioner in three chits for Rs.5,00,000/- each. Her husband and one, Mani also had joined in the said chit group. Each chit was valued at Rs.5,00,000/- payable at Rs.12,500/- per month for each ticket for 40 months. The third respondent had participated in the sixth auction held on 10.04.2010 and prized the chit for Rs.3,00,000/- with the chit amount of Rs.2,00,000/-. The third respondent had offered five personal guarantors as security to the prized chit towards future liability

of Rs.4,25,000/-. She also executed pronote. She had also availed two trade loans for Rs.2,50,000/- and Rs.1,00,000/- in her name and two trade loans of Rs.2,00,000/- and Rs.3,00,000/- in her husband's name i.e. four loans totalling a sum of Rs.8,50,000/- was disbursed as against five chits paid up amount taken as security. The third respondent and her husband had executed necessary lien letter dated 30.04.2010 in favour of the petitioner. Accordingly, the prize money shall be adjusted towards the loans availed by the third respondent and her husband. They also agreed to deduct from the prize money payable by her and her husband towards loan dues. After deducting the loan amount, the third respondent was paid a sum of Rs.94,100/- on 08.05.2010.

2.1 Thereafter, the third respondent and her husband committed default in payment of three unprized chits. Therefore, they were removed from the unprized chit group after proper intimation to them. Further the amount available in the said chits were adjusted after deducting the incidental nominal commission charges and the balance amount was also adjusted towards loan dues. The third respondent and her sureties were issued statutory notice under Sections 32 and 33 of the Tamilnadu Chit Funds Act, 1982. However, no payment was made by the third respondent. Therefore, the petitioner filed claim petition before the second respondent in ARC.No.516 of 2011. However, the third respondent failed to appear and as such, paper publication was ordered and the same was also effected on 02.06.2011 in 'Makkal Kural Newspaper'. However, the third respondent failed to appear and as such, she was set *ex-parte*. Hence, the second respondent passed award thereby ordered to pay a sum of Rs.3,73,454/- with 24% interest payable by the third respondent and other sureties. Thereafter, the third respondent filed claim petition in ARC.No.1181 of 2013 questioning the deduction made from the prize money towards the unprized chit and loan dues to the tune of Rs.1,85,575/-. In the said claim petition, the second respondent passed an award and directed the petitioner to pay a sum of Rs.1,23,750/- along with the principal amount of Rs.1,85,575/- with interest at the rate of 24%. Aggrieved by the same, the petitioner preferred appeal before the first respondent. However, the same was dismissed.

3. The learned counsel for the petitioner would submit that the third respondent only lodged complaint before the second respondent and she never made any application for arbitration. In order to avoid the execution of the award passed by the second respondent in ARC.No.516 of 2011, the third respondent filed complaint. In fact, the execution proceedings in EP.No.11 of 2012 in ARC.No.516 of 2011, is pending for execution on the file of the Sub Court, Cuddalore. That apart, the third respondent did not file any appeal as against the award passed by the second respondent in ARC.No.516 of 2011. The third respondent and her husband's chits are subject to lien to the petitioner for the trade loan availed by them. The third respondent and her husband had arrears in the loan availed by them and also agreed to adjust the paid up amount was credited to their loan account. Therefore, the petitioner is not at all liable to pay any amount to the third respondent and her husband.

4. Heard, the learned counsel appearing on either side.

5. On perusal of the counters filed by the respondents and on hearing the submissions made by the learned counsel appearing for the respondents, revealed that the third respondent and her husband committed default in payment of subscription for three unprized chits and as such, they were removed from the chit. Thereafter, the said amount was adjusted towards incidental nominal commission charges and loan dues. The petitioner is only running the chit business alone and its sister concern is running loan business. Therefore, the petitioner cannot act on the part of its sister concern as recovery agent. If any lien letter is obtained from the third respondent in order to adjust the chit as trade loan which was borrowed from the petitioner's sister concern, it cannot be sustainable in law. In fact, the third respondent did not give any consent letter to the petitioner to adjust the prized chit amount to other trade loan availed by her and her husband. It is relevant to extract the provisions under Section 30 of the Tamilnadu Chit Funds Act, 1982 hereunder:

"30. Amounts due to defaulting subscribers:

(1) A foreman shall out of the amounts payable by and realized from the substituted subscriber towards the

installments relatable to the period before the date of substitution (including the arrears due from the defaulting subscriber), deposit before the date of the next succeeding instalment in a separate identifiable account in an approved bank mentioned in the chit agreement, an amount equal to the contributions made by the defaulting subscriber less such deductions as may be provided for in the chit agreement, and shall inform the defaulting subscriber as well as the Registrar of the fact of such deposit and shall not withdraw the amount so deposited except for payment to the defaulting subscriber.

(2) The amount so deposited under section (1) shall be paid to the defaulting subscriber as and when he claims the amount and the amount so deposited shall not be withdrawn by the foreman for any purpose other than for such payment.

(3) The contributions of any defaulting subscriber who has been substituted till the termination of the chit shall be paid to him within fifteen days from the date of termination of the Chit subject to such deductions as may be provided for in the chit agreement".

6. Accordingly, the petitioner has no right to adjust the said amount of subscription paid by the third respondent and her husband towards dues of its sister concern. The petitioner is not the authorised person to adjust the chit amount of the third respondent towards loan dues. The petitioner's sister concern is a statutory legal entity and it has remedies to recover the debt amount from the third respondent and her husband in accordance with law. In fact the petitioner alleged that the third respondent and her husband had committed default in payment of three unprized chit group and as such, they have been removed from the chit. However, there is no proof to show that the third respondent and her husband were issued notice for committing default in payment of chit amount as contemplated under Section 28 (1) (2) (3) of the Chit Funds Act. There is also no record to show that the third respondent and her husband were removed from chit. Therefore, the petitioner did not even follow any procedure contemplated under the Chit Funds Act, 1982 while removing the third respondent and her husband from the chit group. Therefore, the third respondent filed complaint before the District

Consumer Disputes Redressal Forum, Cuddalore for the deficiency of service by the petitioner. In reply to the said complaint, the petitioner categorically stated that it runs only a chit company and not any other company.

7. That apart, even if the third respondent and her husband committed default in payment of chit amount, it can be liened to another chit. Therefore, the petitioner has no jurisdiction or authority to adjust the chit amount which was paid by the third respondent and her husband towards the loan dues. Further, the petitioner filed this writ petition after period of four years from the date of the order passed by the first respondent. There is absolutely no explanation for the huge delay in challenging the order passed by the second respondent by way of this writ petition. In view of the above reasons, this Court finds no infirmity or illegality in the orders passed by the first and second respondents. As such, this writ petition is liable to be dismissed.

8. Accordingly, this writ petition is dismissed. There shall be no order as to costs.

23.05.2024

Neutral Citation:Yes/No
Index: Yes/No
Speaking/Non-speaking order
lok

To
1.The Additional Chief Secretary to Government(FAC),
Commercial Taxes & Registration (G) Dept,
Secretariat, Fort St.George,
Chennai 600 009
2.The Deputy Registrar of Chits,
Cuddalore

G.K.ILANTHIRAIYAN, J.

lok

W.P.No.13266 of 2020

23.05.2024