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C.R.P.(NPD).No.3266 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.3266 of 2018
and C.M.P.No.18546 of 2018

Margadarsi Chit Private Limited
Represented by its Foreman
No.7/54, III Floor
Ideal Garden Complex,
Junction Main Road
Salem – 4

... Petitioner

VS

1.P.Baskaran

2.P.Ramani @ Raja Ramani

3.M.P.Saravanan

4.K.Rajasekar

5.K.Murugesan

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the Fair and Decreetal order dated 05.04.2018 in R.E.A.No.239 of 2013 in R.E.P.No.43 of 2009 on the file of the I Additional Subordinate Court, Salem.

For Petitioner : Mr.D.Shivakumaran



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For Respondents : No Appearance

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ORDER

The Civil Revision Petition is filed challenging the order passed by the Executing Court allowing the application filed by the 1st respondent under Section 47 of the Civil Procedure Code.

2. Heard argument of learned counsel for the petitioner. Though the respondents are served and their names are appeared in the cause-list, there is no representation for the respondents.

3. The petitioner herein obtained an award against the respondents for a sum of Rs.4,23,013/- under the provisions of Chit Funds Act, 1982. The same was put into execution by the petitioner in R.E.P.No.43 of 2009. The 1st respondent/Judgement Debtor No.5 filed an application in R.E.A.No.239 of 2013 under Section 47 of the Civil Procedure Code raising following objections against the execution of the arbitral award:-

“a) The petitioner/Decree holder has not filed a certificate as contemplated under Section 55(2) of the Chit Fund Rule, 1989, so as to enable him to execute the award. Hence



three executions have to be rejected since it is only an award under section 71(b) of Chit Funds Act, not a decree as contemplated under Section 71(a) of Chit Fund Act.

b) The Chit Funds Act does not provide any Arbitration proceedings initiated by Foreman against surety and the contract of surety of guarantee is so applicable to the Chit Funds Act.

c) Thirdly without issuing a notice under Section 33(1) of Chit Funds Act, the 1st respondent-Foreman cannot demand or claim consolidated payment from a defaulting prized subscriber. Whereas in the present award in Ar.O.P.No.169/09 admittedly, the Foreman-respondent has not issued any such notice to the subscriber. Hence the exparte award passed against the petitioner/J.D.No.5 for consolidated payment is a nullity and the same cannot be executed.

d) While awarding the Arbitrator has passed an award of Rs.4,23,013/- and the award amount shall carry interest at 24% per annum from date of award till realization. Awarding interest at 24% per annum is against law and the Arbitrator has no such authority to grant interest in the manner set out in the award. Hence the Arbitrator has acted beyond the scope of Section 64 of the Chit Fund Act, 1982. Hence the award passed against the petitioner and respondents No.2 to 5 is nullity and is unenforceable.



... ..

a) That the Chit Funds Act does not provide for any arbitration in respect of a claim by the Foreman against the surety.

b) That the arbitrator has no power to pass exparte award and the award passed against the petitioner is a nullity.

c) That the arbitrator has no authority to grant interest in the manner set out in the award.

d) That the arbitrator has acted beyond the scope of Section 64 of Chit Funds Act.

e) That initiated three proceedings against different judgment debtors for the recovery of on and same decree amount is bad or not?"

4. The Executing Court framed the following points for consideration in the execution application filed by the 1st respondent:-

“(i) Whether the award of the arbitrator has been made as decree of civil court and transmitted to this Court for execution as per Civil Procedure Code?

(ii) Whether the award passed by the Arbitrator is valid in law and executable before this Court?

(iii) Whether the Decree Holder is entitled to proceed against the Principal Debtor and the Guarantors



simultaneously?

(iv) Whether the Decree holder is entitled to file simultaneous execution petitions against different Judgment Debtors for different relieves for same decree amount?

(v) Whether the interest awarded under the decree is in contravention of Chit Fund Act and Rules?

(vi) Whether the award was passed in contravention of Sec.64 of Chit Funds Act?

(vii) Whether the petitioner is entitled to get adjudication of his claim made in the petition?

(viii) To what other relieves the parties are entitled to?"

5. The Executing Court found that under Section 71 of Chit Funds Act, 1982 and Rule 55 of Tamil Nadu Chit Funds Rules, 1984 framed under the said Act only Registrar was empowered to transmit the decree and also to issue certificate of non-satisfaction. However, in the present case, the same was done by the Deputy Registrar, therefore, the award has not been made as a decree of the Civil Court and transmitted in accordance with Section 71 of Chit Funds Act read with Rule 55 of Rules framed under the said Act and accordingly, answered the Points Nos.1, 2 and 7 in favour of the 1st respondent and against the petitioner. The other Points were answered in



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favour of the petitioner and against the 1st respondent. In view of the conclusion reached by the Executing Court in Points Nos.1, 2 and 7, the execution application filed by 1st respondent was allowed. Aggrieved by the same, the petitioner is before this Court.

6. The learned counsel appearing for the petitioner by taking this Court to definition of the word Registrar under Section 2(o) of Chit Funds Act, 1982 submitted that the expression 'Registrar' includes Deputy Registrar as per the definition of the Act and hence, the conclusion reached by the Executing Court over looking Section 2(o) of Chit Funds Act, 1982 is erroneous and liable to be set aside.

7. Section 71 of the Chit Funds Act, 1982 reads as follows:-

“71. Money how recovered.—Every order passed by the Registrar or the nominee under section 68 or section 69 and every order passed by the State Government in appeal under section 70 for payment of any money shall, if not carried out,-

(a) on a certificate issued by the Registrar, be deemed to be a decree of a Civil Court, and shall be executed in the same



manner as a decree of such Court, or

(b) be executed in accordance with the provisions of any law for the time being in force for the recovery of amounts as arrears of land revenue:

Provided that no application for execution under clause (b) shall be made after the expiry of three years from the date fixed in the order, and if no such date is fixed, from the date of the order.”

8. A perusal of the above provision would make it clear that only if certificate is issued by the Registrar under Section 71 of the Act, the award passed in arbitral proceedings will become a deemed decree.

9. Rule 55 of the Tamil Nadu Chit Funds Rules, 1984 reads as follows:-

“55. Procedure for execution of awards.—(1) Every order or award passed by the Registrar, or his nominee under Section 68 or 69 shall be forwarded by the Registrar to the foreman or to the party concerned with instructions that the foreman or as the case may be, the party concerned should initiate execution proceedings forthwith according to the provisions of Section 71.



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(2) If the amount due under the award is not forthwith recovered, or the order thereunder is not carried out, it shall be forwarded to the Registrar with an application for execution along with all information required by the Registrar, for the issue of certificate under Section 71. The applicant shall state whether he desires to execute the award through a Civil Court or through the revenue authorities as provided under Section 71.

(3) On receipt of such application for execution, the Registrar shall forward the same to the proper authority for execution along with a certificate issued by him under Section 71 and a proclamation issued under rule 54 in the manner prescribed therein.

(4) Every order passed in appeal under Section 70 shall also be executed in the manner laid down in sub-rules (2) and (3).”

10. A perusal of the above rule would indicate that if amount due under the award is not recovered, it shall be forwarded to the Registrar with an application for execution along with an indication whether the applicant desires will execute the award through the Civil Court or through the Revenue Authorities. On receipt of such application, the Registrar shall forward the same to the proper authority for execution along with a certificate



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issued by him under Section 71 of the said Act. Therefore, the Registrar is the Authority empowered to transmit the decree for execution.

11. Section 2(o) of the Chit Funds Act, 1982 reads as follows:-

“(o) “Registrar” means the Registrar of Chits appointed under section 61, and includes an Additional, a Joint, Deputy or an Assistant Registrar appointed under that section.”

12. A perusal of Section 2(o) of the Act would make it clear that the expression 'Registrar' includes a Deputy Registrar. In the case on hand, certificate under Section 71(a) of Chit Funds Act, 1982 was issued by Deputy Registrar and the transmission of the decree along with certificate was also made by Deputy Registrar of Chit Funds. In view of the inclusive definition under Section 2(o) of the Chit Funds Act, 1982 Registrar includes Deputy Registrar and hence, the conclusion reached by the Executing Court that certificate issued and the transmission made by Deputy Registrar instead of Registrar would vitiate the proceedings is not acceptable to this Court. Therefore, the order impugned in this revision is set aside and Section 47



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application filed by the 1st respondent in R.E.A.No.239 of 2013 in R.E.P.No.43 of 2009, dated 05.04.2018 is dismissed with a liberty to the petitioner to execute the award in accordance with law.

13. Accordingly, the Civil Revision Petition stands allowed. No costs.

Consequently, the connected civil miscellaneous petition is closed.

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Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

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The Additional Subordinate Court,
Salem.



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S.SOUNTHAR, J.

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