

**(2009) 10 KL CK 0043**  
**In the High Court Of Kerala**  
**Case No : A.S. No. 12 of 1997**

Employees Kuries Ltd.

APPELLANT

Vs

Claramma

RESPONDENT

**Date of Decision :** 20-10-2009

**Acts Referred:**

Chit Funds Act, 1982 — Section 33, 4, 5, 64(1), 64(2)  
Cochin Kuries Act, 1107 — Section 3(1), 4, 5  
Contract Act, 1872 — Section 65

**Citation :** (2009) 4 KLT 786

**Hon'ble Judges :** Harun-UI-Rashid, J

**Bench :** Single Bench

**Advocate :** V.O. John and Jimmy John, for the Appellant; K. Radhakrishnan Sajeew Kumar K. Gopal, Ambika Radhakrishnan and Abraham Vakkanal, for the Respondent

**Final Decision :** Allowed

## Judgement

Harun-UI-Rashid, J.—Plaintiffs in O.S. Nos. 1062/92 and 1056/92 on the file of the IInd Additional Sub Court, Thrissur are the appellants in these appeals. Plaintiff in both suit is same Kuri Company. Defendants 1 and 2 in both suits are also same persons. Both suits are for realisation of money. The Trial Court held that the suit is not maintainable and that the said court has no jurisdiction to try the suit and further held on merits that the plaintiff is not entitled to realise the amount claimed in the plaint. Aggrieved by the decree and judgment, the plaintiffs have preferred these appeals.

2. The facts in both suits are same. The 1st defendant in both cases had joined one ticket in the monthly kuri conducted by the Bangalore Branch of the plaintiff-Company from 8.2.1988. The 1st defendant in both suits had bid the kuri at the auction. The kuri amount was subsequently paid to the 1st defendant in the suits on executing a kuri security bond on 6.9.1988 assuring the payment of future kuri subscriptions. It is averred that later the defendants committed default of

payment of kuri subscriptions from the month of October 1989. The plaintiff issued notice to the defendants demanding the amount due under the kuri transaction, but no reply was sent. The other defendants are guarantors. O.S. Nos. 1056/92 and 1062/92 were filed for realisation of Rs. 36,627/- and Rs. 36,642/- with interest and costs.

3. The defendants filed separate written statements in the suits. The 2nd defendant in O.S. No. 1062/92 filed a written statement, the 2nd defendant adopted the contentions contained in the written statement filed by the 1st defendant and. the 3rd respondent remains ex parte. The gist of the contentions of the contesting defendants is that since the kuri was commenced and conducted in the State of Karnataka by the Bangalore Branch of the plaintiff Company, the Chit Funds Act, 1982 (hereinafter referred as "the Act") is applicable, that the dispute is touching the management of a chit business as envisaged u/s 64(1) of the Act and therefore, the dispute shall be referred to the Registrar for arbitration as per Section 64(1) and Section 33 of the Act. It is also pleaded that Section 64(2) and 64(3) ousted jurisdiction of the Civil Court to try the suit and therefore, the suit is not maintainable. It is also contended that the bond is executed at St. Thomas College, Pala in Meenachil Taluk and that no cause of action arises at Thrissur. Therefore, the Civil Court at Thrissur has no jurisdiction to take cognizance of the dispute.

4. The evidence in the case consists of the oral testimony of PW-1 and Exts.A1 to A12. The defendants did not tender any evidence both oral and documentary.

5. The kuri was conducted in the State of Karnataka by the Bangalore Branch of the plaintiff-Company from 8.7.1988. The Chit Funds Act, 1982 came into force in the State of Karnataka on 2.1.1984. Section 4 of the Act mandates that no chit shall be commenced or conducted without obtaining the previous sanction of the State Government, within whose jurisdiction the chit is to be commenced or conducted or of such officer as may be empowered by that Government in this behalf, and unless the chit is registered in that State in accordance with the provisions of the Act. On that basis the defendants contended that the claim for realisation of money due under the chit is a dispute touching the management of the chit business u/s 64(1) of the Act and therefore such dispute is to be referred to the Registrar for arbitration as per the said provisions of the Act. It is also contended that the jurisdiction of the Civil Court to entertain the suit of this nature is expressly barred by Section 64(3) of the Act.

6. Section 64(1) of the Act mandates that any dispute touching the management of a chit business shall be referred to by any of the parties to the dispute to the Registrar for arbitration and Section 64(3) bars the jurisdiction of the Civil Court to entertain any suit or other proceedings in respect of any dispute referred to in Sub-section (1). The Trial Court, after extracting the said provisions of the Act, held that the dispute in question is a dispute coming under the purview of Section 64(1) of the Act and therefore, the dispute is to be referred to the Registrar for arbitration. The Trial Court also held that Section 64(3) is a

mandatory provision barring the jurisdiction of the Civil Court. Thus, the sub court held that it has no jurisdiction to try the suit. The sub court also found that since the kuri mentioned in the plaint was not registered under the provisions of the Act, the suit is not maintainable. Repelling the contentions of the plaintiff, the Trial Court further held that Section 65 of the Indian Contract Act is not applicable for the reason that in a case where at the time when the agreement was entered into, both the parties knew that it is not lawful and therefore there was no contract but only an agreement and it is not a case where it is discovered to be void subsequently. The sub court observed that the kuri business was transacted without registration and contrary to the said Act and therefore, it has to be found that the object of Ext.A1 was illegal to the knowledge of the plaintiff-Company at the time it was made and therefore the provisions contained in Section 65 of the Indian Contract Act cannot be applied to an agreement like Ext.A, the object of which was unlawful.

7. It has come out in evidence that the plaintiff-Company had filed a Writ Petition before the High Court of Karnataka challenging the constitutional validity of the provisions of the Act. Ext.A9 is a certified copy of the interim order in W.P.(C). No. 18166/1986. Ext.P10 is a certified copy of the final judgment passed by the High Court of Karnataka. By the interim order in the said Writ Petition filed by the plaintiff the operation of the Chit Funds Act in so far as it related to the plaintiff was stayed. Writ Petition was filed on 15.10.1986 and an interim order was obtained. It is not disputed that the kuri was started on 8.2.1988 at a time when the operation of the Chit Funds Act was stayed by the Karnataka High Court, in so far as it related to the plaintiff and the Writ Petition was dismissed by final judgment dated 29.4.1988. It is clear from the above mentioned dates that, the commencement of the kuri was at a time when the Act is not applicable to the plaintiff-Company. Section 4 of the Act provides that no chit shall be commenced or conducted without obtaining the previous sanction of the State Government within whose jurisdiction the chit is to be commenced or conducted or of such officer as may be empowered by that Government in this behalf, and unless the chit is registered in that State in accordance with the provisions of this Act.

8. Plaintiff commenced the kuri at a time when the operation of the Act is stayed by the Karnataka High Court. At the same time, the kuri business commenced without registration was continued after the dismissal of the Writ Petition. The contention of the defendants is that the kuri conducted without sanction and registration is void. The said contention is not sustainable in law for the following reasons:

As cited supra, the kuri was commenced by the plaintiff-Company from its Bangalore Branch from 8.2.1988, at the time of commencement the order of stay of operation of the Act was in force. Therefore, the commencement and conduct of chit at least till the dismissal of the Writ Petition cannot be held to be in contravention of any of the provisions of the Act.

9. The further question is whether the conduct of chit subsequent to the

dismissal of the Writ Petition and the transaction is void. Going by the provisions in the Act, I do not find any provision including Section 4 to make the chit conducted without obtaining the previous sanction of the State Government or the Authorised Officer and without registering the same under the provisions of the Act is void, illegal or unlawful. Section 4 of the Act prohibits the conduct of chit without sanction and without registration and whoever contravenes the said provision, he is liable to pay penalty. Section 76 of the Act provides that whoever contravenes the provisions of Sections 4, 5 etc. shall, on conviction, be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to Rs. 5,000/- or with both. I find no provision in the Act which lays down that every kuri if not registered under the Act, shall be void. The foreman shall be liable to a fine for contravention of Section 4 etc. Section 4 of the Cochin Kuries Act, VII of 1107 replaced by the Kerala Chitties Act, 1975 stipulates that transactions partaking of the nature of a Kuri but not falling with the definition in Sub-section (1) of Section 3 are void and any person who starts a transaction or conducts such a transaction started after coming into force of that Act without the previous sanction of the Government shall be liable to a fine not exceeding five hundred rupees. Section 5 of the Act lays down that every Kuri shall be registered in accordance with the provisions of the Act, and if not registered, it shall be void and the foreman shall be liable to a fine not exceeding five hundred rupees. There is no similar provision like Section 5 of the Act, which declared that the chitty business conducted without registration is void. In the Kerala Chitties Act, 1975 and the Cochin Kuries Act no provision is incorporated to the effect that the chitty started and conducted in contravention of the provisions of the Act is void. The Act prohibited the starting and the conducting of kuries, after the commencement of the Act, without the previous sanction of the Government or the authorised officer and without registering the same, under the provisions of the Act and imposed penalty to whoever contravenes the provisions of Section 4(1) of the Act. Thus, in contravention of the provisions of the Act if anybody started kuri business without registration, it invites penal provision in the Act, which provides liability to pay penalty.

10. In this case it cannot be said that the chitty commenced in contravention of the provisions of the Chit Funds Act, 1982. As I said supra, the chitty was commenced at a time when the Chit Funds Act is not in operation in so far as the plaintiff is concerned, in the light of the order passed by the Karnataka High Court. Continuance of the chit subsequent to the dismissal of the Writ Petition invites penal provision in the Act and the chit transaction will not become void, illegal or unlawful.

11. Similar question was considered by this Court in the decision reported in *Nadarajan v. Nadarajan* 1999 (2) KLT 512. In that case the kuri was commenced and conducted without permission of the State Government and without registration under the Kerala Chitties Act. This Court, after referring to the provisions of the Kerala Chitties Act, Cochin Kuries Act and the Travancore Chitties Act, held that Kerala Chitties Act was enacted to make a uniform law

applicable to chitties throughout the State of Kerala by repealing the Travancore Chitties Act and Cochin Kuries Act, it is clear that Section 3(1) is enacted in the Kerala Chitties Act imposing the penalty only for the purpose of protection of revenue and not for the protection of public interest. If in fact the Legislature intended to declare the chitty transaction conducted without the permission of the Government or the authorised officer or without registration under the Act, it would have provided a similar provision as is found in Section 5 of the Cochin Kuries Act declaring the kuri conducted without registration under the Act as void. It is further held that the intention of the Legislature is manifest in this case that the provisions of the Kerala Chitties Act are incorporated to protect the interest of the subscribers and also the revenue of the State. The contention of the subscriber that the kuri due to non-registration and non-permission is void was repelled and held that such a chitty commenced and conducted in contravention of the provisions of the Kerala Chitties Act cannot be characterised as a transaction immoral or opposed to public policy and that the Kerala Chitties Act only penalises the foreman who conducts the chitty in contravention of the provisions of the Act and it does not declare such a transaction as illegal or unlawful.

12. The provisions relating to the contravention, registration and penalty are more or less similar provisions contained in the Act. The Kerala Chitties Act only penalises the foreman, who conducts the chitty in contravention of the provisions of the Act and it does not declare such a transaction as illegal or unlawful.

13. In this case, in fact the commencement of the chitty was not in contravention of any of the provisions of the Act. Even in a case where there is contravention of Section 4 and the other provisions of the Act and a chitty was commenced and conducted without registration and without permission will attract only the penal provisions and the foreman is liable to pay the penalty as laid down in the Act. This case is distinguishable from a case where chitty was commenced without permission and without registration. This is a case where the chitty was commenced at a time when the operation of the Act is stayed so far as the plaintiff is concerned. Therefore, by any stretch of imagination, it cannot be said that the transaction is void, illegal or unlawful. As laid down by this Court in the decision referred above, a chitty conducted in contravention of the provisions of Chitties Act cannot be construed as immoral or opposed to the public policy. In so far as the chitty is not conducted under the provisions of the Act, the findings recorded by the sub court that the dispute in question is to be referred to the Registrar for arbitration u/s 64(1), that the jurisdiction of this Court to entertain a suit in respect of the dispute conceived of in Section 64(1) of the Act is expressly barred and that the suit is not maintainable, are liable to be interfered with.

14. The next question for consideration is as to whether Section 64 of the Act bars the jurisdiction of the court in the State of Kerala to try the suit for realisation of the amount due under the kuri started at Bangalore. The learned

Counsel for the appellant also brought to this Court's notice referring to Section 64(3) of the Act, that the provisions of the Act have been made applicable by notification, that the Act has not been brought into force in the State of Kerala and that the cause or action for the suit arose within the jurisdiction of the Sub Court, Thrissur. The learned Counsel contended that the said Act has no application to the State of Kerala and therefore cannot bar the institution of the suit in any of the courts in Kerala provided such courts otherwise have got jurisdiction. It is true that Section 64(3) of the Act expressly ousts the jurisdiction of the Civil Court, but the said provision can apply only to a place where the Chit Funds Act is in operation. The learned Counsel relied on the decision reported in *Krishnamoorthy v. Khaleel Rahman* 1996 (2) KLT 788 wherein it was held that in the absence of enforcement of Chit Funds Act, 1982 in the State of Kerala, the Civil Courts cannot treat the orders of the Registrar under the Chit Funds Act as a decree of a Civil Court and it cannot be executed. The learned Counsel also relied on the decision reported in *Oommen Panicker v. Muthoot Mini Chit Fund* 1995 (1) KLT 401 (F.B.) wherein it was held that a chitty commenced and conducted by Muthoot Mini Chit Fund by its Bangalore Branch office in Karnataka State is not governed by the Kerala Chitties Act. It is specifically held that Kerala Chitties Act cannot govern Chitty started in Karnataka State by the Branch Office of the plaintiff firm at Bangalore. The Full Bench of this Court held that since the head office of the plaintiff is within the State of Kerala and therefore the Kerala Chit Funds Act has necessarily to govern the chitty started by the plaintiff from its Bangalore office cannot be accepted.

15. The legal principles settled by this Court in the earlier decisions would go to show that the provisions of the Chit Funds Act, 1982 which includes Section 64(3) of the Act which expressly ousted the jurisdiction of the Civil Court, can apply only to a place where the Act itself is made applicable. Therefore, the contention that the Civil Court has no jurisdiction to try the suit in view of Section 64(3) of the Chit Funds Act cannot be sustained. By no stretch of imagination, it can be said that Section 64(3) of the Act can have application to the suits instituted before the courts, situated at a place where the Act is not in force or extended.

16. In the plaint, the plaintiffs narrated the sequence and the cause of action in filing the suit. According to the plaintiffs, a part of cause of action arose within the jurisdiction of the Sub Court, Thrissur. As per Section 20(c) of the C.P.C., a Civil Court has got jurisdiction to entertain a suit within whose jurisdiction cause of action has wholly or in part arisen. Therefore when two or more courts have concurrent jurisdiction to try a suit, it is open to the plaintiff, subject of course to any contract between the parties concerned confining jurisdiction to any one of such courts, to choose any one of those courts as the forum to vindicate his grievance.

17. The question whether the Civil Court in Kerala has jurisdiction to entertain the suit which was instituted by the Chit Fund Company having branch Office at

Bangalore in Karnataka State, was considered by this Court in the judgment dated 2.4.2009 in A.S. No. 944/1996 in Gosri Chit Funds Pvt. Ltd. Vs. Dharmapalan, . This Court held that a part of the cause of action has arisen within the territorial jurisdiction of the Sub Court, Ernakulam.

18. The averments in this case show that part of cause of action has arisen within the jurisdiction of the Sub Court, Thrissur. The amount was received by the subscriber from the head office of the plaintiff-Company at Thrissur and the defendants executed kuri bond and other documents at the head office at Thrissur. The materials pleaded in different paragraphs of the plaint gave the appellant a right of action. The finding of the learned Sub Judge that he has no jurisdiction to try the suit cannot be sustained, for the said reason as well.

19. The main contention raised by the defendants is based on Sections 4, 64(1) and 64(3) of the Act. Neither the transaction nor the liability to pay the amounts is denied by the defendants. The plaintiff instituted the suit on the basis of Ext.A1 kuri security bond executed by the defendants while receiving the kuri amount. There is no dispute as to the execution of Ext.A1 bond. On the basis of oral and documentary evidence, this Court is convinced that the defendants are liable to pay the amount claimed in the suit and therefore the plaintiff is entitled to recover the kuri amount due as per Ext.A1 kuri bond.

20. Before the Sub Court, the plaintiff alternatively contended that though the kuri was not registered under the provisions of the Act, the learned Counsel for the plaintiff contended that the plaintiff is still entitled to recover the amount due based on Ext.A1 as per the provisions contained in Section 65 of the Contract Act. Section 65 of the Contract Act reads as follows:

When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

21. This section distinguishes between an agreement and a contract, that the phrase in the section "discovered to be void" means that the agreement is not enforceable and is, therefore, not a contract and that the parties or one of them had no knowledge, when they entered into the agreement, that the agreement was in law not enforceable, and they might have come to know of the unenforceability later. The Sub Court held that Section 65 of the Act does not apply where at the time when the agreement was entered into, both the parties knew that it was not lawful and therefore there was no contract, but only an agreement and it is not a case where it is discovered to be void subsequently and that Ext.A1 contravened the provisions of the Act as the plaintiff is not entitled to conduct the chitty in the State of Karnataka except in accordance with the provisions contained in the Act and therefore, it has to be found that the object of ExtA1 was illegal to the knowledge of the plaintiff-Company at the time it was made and therefore Section 65 of the Indian Contract Act is not applicable. This

is a case wherein the transaction was commenced by the plaintiff during the period when Chitty Fund Act, 1982 is not in operation so far as the plaintiff is concerned. Therefore, the commencement of the chitty cannot be said to be unauthorised or contravenes Section 4 of the Act. Therefore, assuming that the agreement subsequently becomes void or discovered to be void any person who has received any advantage under such agreement or contract is bound to compensate the loss to the person from whom he received the amount. Therefore, even assuming that the transaction becomes void, as held by the Sub Court, then also the plaintiff is entitled to realise the amount by virtue of Section 65 of the Indian Contract Act.

22. In the light of the above discussion, I find that Section 65 of the Indian Contract Act is applicable, but the same need not be resorted to in this case, since the plaintiff is entitled to realise the amount under the kuri transaction.

In the result, the appeals are allowed. The judgment and decree under appeal are set aside.

O.S. No. 1062/92 is decreed directing the defendants to pay an amount of Rs. 36,642/- with interest at the rate of 12% per annum from the date of suit till realisation, with costs. In case of default, the plaintiff is entitled to realise the same from the defendants in person and from their assets.

O.S. No. 1056/92 is decreed directing the defendants to pay an amount of Rs. 36,627/- with interest at the rate of 12% per annum from the date of suit till realisation with costs. In case of default, the plaintiff is entitled to realise the same from the defendants in person and from their assets.