

(2019) 06 BOM CK 0090
In the Bombay High Court
Case No : Arbitration Petition No. 549 Of 2016

Dinesh Jaya Poojary

APPELLANT

Vs

M/s. Malvika Chits India Pvt. Ltd

RESPONDENT

Date of Decision : 28-06-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 2(4), 16, 34, 64
Chit Funds Act, 1982 — Section 2(r), 2(j), 3, 21, 21(2), 21(1)(d), 21(1)(e), 21(1)(g),
64, 64(a), 64(1), 64(2), 64(3), 64(1)(a), 64(1)(b), 64(1)(e), 66, 67, 67(3)(a), 68, 70,
71
Indian Contract Act, 1872 — Section 126

Citation : (2019) 06 BOM CK 0090

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : Simil Purohit, Faran M. Khan, Arun Bhaskar Ketkar, Anoshak Daver,
Shavez Mukri, S. Khan, Amrita Kingaonkar, Pratik Parmar

Final Decision : Allowed

Judgement

1. By this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, the petitioner has impugned the arbitral award dated 22nd

December 2015 passed by the learned arbitrator allowing the claims made by the respondent and directing the petitioner to pay the sum of

Rs.93,34,100/- with interest @18% from 13th August 2012 till payment and/or realisation and further sum of Rs.1,00,000/- towards fees of the

arbitrator and Rs.1,00,000/- towards the cost of arbitration.

2. Though the petitioner has impugned the arbitral award and has raised several grounds in the petition, the petitioner as well as the respondent have

argued before this Court on the issue of jurisdiction at this stage and have reserved their right to make submission on merit depending upon the

outcome on the issue of jurisdiction. This Court has thus heard both the parties only on the issue of jurisdiction of the learned arbitrator to entertain, try

and adjudicate upon the claims filed by the respondent and not on other issues. Some of the relevant facts for the purpose of deciding limited issue of

jurisdiction urged before this Court are as under :-

3. Harish Pujary was a member of chit group of the respondent for the chit amount of Rs.3 crores with the monthly subscription of Rs.15 lacs

commencing on 28th June 2010. It is the case of the respondent that the said Harish Pujary was a "subscriber" within the meaning of Section 2(r)

of the Chit Funds Act, 1982 (for short "the said Chit Funds Act"). The respondent was a "foreman" within the meaning of Section 2(j) of the

said Chit Funds Act.

4. It is the case of the respondent that the said Harish Pujary was entitled for an aggregate amount of Rs.2,25,00,000/- as prized chit amount subject to

deductions as applicable. The respondent had paid the prized chit amount of Rs.2,25,00,000/- to the said Harish Pujary in the month of November

2010, December 2010, January 2011 and March 2011 as per the terms of the chit scheme. The said Harish Pujary had executed an agreement with

the respondent to pay future/balance subscription with all other amounts due and payable under the Chit Fund Scheme till the date of termination of

the Chit fund without any defaults. It is the case of the respondent that Myrna Pujary, wife of the said Harish Pujary had executed Agreement of

Guarantee in favour of the respondent thereby guaranteeing payment of future subscription by the subscriber i.e. Harish Pujary on the terms and

conditions recorded in the said Agreement of Guarantee.

5. It is also the case of the respondent that the petitioner also executed a separate Agreement of Guarantee dated 13th August 2012 with the

respondent allegedly admitting that a sum of Rs.93,34,100/- was due and payable by the said subscriber Harish Pujary to the respondent as settlement

amount. The petitioner had allegedly agreed that the settlement amount of Rs.65,00,000/- would be paid as per time stipulated therein and in the event

of the petitioner committing default on the agreed settlement amount, he would be liable to pay the entire sum of Rs.93,34,100/-.

6. It is the case of the respondent that under Clause 6 of the said Agreement of Guarantee dated 13th August 2012, the parties agreed to refer their all

disputes, disagreements, differences, claims etc. arising out of and in consequences of the said agreement to the decision of a Sole Arbitrator to be nominated by the respondent. It was allegedly agreed that the arbitration shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modifications made thereof from time to time. The venue of the Arbitration shall be at Mumbai. The petitioner had disputed his signature on the said alleged Agreement of Guarantee dated 13th August 2012.

7. On 1st July 2013, the respondent through its advocates issued a notice to the petitioner calling upon him to pay a sum of Rs.60 lacs to the respondent. The petitioner through its advocates' letter dated 19th July 2013 replied to the said notice of demand and denied the allegations therein.

The petitioner also alleged forgery, fabrication and cheating against the respondent in the said reply. The respondent through its advocates' reply dated 20th May 2015 called upon Harish Pujary, Myrna Pujary and the petitioner to pay a sum of Rs.1,94,14,928/- together with interest on Rs.93,34,100/-

@36% p.a. thereon from 19th May 2015 till payment or realization from the date of receipt of the said notice.

8. The respondent appointed Mr.M.Sankara Narayanan as a Sole Arbitrator. He filed statement of claim before the learned arbitrator against the

petitioner herein inter alia praying for an aggregate sum of Rs.1,94,14,928/- together with further interest on Rs.93,34,100/- @36% p.a. thereon from

19th May 2015 till payment and /or realization and also prayed for an order and direction to furnish security to the extent of Rs.1,94,14,928/- or deposit

the sum of Rs.1,94,14,928/- with the learned arbitrator. The said claim was resisted by the petitioner on various grounds. The respondent had

impleaded Harish Pujary and Myrna Pujary also as the respondent nos.1 and 2 in the arbitral proceedings, however, subsequently deleted their names

from the cause title of the statement of claim.

9. By an order dated 6th October 2015, the learned Arbitrator rejected the application dated 30th September 2015 filed by the petitioner under Section

16 of the Arbitration and Conciliation Act, 1996 holding that he has enough and sufficient jurisdiction to proceed with and resolve the dispute between

the parties. The petitioner thereafter filed a separate written statement dated 4th November 2015 in the said arbitral proceedings raising an issue of

jurisdiction and also dealing with the claims made by the respondent. On 28th

September 2015, the respondent filed a claim affidavit before the learned arbitrator. On 30th November 2015, the petitioner had filed an affidavit before the learned arbitrator. On 30th November 2015, Harish Pujary had also filed an affidavit before the learned arbitrator. On 22nd December 2015, the learned arbitrator made an award allowing the claims made by the respondent directing the petitioner to pay a sum of Rs.93,34,100/- with interest and cost of arbitration.

10. Mr.Purohit, learned counsel for the petitioner submits that it was the case of the respondent itself that the said Harish Pujary was a Member subscriber of chit fund scheme floated by the respondent and had paid various amounts. He submits that the respondent had invoked the alleged arbitration agreement allegedly recorded in the Agreement of Guarantee dated 13th August 2012 and in particular paragraph 6 thereof which agreement itself was disputed by the petitioner.

11. It is submitted that in any event, since the respondent had invoked the arbitration agreement based on the alleged Agreement of Guarantee against the petitioner as Guarantor on behalf of the Harish Pujary who was a subscriber within the meaning of Section 2(r) of the said Chit Funds Act, under Section 64 of the said Chit Funds Act, dispute touching the management of chit business between a foreman and a surety of a subscriber could be referred only to the Registrar for Arbitration. He strongly placed reliance on Section 3 of the said Chit Funds Act in support of the submission that in view of non obstante clause under Section 3, provisions of the Chit Funds Act being a Special Act would prevail over the provisions of the Arbitration and Conciliation Act, 1996. Learned counsel also strongly placed reliance on Section 64 (3) of the Chit Funds Act in support of the submission that under the said provision, Civil Court does not have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1). Sub-section (1) of Section 64 of the said Chit Funds Act. The arbitration proceedings for recovery of the amount thus could not have been filed by the respondent.

12. It is submitted that under Sub-section (2) of Section 64, only Registrar could decide the question as to whether any matter referred to the Registrar is a dispute or not for the purposes of Sub-section (1) of Section 64 and whose decision shall be final. He submits that under Section 66 of the said

Chit Funds Act, the Registrar is empowered to settle the dispute within the meaning of Section 64 or he may refer it for disposal to a person appointed

by him as Nominee. Section 67 provides for procedure for settlement of disputes and powers of Registrar or Nominee. Under Section 68, the

Registrar or the Nominee has a power to pass an order of attachment before judgment and also to pass interlocutory orders. Under Section 70, any

party aggrieved by any order passed by the Registrar or the Nominee or the award of the Registrar or the Nominee is entitled to file an appeal to the

State Government within two months from the date of the order or award.

13. Section 71 of the Chit Funds Act also provides as to how the money payable under the order passed by the Registrar or the Nominee can be

recovered. He submits that the said Chit Funds Act being a self-contained Code, the petitioner and the respondent could not have entered into any

agreement including the alleged Agreement of Guarantee whereby the petitioner allegedly guaranteed the alleged dues of the said Harish Pujary arising

out of the transaction under the chit scheme under the provisions of the said Chit Funds Act.

14. It is submitted by the learned counsel that under the provisions of the said Chit Funds Act, the term "surety" is not defined. He submits that

the respondent itself has described the petitioner as "surety" or "guarantor" of the respondent on behalf of the subscriber Harish Pujary. He

submits that under Sections 66 and 67 of the said Chit Funds Act, even a third party can be impleaded by the Registrar in the circumstances set out

therein. He placed reliance on Section 126 of the Indian Contract Act, 1872 and submits that the terms "guarantor" and "surety" are one and

the same. In view of Section 3 of the said Chit Funds Act, in case of any inconsistency, the provisions of the said Chit Funds Act would prevail and in

any event would prevail over the alleged Agreement of Guarantee allegedly arrived at between the petitioner and the respondent.

15. Mr.Daver, learned counsel for the respondent, on the other hand, tendered copies of the documents entered into between the respondent and the

said Harish Pujary in support of his submission that the said Harish Pujary was a Subscriber of various chit schemes floated by the respondent-

company. He submits that wife of the said Harish Pujary was one of the guarantors under a separate Agreement of Guarantee executed by her in

favour of the respondent. He also strongly placed reliance on the alleged Agreement of Guarantee dated 13th August 2012 between the respondent and the petitioner.

16. It is submitted that the said Harish Pujary was paid various amounts under the said chit scheme which he failed to return. Liability of the said

Harish Pujary was already crystallized prior to 13th August 2012. The petitioner had entered into Agreement of Guarantee only thereafter on 13th

August 2012 and thus there was no question of applicability of provisions of the said Chit Funds Act to the parties to this petition. He submits that

clause 6 of the said Agreement of Guarantee clearly recorded an arbitration agreement. He submits that the respondent had thus rightly invoked the

arbitration agreement and had appointed the learned arbitrator for adjudication of the disputes having arisen between the petitioner and the respondent.

He submits that the learned arbitrator has thus rightly rejected the plea of jurisdiction raised by the petitioner by rejecting the application filed by the

petitioner under Section 16 of the Arbitration and Conciliation Act, 1996.

17. Learned counsel for the respondent invited my attention to some of the correspondence exchanged between the petitioner and the respondent

through their respective advocates before filing of statement of claim by his clients before the learned arbitrator. He submits that even in the

Agreement of Guarantee dated 13th August 2012, it was clearly mentioned that liability of the said Harish Pujary in the sum of Rs.93,34,100/- was

already crystallized and only thereafter the said Agreement of Guarantee was executed between the petitioner and the respondent by which the

petitioner agreed to settle the amount at Rs.65 lacs out of which Rs.5 lacs was agreed to be paid before entering into the said agreement and balance

of Rs.60 lacs was agreed to be paid on or before 31st December 2012.

18. Learned counsel for the respondent placed reliance on Section 64(1)(a) and (b) of the said Chit Funds Act and would submit that the said

Agreement of Guarantee executed by the petitioner and the respondent was not executed under the provisions of the said Chit Funds Act but was an

independent transaction. It is submitted that after defaulted amount of the subscriber under the chit fund scheme floated by the respondent was

crystallized and an independent Agreement of Guarantee was executed by the petitioner in favour of the respondent, the petitioner can thus neither be

considered as subscriber or surety as described in Section 64(1)(a) & (b) of the said Chit Funds Act.

19. Learned counsel for the respondent placed reliance upon the explanation to Section 64(1) and would submit that the execution of Agreement of

Guarantee by the petitioner in favour of the respondent was a separate and independent contract and thus the dispute arising out of such Agreement

of Guarantee would not be a dispute touching the management of chit business. Only such dispute has to be referred to the Registrar for Arbitration

under Section 64 of the said Chit Funds Act. He submits that the said Agreement of Guarantee was subsequent Agreement entered into between the

petitioner and the respondent by which the petitioner agreed to pay the agreed settled amount towards liability of the subscriber Harish Pujary and thus

the provisions of the said Chit Funds Act were not at all applicable to the parties. In view of the petitioner and the respondent having entered into the

said Agreement of Guarantee containing arbitration agreement, the respondent was justified in filing the arbitration proceedings by invoking the

arbitration agreement recorded therein. No interference is thus warranted on the issue of jurisdiction decided by the learned arbitrator in favour of the

respondent.

20. Mr. Purohit, learned counsel for the petitioner in rejoinder submits that there is no distinction found in Section 64 of the said Chit Funds Act or

under any other provisions of the said Chit Funds Act about the Agreement of Guarantee having executed not on the date of the subscriber becoming

a Member of the chit fund scheme or having been entered subsequently upon the subscriber committing a default. The term 'surety' is not

defined under the Chit Funds Act. However, the term 'guarantor' or 'surety' described in Section 126 of the Indian Contract Act, 1872 are

one and the same. There is thus no distinction between a surety of a subscriber and surety for debt under Section 64 of the said Chit Funds Act.

21. Learned counsel for the petitioner placed reliance on Section 21(1)(d) of the said Chit Funds Act and would submit that under the said provisions,

a foreman is entitled to receive and realise all subscriptions from the subscribers and to distribute the prize amounts to the prized subscribers. He is

also entitled to demand sufficient security from any prized subscriber for the due payment of future subscriptions payable by him under Section 21(1)

(e). Under Section 21(1)(g), a foreman is also entitled to do all other acts that may be necessary for the due and proper conduct of the chit. Under

Section 21(2), if any dispute arises with regard to the value of the property offered as security under clause (e) of Sub-section (1) of Section 64 of the

said Chit Funds Act, it shall be referred to the 'Registrar' for Arbitration under Section 64.

22. It is submitted by the learned counsel that in view of Section 3 of the said Chit Funds Act, the provisions of the Chit Funds Act, 1982 shall have

effect notwithstanding anything to the contrary contained in any other law for the time being in force, save as otherwise expressly provided in the said

Act. He submits that in view of this specific wider non-obstante provision having overriding effect, the Agreement of Guarantee even if executed

between the petitioner and the respondent would be of no effect. It is submitted that Section 2(4) of the Arbitration and Conciliation Act, 1996 thus

would not apply to these parties at all. The Chit Funds Act, 1872 is a self-contained Code.

23. It is submitted by the learned counsel that in addition to his right of recovery, a foreman under Section 21 of the said Chit Funds Act, is also

entitled to do all other acts that may be necessary for the due and proper conduct of the chit or for recovering the amount from surety touching the

management of chit business and thus squarely falls within the provision of Section 64(1) of the said Chit Funds Act.

24. Learned counsel for the petitioners invited my attention to clauses 2 to 6 of the Agreement of Guarantee which document is disputed by the

petitioner and would submit that in those clauses of the agreement, the alleged liability of Harish Pujary has been mentioned. The said Harish Pujary

had requested the respondent to grant time for repayment of the balance due in installments. He submits that in view of Section 64(2), the respondent

was required to file a dispute only before the Registrar and the Registrar thereafter only was empowered to decide whether the dispute filed by the

respondent would be a dispute or not for the purposes of Sub-section (1) of Section 64 and such decision of the Registrar would be final. The said

provision also indicates that jurisdiction of any Civil Court or Arbitrator is barred to entertain any suit or other proceedings in respect of the dispute

already referred in Sub-section (a) of Section 64 of the said Chit Funds Act.

25. Learned counsel placed reliance on the judgment of the Madras High Court in the case of Vimala Vs. Shriman Chits & Investments Pvt. Ltd.,

reported in 1999 (3) CTC 210 in support of the submission that the surety of a subscriber is one who could be referred to the Registrar for arbitration

being a surety of a subscriber as contemplated under Section 64(1)(b) of the said Chit Funds Act. It is submitted that the Registrar is empowered to

direct impleadment of even a third party to the proceedings before the Registrar.

26. Learned counsel for the petitioner invited my attention to some of the findings rendered by the learned arbitrator in the order dated 6th October

2015 dismissing the application filed by the petitioner under Section 16 of the Arbitration and Conciliation Act, 1996. He submits that the finding of the

learned arbitrator that the Agreement of Guarantee was admitted is factually incorrect. It was specifically alleged by the petitioner that the said

document was forged and fabricated. The finding of the learned arbitrator which is totally contrary to Section 64 of the said Chit Funds Act that the

Agreement of Guarantee would not come within the exclusive purview of the Chit Funds Act, 1982. He submits that the finding of the learned

arbitrator that there was a third person who approached the claimants after a long time and agreed to pay the dues of the subscriber as a surety was

not governed by the provisions of the Chit Funds Act is ex facie perverse.

REASONS AND CONCLUSIONS:-

27. A perusal of the record indicates that the petitioner has disputed the alleged Agreement of Guarantee dated 13th August 2012 between the

petitioner and the respondent in the letter dated 19th July 2013 addressed by the petitioner through his advocate to the respondent's advocate. The

finding of the learned arbitrator that there is no dispute about execution of the said Agreement of Guarantee is thus ex facie contrary to the pleadings

and documents on record.

28. Even if any such Agreement of Guarantee was executed between the petitioner and the respondent as sought to be canvassed by the respondent

before the learned arbitrator and also in this proceeding, question that arises for consideration of this Court is whether such Agreement of Guarantee

between the petitioner and the respondent would fall under the provisions of the Chit Funds Act and thus the dispute having arisen between the

petitioner and the respondent under such agreement could be referred only to

the Registrar under Section 64(1) of the Chit Funds Act for Arbitration or not. The question also arises for consideration of this Court is whether statement of claim filed by the respondent for recovery of the amount under the said letter of guarantee was arising out of dispute touching the management of chit business and was between the parties described in Section 64 (1)(a) and (b) read with the explanation to the said provision or not.

29. A plain reading of Section 64 clearly indicates that Sub-section (1) of Section 64 provides for non obstante provision i.e. notwithstanding anything contained in any other law for the time being in force, any dispute touching the management of chit business shall be referred by any of the parties to the dispute, to the Registrar for arbitration if each party thereto is one or the other of the parties mentioned in Section 64(1)(a) and (b). The expression "any dispute touching the management of chit business" is explained in the explanation to the said Section 64(1). Section 64(1)(b) clearly refers to a surety of a subscriber, past subscriber or a deceased subscriber. It is thus clear beyond reasonable doubt that even if the said Harish Pujary was considered as past subscriber, surety of such past subscriber or a foreman or vice-versa could be referred only to the Registrar for Arbitration.

30. A perusal of the Agreement of Guarantee strongly relied upon by the respondent clearly indicates that in first 6 paragraphs, there is a reference to the alleged amount payable to the said Harish Pujary who was described as a Member of chit group mentioned therein of Rs.3 crore. It is also mentioned in the said agreement that the said Harish Pujary had committed defaults for the payment of installments. The said Harish Pujary if committed defaults for the payment of installments, the petitioner shall be liable to pay the balance installments in the said chit group. It was further mentioned that the said Harish Pujary is still liable to pay Rs.93,34,100/- due as on 30th April 2012. The said Harish Pujary had requested the respondent to grant time for repayment of the balance due installments and further stated that the petitioner would repay the balance amount due and payable to the respondent. It was further stated in the alleged Agreement of Guarantee that the petitioner and the respondent had allegedly agreed that the petitioner would pay a sum of Rs.65 lacs being settled amount payable on or before 31st December 2012 which was the balance amount due by the said Harish Pujary to the respondent.

31. It is thus clear that even under the said alleged Agreement of Guarantee, the petitioner had stood as guarantor and as a surety on behalf of the petitioner who had allegedly requested for grant of time for repayment of the balance due installments and in case of his default, the petitioner had allegedly agreed to pay the balance amount settled at Rs.65 lacs payable on or before 31st December 2012. A perusal of the correspondence exchanged between the petitioner and the respondent also indicates that the respondent had considered the petitioner as a surety or a guarantor thereby guaranteeing the alleged liability of the said Harish Pujary. In the statement of claim originally filed by the respondent, the respondent had impleaded Harish Pujary as well as his wife Myrna Pujary but deleted their names subsequently from the cause title of the said statement of claim.

32. In paragraph 6 of the statement of claim, it is alleged that the petitioner and his brother Harish Pujary had approached the respondent with a request to settle the claim and to grant time for repayment of the balance amount due and payable to the respondent herein. The petitioner had assured and guaranteed to pay the entire amount due and payable by his brother. The recovery was sought from the petitioner as surety or guarantor on behalf of his brother Harish Pujary. It is thus clear beyond doubt that the statement of claim was filed for recovery of the amount from the petitioner as a surety/guarantor for subscriber Harish Pujary under the chit scheme floated by the respondent under the provisions of the said Chit Funds Act. I am thus not inclined to accept the submission of Mr.Daver, learned counsel for the respondent that the said agreement entered into between the petitioner and the respondent was an independent transaction outside the purview of the provisions of the Chit Funds Act, 1982 or that the dispute between the petitioner and the respondent would not fall under Section 64 of the said Chit Funds Act.

33. In my view, dispute between the petitioner and the respondent was relating to chit business between a surety of a subscriber and a foreman. Even if the petitioner would be considered as a surety of past subscriber i.e. Harish Pujary, it would still fall under Section 64(1) (b) of the said Chit Funds Act and thus such dispute arising out of and relating to chit business could be referred only to the Registrar for Arbitration by the respondent and not to the learned arbitrator by invoking clause 6 of the alleged Agreement of Guarantee.

34. In my view, statement of claim filed by the respondent against the petitioner before the learned arbitrator for resolution of the dispute arising out of

chit business was a dispute touching the management of the chit business and thus this condition also was fully attracted to the facts of this case.

Filing a claim for recovery of alleged dues under a Chit under a Chit Funds Act by a foreman amounts to a dispute touching the management of chit business.

35. There is no substance in the submission of Mr.Daver, learned counsel for the respondent that the liability of the subscriber was crystallized and

admitted and only thereafter an independent Agreement of Guarantee was executed between the parties. Before the learned arbitrator, the said

Harish Pujary had disputed the transaction. Be that as it may, whether there existed a dispute or not for the purposes of Sub-section (1) of Section 64,

such question could also be decided only by the Registrar in view of Section 64(2) of the said Chit Funds Act whose decision thereon is final. Section

66 provides for settlement of dispute. Section 67 provides for powers of Registrar or Nominee. In case of such dispute, the same powers as are

vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908 in respect of various matters specifically provided therein are

vested.

36. Under Section 67(3)(a), the Registrar or the nominee may even pass an order for impleadment of a third party to the dispute who has acquired the

interest in the property of a person who is a party to a dispute and such decision of the Registrar or the nominee on the dispute shall be binding on

such third party impleaded in the proceedings before the Registrar as if he were an original party to the dispute. Section 70 of the said Chit Funds Act

provides for an Appeal against the decision of Registrar or nominee. Section 71 provides for remedy of appeal against the order passed by the

Registrar or the nominee to the State Government.

Certificate issued by the Registrar is deemed to be a decree of a Civil Court and has to be executed in the same manner as a decree of such Court or

has to 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.

37. A conjoint reading of the aforesaid provisions clearly indicates that the said Chit Funds Act, 1982 is a self-contained Code. The provisions of the

Arbitration and Conciliation Act, 1996 thus would not apply to the disputes relating to the chit business. Under Sub-section (3) of Section 64 of the said Chit Funds Act, a Civil Court is barred from entertaining any suit or other proceedings in respect of any dispute referred in Sub-section (1) of Section 64 of the said Chit Funds Act. This provision also clearly indicates that if a Civil Court is barred from entertaining any suit or other proceedings, arbitral proceedings initiated by the respondent for recovery of the amount arising out of disputes relating to chit business touching the management of chit business also cannot be entertained. Such disputes could be referred only to the Registrar for Arbitration provided in Section 64 of the said Chit Funds Act. The judgment of the Madras High Court in the case of Vimala (supra) relied upon by Mr. Purohit, learned counsel for the petitioner would assist the case of the petitioner.

38. A perusal of the findings rendered by the learned arbitrator on the issue of jurisdiction clearly indicates that the same are totally contrary to the plain reading of Section 64 of the said Chit Funds Act read with Section 3 thereof read with definition of "foreman" under Section 2(j) and definition of "subscriber" under Section 2(r). The findings rendered by the learned arbitrator being perverse thus deserves to be interfered with.

In my view, learned arbitrator has clearly acted beyond the jurisdiction in entertaining the claims made by the respondent and allowing the said claims.

Even if the petitioner had allegedly entered into any such Agreement of Guarantee with the respondent, such Agreement of Guarantee recording arbitration agreement was contrary to Sub-section (1) of Section 64 read with Section 3 of the said Chit Funds Act.

39. In my view, the exclusive remedy of the arbitration before the Registrar under Section 64 of the said Chit Funds Act being statutory arbitration can not be varied by an agreement of parties by referring the dispute to private arbitral forum contrary to Section 3 of the said Chit Funds Act. Such agreement even if entered into between the petitioner and the respondent recording an arbitration agreement and substituting the remedy under Section 64 by private arbitration is inconsistent and contrary to the said provision and thus could not be acted upon. The decision of the learned arbitrator on this issue itself is totally perverse and is in conflict with the public policy.

40. Since this Court has heard the parties only on the issue of jurisdiction and not on merits of the claim, and since this Court is of the view that the learned arbitrator had acted without jurisdiction, this Court did not call upon the parties to address this Court on the validity of the award allowing the claims filed by the respondent. I therefore pass the following order : -

(i) The impugned order dated 6th October 2015 rejecting the application dated 30th September 2015 filed by the petitioner under Section 16 of the Arbitration and Conciliation Act, 1996 is set aside.

(ii) The application dated 30th September 2015 filed by the petitioner is allowed.

(iii) It is declared that the learned arbitrator did not have jurisdiction to entertain, try and adjudicate upon the dispute filed by the respondent. In view of this Court having set aside the said order dated 6th October 2015, the impugned award rendered by the learned arbitrator on 22nd December 2015 is also without jurisdiction and is accordingly quashed and set aside.

(iv) It is made clear that this Court has not expressed any views on merit of the claims made by the respondent and awarded by the learned arbitrator.

(v) The respondent would be at liberty to file appropriate proceedings for recovery of the amount according to law. If any such proceedings are filed by the respondent, such proceedings shall be decided without being influenced by the observations made and the conclusion drawn in the impugned order dated 6th October 2015 and the arbitral award dated 22nd December 2015.

41. Arbitration petition is made absolute on the aforesaid terms. There shall be no order as to costs.