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W.P.No.15455 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.15455 of 2020
and
W.M.P.No.19306 of 2020**

V.Rathipriya
W/o.Venkatarangan

... Petitioner

Vs.

1.The Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The Deputy Registrar of Chits,
Tindivanam.

3.M/s.Shri Ram Chits Tamil Nadu (P) Ltd.,
Represented by Foreman R.Murugasan,
Having its registered office at
No.123, Angappa Naicker Street,
Chennai.
Branch Office at
No.1, Aravindar Street,
Gingee Salai,
Puducherry - 605 001.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records comprised in G.O.(D) No.28 dated 17.02.2020 passed by the first respondent and quash the same.

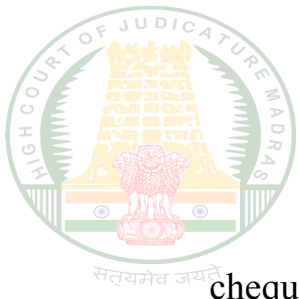
For Petitioner : Mr.R.Bharanidharan
for Mr.P.K.Harinath Babu

For Respondents : Mr.LSM.Hasan Fisal
Additional Government Pleader for R1 & R2
Mr.T.Jayakumar for R3

ORDER

This writ petition has been filed challenging the impugned order dated 17.02.2020 issued by the first respondent.

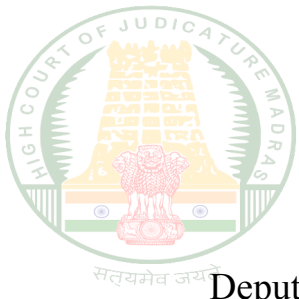
2. The case of the petitioner is that the petitioner is a member of Chit Group bearing No.80004 and ticket No.32 as well as another Chit Group conducted by the third respondent and has regular in paying the chit amount and she emerged as the successful bidder in the auction dated 08.10.2013. Pursuant to the same, the petitioner executed the surety as sought for and also submitted her Life Insurance Policy Certificate which is still under the third respondent's custody. The petitioner was issued with a



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cheque by the third respondent on 12.03.2014 for a sum of Rs.4,30,325/- out of Rs.10,00,000/-. However, she received a legal notice dated 19.04.2016 from the third respondent under Sections 32 and 33 of the Chits Funds Act, 1982 alleging that the petitioner has only paid 41 instalments and has defaulted thereafter. It was also alleged in the said notice that the petitioner is liable to pay a sum of Rs.1,01,715/- and further sum towards future instalments. The petitioner has replied to the said notice stating that only a partial amount was received by her. Another notice was issued to the petitioner on 06.07.2016 and the same was also replied on 20.07.2016. However, suddenly she received a notice in E.P.No.298 of 2017 in D.R.A.No.225 of 2016 on the file of the Principal Subordinate Court, Puducherry calling upon her to appear before the said Court on 29.01.2018. Only thereafter the petitioner came to know that an exparte order was passed against her as early as on 10.04.2017 by the Deputy Registrar of Chits, Tindivanam, i.e., second respondent, directing the petitioner to pay a sum of Rs.2,09,683/-. She came to know that the third respondent had filed a claim petition before the second respondent against the petitioner and that the



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Deputy Registrar of Chits has recorded that since acknowledgment for the first respondent therein, who is the petitioner herein was not received, the same was adjourned, pursuant to which, notice was once again sent to the first respondent therein and since the same was returned, paper publication was ordered and the case was posted on 10.04.2017. Since the petitioner was not aware any of these proceedings, she could not appeared before the Deputy Registrar of Chits and ultimately, an order dated 17.02.2020 was passed by the first respondent herein modifying the interest rate alone. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner submitted that admittedly the second respondent passed an exparte order which is contrary to Rule 50 (3) & (4) of the Tamil Nadu Chit Funds Rules and as against which, the petitioner preferred an appeal before the first respondent, but the first respondent without considering the facts and circumstances of the case has passed the impugned order mechanically.



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4. The learned counsel appearing for the third respondent submitted that the petitioner as a subscriber of the third respondent Company had received a prize money on 11.03.2014 from the third respondent after executing necessary documents. The LIC policy was also offered as collateral security and the non prized two chits were offered as security to the prized chit future liability. After receiving the prize money, the petitioner committed default in payment of the chit dues from the 41st balance instalments. Hence, the third respondent issued a legal notice dated 21.04.2016 under Sections 32 & 33 (1) of the Chit Funds Act. Even after receipt of the legal notice also, the petitioner herein failed to pay the chit dues to the third respondent. Hence, the third respondent filed the Arbitration Case under Section 64 of the Chit Funds Act, before the Deputy Registrar of Chits / Arbitrator, Tindivanam for the claim amount of Rs.2,09,683/- with cost and further interest. The Arbitrator issued summons to the petitioner for appearing for the hearing posted to 20.02.2017 but the acknowledgment card / return cover was not received. Hence, the Arbitrator had issued fresh notice to the petitioner scheduling the hearing on 20.03.2017. The said notice sent

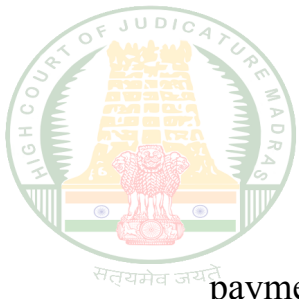


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to the petitioner was returned with an endorsement 'not claimed return to the sender'. Thereafter paper publication was issued as per Rule 50(4) of the Tamil Nadu Chit Funds Rules. Even after the paper publication, the petitioner had failed to appear before the Chit Funds Court. Therefore, the petitioner was set exparte on 10.04.2017.

5. The learned counsel for the third respondent further submitted that the third respondent has filed an execution petition before the learned Principal Sub Judge, Puducherry to execute the award. That apart the LIC policy given as a collateral security by the petitioner is also a lapsed policy and therefore, the third respondent is not in a position to utilize the same as against the chit dues. Therefore, the petitioner filed an appeal in D.R.A.No.225 of 2016 dated 10.04.2017 with inordinate delay of 289 days. The Appellate Authority heard both sides and disposed the same by order dated 17.02.2020 by modifying the rate of interest to 8% instead of 24% and directed the petitioner herein to repay the awarded amount with interest at the rate of 8% from the date of filing of the arbitration case to till entire



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payment is made. He further submitted that the award as well as the Appellate Authorities order are well reasoned orders and therefore the same cannot be interfered with. Therefore, he seeks dismissal of the writ petition.

6. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and also perused the materials available on record.

7. Admittedly the issue is whether the second respondent before concluding arbitration proceedings has followed Rule 50 (3) & (4) of the Tamil Nadu Chit Funds Rules, 1984. For better appreciation, Rule 50 (3) & (4) of the Tamil Nadu Chit Funds Rules, 1984 is extracted hereunder:

(3) The Officer serving a summons or notice shall, in all cases in which summons or notice has been served, endorse annex or cause to be endorsed on or annexed to, the original summons or notice, a return stating the time when, and the manner in which, the summons or, notice as the case may be was served, and the name and address of the person(if any)



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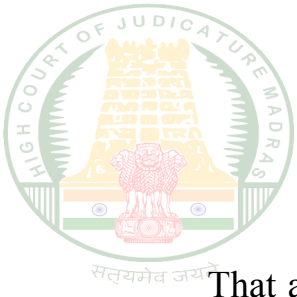


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identifying the person served and witnessing the delivery or tender of the summons or the notice.

(4) The Official issuing the summons or notice may examine the serving officer on oath or cause him to be so examined by the Officer through whom it is served and may make such further inquiry in the matter as he thinks fit; and shall either declare that the summons or, notice as the case may be, has been duly served or order it to be served in such manner as he thinks fit.”

8. In the instant case the first notice 19.04.2016 was acknowledged by the petitioner and a suitable reply was also sent. However, the case of the respondents that the summon was served on the petitioner in the arbitration proceedings and the legal notices were duly served was not substantially proved. The third respondent has not stated the correct address to which the notice was taken. It is also to be noted that the return of original summons or notice stating the time when, and the manner in which, the summons or, notice was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons or the notice has not been substantially proved in the instant case.



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That apart, the official issuing the summons or notice has not examined the serving officer through whom it is served. Hence this Court is of the view that the impugned G.O.(D)No.28, Commercial Taxes and Registration (G) Department dated 17.02.2020 is liable to be set aside and accordingly, it is set aside. The petitioner shall be given an opportunity to put forth her case and after giving an opportunity to the petitioner, the matter can be decided on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

9. With the above observations, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

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