



W.P.(MD)No.9359 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2024

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD)No.9359 of 2009

and

W.M.P.(MD)Nos.4692, 4693 and 18055 of 2024

1.N.Ganesan

2.P.Navaneethakrishnan

3.N.Arumugam

4.N.Pushpam

5.N.Paramanantham

...Petitioners

Vs

1.The Principal Secretary to the Government,
Commercial Taxes and Registration Department,
Secretariat,
Chennai.

2.The Assistant Registrar of Chits,
Assistant Chits Registrar Court,
Tirunelveli,
Tirunelveli District.

3.A.Ayyachamy

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorari, calling for the



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records relating to the impugned order dated 28.08.2006 made in A.R.C.No.21 of 2005 on the file of the second respondent as well as the consequential impugned order dated 05.08.2009 made in G.O.(D). No.367 on the file of the first respondent and quash the same.

(Prayer amended vide order dated 11.11.2024 in W.M.P.(MD)No.18052 of 2024 in W.P.(MD)No.9359 of 2009)

For Petitioner : Mr.M.S.Jeyakarthish

For R-1 and R-2 : Mr.J.K.Jayaselan

For R-3 : M/s.P.Kalaiyarasi Bharathi

ORDER

Heard Mr.M.S.Jeyakarthish, learned counsel for the petitioner, Mr.J.K.Jayaselan, learned counsel for the respondents 1 and 2 and M/s.P.Kalaiyarasi Bharathi, learned counsel for the 3rd respondent.

2. This Writ Petition has been filed challenging impugned order dated 28.08.2006 made in A.R.C.No.21 of 2005 on the file of the second respondent as well as the consequential impugned order dated 05.08.2009 made in G.O.(D).No.367 on the file of the first respondent and quash the same.



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3. The case of the petitioners is that the first petitioner was the subscriber of the third respondent chit fund and that he had defaulted in making certain payments. The third respondent had approached the second respondent who had passed an award on 28.08.2006 wherein, he had set the petitioners exparte on 22.08.2006. Immediately, on the next day ie., on 23.08.2006, the third petitioner herein had preferred an application to set aside the exparte order dated 22.08.2006 along with the counter. Without considering the said application, an exparte award has been passed by the second respondent on 28.08.2006 and hence the petitioners had preferred an appeal with the delay of 208 days before the first respondent. Originally, the claim of the petitioners for seeking to condone the delay was dismissed by the first respondent, against which the petitioners have preferred W.P.No.7221 of 2007 and this Court in its order dated 20.09.2007 considering the claim of the petitioners and having *prima facie* found that the exparte order had been passed without considering the application of the petitioners for setting aside the order of exparte, had allowed the condone delay application and directed the first respondent to decide the appeal on merits. Even though had granted an opportunity to the petitioner, had not dealt with the issue in a proper



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perspective and had rejected the appeal by holding that no counter had been filed during the course of trial and that the application to set aside the exparte order was also duly dismissed. He would submit that the reasoning assigned by the first respondent, that the application to set aside the exparte order was dismissed, is wholly contrary to the facts, as the application was never taken up by the second respondent. He would also rely upon the information provided by the District Registrar which conclusively prove that the application that has been filed by the petitioners to set aside the exparte order was not at all considered by the second respondent. Hence, he would submit that the orders impugned would have to be set aside and remitted back to the second respondent to be dealt with afresh.

4. At this juncture, he had also made an offer that he is willing to pay the amount claimed by the third respondent but had contested the interest that has been awarded at 24% per month. He would submit that post the claim petition the third respondent would not be entitled to claim 24% of the award amount and he would be willing to pay sum of Rs.1,20,000/- claimed by the third respondent at reasonable interest that would be fixed by this Court.



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5. Countering his arguments, the learned counsel for the third respondent would vehemently contend that it is the agreed contractual amount that the petitioners were liable to pay to the third respondent and that he would submit that the petitioners inspite of notices, which have been properly served on them had failed to appear before the second respondent / arbitrator and hence there is no necessity to set aside the exparte order on the ground claimed by the petitioners. He would submit that the petitioners are liable to pay the claim amount together with interest at 24% per annum as award by the second respondent and confirmed by the first respondent. Hence, he would seek to dismiss the Writ Petition.

6. I have considered the rival submissions made on either side and perused the materials on record.

7. An exparte order had been passed by the second respondent. A reading of the said order would indicate that the notice to the first petitioner had been returned un-served and that the notice to the



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petitioners 3 and 5 was not able to be ascertained. Therefore, they were set exparte on 22.08.2006 and the second respondent had proceeded to pass the exparte award on 28.08.2006. When the second respondent was unable to ascertain the service of notice on the petitioners 3 and 5 and that the notice to the first respondent had been returned un-served, the second respondent ought not to have set them exparte and passed an exparte award. On this ground itself, the order passed by the second respondent suffers from infirmity. The first respondent also committed an infirmity by holding that the application to set aside the exparte order had been duly dismissed. The learned counsel for the petitioners relied upon the communication given by the District Registrar in ந.க.எண். 1914 / 252 / 07 dated 28.03.2007, where it had been clearly indicated that the petition filed by the petitioners along with counter statements on 23.08.2006 had not been taken up by the second respondent and no decision had been made in the same. Hence, the impugned orders would have to be set aside on the ground that the petitioners have not been given sufficient opportunity to respond to the claim made against them.



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8. However, the learned counsel for the petitioners had made a submission that the petitioners are willing to make the entire claim amount after deducting the amount of Rs.44,760/- that had been deposited with the District Registrar pursuant to the conditional interim order granted by this Court, however, with a reasonable interest that may be fixed.

9. The learned counsel for the respondents had vehemently contended that the petitioners are entitled to pay contractual interest at the rate of 24% per annum as agreed to be paid by the petitioners. Having filed a claim petition before the second respondent, the third respondent would be only entitled for contractual interest till the filing of the claim petition. Pendente lite interest cannot be on the basis of the contract and a reasonable interest could be awarded to the third respondent.

10. In such event, I am inclined to hold that the third respondent would only be entitled to 12% interest per annum on the claim amount from the date of the claim petition. The petitioners are directed to make payment on the claim amount after deducting a sum of Rs.44,760/- as



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deposited by them before the District Registrar, Tirunelveli, pursuant to the order of this Court in M.P.MD.No.2 of 2009 in the instant writ petition and also pay interest at the rate of 12% on and from 04.10.2005, viz., the date on which the claim petition was filed before the second respondent. Such payment shall be made within a period of twelve weeks from the date of receipt of a copy of this order. The petitioners are also entitled to make the aforesaid payment in two equated installments ie., 50% of the amount within a period of six weeks from the date of receipt of a copy of this order and the balance amount shall be paid within a period of six weeks therefrom. The third respondent shall withdraw the sum of Rs.44,760/- deposited with the District Registrar, Tirunelveli which has been deposited by the petitioner.

11. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

11.11.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr



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To:

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- 2.The Assistant Registrar of Chits,
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K.KUMARESH BABU, J.

Nsr

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