
(1977) 07 MAD CK 0020
In the Madras High Court
Case No : O.S. App. No. 28 of 1977

C.A. Durgachalam

APPELLANT

Vs

Jannet Chit Funds (P) Ltd. (in liquidation) and others

RESPONDENT

Date of Decision : 07-07-1977

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 79

Citation : (1977) 07 MAD CK 0020

Hon'ble Judges : Ratnavel Pandian, J; Ramaprasada Rao, J

Bench : Division Bench

Advocate : Aiyer, Dolia and S. Sunder, for the Appellant; G. Visvanathan for the Official Liquidator, for the Respondent

Judgement

Ramaprasada Rao, J.—This Original Side Appeal poses a question within a short compass. The appellant was a subscriber to a chit fund in a Company known as "Jannet Chit Funds Co., Pvt. Ltd." now in liquidation represented by the Official liquidator, High Court, Madras. He was a member of the chit, the value of which was Rs. 25,000, the monthly subscription being Rs. 500. The number of months or what is known as the period of the chit was 50 months It commenced on 16th August, 1971, and the appellant became the successful bidder at the auction chit held on 16th June, 1972. By that time, 11 months of the period of the chit were over and there were 39 months to go. It is common ground that the company conducted the chits in accordance with the provisions of the Tamil Nadu Chit Funds Act, 1961, till 16th October 1972. On 2nd February 1973, the company was wound up on a creditor's petition and a provisional Liquidator was appointed. The result was that the company could not carry on its commercial activity of conducting the chit or holding an auction chit as was required under their bye-laws. Pursuant to the admitted fact that the appellant bid at the auction held on 16th June, 1972 and, by then, 39 months were still to go to complete the period of the chit, the appellant was obliged to execute a promissory note guaranteeing the payment of future instalments which he did execute along with two other sureties. It is also not disputed that the appellant paid the instalments

payable till 16th October 1972, the date when the company stopped conducting its business and was also entitled to, till that date, to the kazar (dividends). The appellant has no dispute about the quantum of his entitlement as quantified by the Chit Fund Company. Since he defaulted in payment of the future instalments after he executed the promissory note dated 16th June, 1972, and, after paying the instalments upto 16th October, 1972, the Official Liquidator had to institute the present action to realise the sum of Rs. 23,450, made up of a sum of Rs. 17 500 towards the principal (representing the future instalments for 35 months at the rate of Rs. 500) and the balance of interest thereon. This was resisted on the ground that the plaintiff was at fault in not conducting chits subsequent to 16th October, 1972, and that the appellant could have earned the usual kazar if the auctions were held month to month and, in any event, he would be entitled to a notional kazar and, finally, it is contended that the promissory note is not supported by consideration and he is not liable to pay interest as claimed. The learned Judge held against the appellant on all the issues framed. On the issue whether the defendants were entitled to notional kazar, whether the defendants were liable to pay only Rs. 14,900 minus the monthly payments already made and whether they were not liable to pay interest, the learned Judge held that the promissory note is supported by consideration and ought to be held to be so by reason of the judgment of this court in *Chellaperumal Chetti v. Jayarathnam Chettiar* 1911-1 M.L.J. 237=73 L.W. 233. He has also observed that the defendant cannot absolve himself from his liability to respect his obligations, under the promissory note and take umbrage under the fact that the company did not pursue its commercial activity of conducting the chits after 26th October, 1972. The learned Judge also held that, in the absence of a tender of the amounts due under the promissory note either as such, or as amounts representing the future instalments payable under the chit scheme, the appellant would not be entitled to say that he is not bound to pay the interest. It is as against this, the present appeal has been filed. We are in agreement with the learned Judge that, in the conspectus of events, the suit has to be adjudged on the basis that the plaintiff has come to court basing his relief on the promissory note executed by a person who took the prize chit and, in lieu thereof, executed the promissory note for the payment of the future instalments, admittedly, payable, by him as a member of this scheme. Though a feigned argument was made by the learned counsel for the appellant that the promissory note is not supported by consideration, we are unable to see any force in it because the amount for which the appellant executed the promissory note did represent the future instalments payable by him as on the date of execution. In any event, following the decision of this court in *Chellaperumal Chetti v. Jayarathnam Chettiar* 1960-M.L.J. 237=73 L.W. 233, we are to hold that the promissory note is supported by consideration.

2. What is, however, urged is that, as there has been a cessation in the mercantile activity of this incorporated company in that it failed to conduct its chits after October 1972 some equities have to be adjusted as between the stake-

holder and the member and, in that behalf, it is stated that the appellant is either entitled to a notional kazar or is not made liable for payment of interest. The argument *ex facie*, is, no doubt, attractive. But this is a case in which the stakeholder had to part with a consolidated amount consequent upon a member in the chit scheme being declared as the highest bidder and in lieu of such payment taking from him such instruments and documents so as to safeguard his future right to collect the future instalments which the member was bound to pay till the end of the period of the scheme. Therefore, at that particular point of time, the responsibility of the member of this scheme is reflected in the promissory note more rather than on any other instrument which the stakeholder might have taken from the member. Reference was made to a decision of our court in *Sri Visalam Chit Funds v. P.N. Srinivasa Mudaliar* 88 L.W. 415. This Bench decision, to which one of us was a party, has no application to the facts and circumstances of this case. The question posed in that appeal was whether the stakeholder was entitled in law to forfeit the quondam kazar or amount already earned by the prize chit holder. The Division Bench stated that the stakeholder cannot unjustly enrich himself. In fact, in that case, no argument was advanced on the right of the stakeholder to recover interest on the defaulted instalments. Even on the question of the right to claim kazar, which is said to be notional in this case, we are unable to grant any relief for the reason that the kazar is something which is the bye-product of a commercial activity such as the conduct of auction chits and, in the absence of any such continuance of such activity or an allegation that that activity was continued after winding up, the question of payment of kazar or dividends, which would not arise at all, does not arise. We are unable, therefore, to agree with the learned counsel for the appellant that, in equity, the appellant would be entitled to a notional kazar and a provision on the basis of such a bare expectancy should be made a part of our judgment. Regarding the non-liability to pay interest, the position could be viewed under two distinct heads. We have already expressed the view that the inter se liability between the member and the stakeholder has to be adjudged on the basis that the former has executed a promissory note in favour of the company and that the rights and liabilities have to be worked out in the light of that Negotiable instrument. S.79 of the Negotiable Instruments Act creates a mandate. It provides that when interest at a specified rate is expressly made payable on a promissory note, interest shall be calculated at the rate specified on the amount of the principal money due from the date of the instrument until tender,...etc. There is, therefore, no option left to a civil court except to award interest on claims based on promissory notes. But, the argument is put in a slightly different way by referring to S.25 of the Tamil Nadu Chit Funds Act 1961. Whatever may be the effect of this enactment, which is of the local Legislature when it has an impact upon the mandate in the Legislature of the Parliament, we are not satisfied that the appellant would be entitled to a relief. What is contended is that in the case of future subscriptions, the appellant should have an opportunity to pay the same at the appointed hour or date and once that opportunity is lost to him in the sense that he is unable to pay the same after liquidation, he cannot be

called upon to pay Interest on such future subscriptions though embodied as a liability in a negotiable instrument. We are unable to agree. Even under sub-clause (2) of S.25, the section provides that the plaintiff (meaning thereby the stakeholder) is at liberty to recover all the future subscriptions and the interest thereon less the amount, if any, already deposited or tendered by the defendants. This would mean, that initially, the member should have tendered the amounts to the company or the stakeholder or, at least, to the Official Liquidator after liquidation and if, on such tender, it was not accepted by the Official Liquidator, then, presumably, he can claim such entitlement, as pleaded. But, in the absence of any evidence in this case, that there was any such tender, or offer to pay the future instalments or any moneys under the promissory note, we are unable to agree that the member is absolved from his liability to pay interest on future instalments. We have made this observation because an argument was addressed before us. We are, however, satisfied that the present action has to be adjudged on the basis that the suit is based on the promissory note and having regard to S.79 of the Negotiable Instruments Act, we are bound to award interest as contracted to between the parties. The learned Judge, therefore, was right in having awarded the interest as prayed for. The appeal fails and it is dismissed, but, there will be no order as to costs.