
(1978) 02 MAD CK 0022
In the Madras High Court
Case No : Diary No. 8001 of 1977

G. Loganayaki

APPELLANT

Vs

Moolangudi Chit Funds Private Ltd.

RESPONDENT

Date of Decision : 02-02-1978

Acts Referred:

Companies Act, 1956 — Section 433, 434(1)

Citation : (1979) 49 CompCas 644

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : N. Panchapagesa Iyer, for the Appellant; G. Ramaswami, for R. Krishnaswami, for the Respondent

Final Decision : Dismissed

Judgement

Ramaprasada Rao, J.—This unnumbered company petition bearing Diary No. 8001 of 1977 is before me on an office objection that the

petition, as framed originally and as amended later, is not maintainable and the relief sought for u/s 433(e) read with Section 434(1)(a) of the

Companies Act (hereinafter referred to as "the Act") cannot be granted.

2. The petitioner was a subscriber to a chit in the respondent-company in group No. N. Ticket No. 32, for the value of Rs. 50,000. The period of

the chit was 50 months and the monthly instalment was Rs. 1,000. The chit commenced on July 17, 1974, and on its usual run would terminate

itself on October 17, 1978. The petitioner paid about 20 instalments as per the contract between herself and the stake-holder. On the 21st month,

to wit, on March 17, 1976, she bid at the auction and was declared as the highest bidder of the chit and the prize amount thereunder was

admittedly Rs. 35,400. Under the chit agreement duly entered into between the

petitioner and the respondent, it is open to a subscriber to bid in a particular month and become the prized subscriber. But the prized subscriber is obliged to furnish sufficient security to the respondent-company in order to entitle him to draw the prize money. One of the clauses agreed to provides that the prized chit subscriber, before drawing the prize amount, will be required to furnish necessary securities or sureties or both to the satisfaction of the foreman as provided for in the registered bye-laws for the due payment of the future instalments by the subscriber. The clause also contemplates that the prized chit subscriber can furnish security of immovable properties within the Corporation limits of Madras to the satisfaction of the foreman. Ultimately, the clause provides that the foreman shall have the absolute right and discretion in deciding as to the adequacy or acceptability of the securities and/or sureties offered.

Complying with the provisions of the Tamil Nadu Chit Funds Act of 1961, there is yet another clause in the chit agreement, providing for a contingency in which the prized subscriber defaults. If the unpaid prized subscriber fails to draw the prize amount furnishing sufficient securities for the future subscriptions before the next date of auction, that amount will be kept in an approved bank in a separate account. The latter portion of Clause 14(b) of the contract reflects only upon the right of the stake-holder to withdraw from that account every month such amounts as are payable by the defaulting prized subscriber towards the future instalments. We are not, however, concerned with this in the instant case. After having bid at the auction on March 17, 1976, the case of the petitioner is that she furnished security of immovable property in Madras and forwarded the title deeds to the company and that, according to her, as is seen from the lawyer's notice dated March 12, 1977, the security of immovable property offered by the petitioner was accepted. Finding that the respondent-company did not pay the prize amount even after the alleged acceptance of the security offered by the petitioner as the prized subscriber, the petitioner called upon the respondent-company to pay the same or, in any event, refund the instalments already paid together with a sum of Rs. 30,000 as damages for wrongful non-observance of the contract and the obligations arising thereunder on the part of the respondent. The respondent's case was that the subscriber had to furnish

additional security by way of bank guarantee and that unless such additional security as called for earlier is given, there was no obligation on their part to pay the prize amount to the petitioner. Thereafter, on March 25, 1977, the petitioner's counsel reiterated that it was obligatory on the part of the chit fund company to pay back the paid up instalments as also the damages, or suffer the consequences arising therefrom by non-compliance with the demand specifically raised by the petitioner in such a notice of demand. I am not inclined to set out the notices which emanated from the counsel for the petitioner to the respondent since the language is very forceful and not at all appealing to a court and I am only setting out the substance of the correspondence, which would satisfy the purpose before me. Equally, the language employed by the company in reply is highly unsatisfactory. The sum and substance of the controversy is that the petitioner charges the respondent-company as having repudiated a contract without justification and that such a repudiation has been accepted by the petitioner and as a result of such acceptance of the repudiation caused voluntarily by the respondent-company by an act of omission or commission on their part, the petitioner is entitled, as a matter of fact in law, for the refund of the paid up instalments (for the 20 months to which she subscribed) and by the non-payment of the same on demand since it has remained unpaid for a period of 21 days after the demand, a deeming situation of inability to pay the debts has arisen within the meaning of Section 434(1)(a) of the Act and Section 433(e) thereunder and, therefore, the petition is maintainable.

3. Learned counsel for the respondent denied that the security of immovable property offered by the petitioner was accepted. In the alternative, he would say that the company had the option and, indeed, a right under the contract to demand not only security by way of immovable property but also such other securities to the satisfaction of the foreman, as contemplated in the contract between the subscriber and the company and, in the absence of compliance of the demand for additional security, the question of payment of the prize amount to the so-called successful prized subscriber as a result of her highest bid made on March 17, 1976, does not at all arise. In answer to the second contention for refund of the amount paid by way of instalment again the contract is relied upon for the purpose to show that there was no present obligation on the part of the

company to repay the prized amount to a defaulting subscriber as, after March 17, 1976, it is common ground that the petitioner did not further

make any payment towards her subscriptions to the chit and in that context it is said that the assumption of inability to pay debts either u/s 434(a)

or u/s 433(e) of the Act does not arise. In any event, it is said that the claim is not only premature but the debt is also disputed and if at all the debt

is refundable, it could only be after a full and complete investigation into the rights and obligations of the parties, as reflected in the chit fund

agreement, and, in that view, the company court cannot maintain this petition and adjudicate on that main issue which is the foundational issue for

further exercise of the jurisdiction to wind up a company incorporated under the Act.

4. It is fundamental that in order to sustain a case for winding up of an incorporated company on the ground that it is unable to pay its debts, the

debt which is the substratum of the action either u/s 433(e) on its own or u/s 433(e) read with Section 434(1)(a) of the Act is not a disputed debt

or a debt which could be found after an investigation and adjudication on the claims made inter se between the so-called creditor and the debtor

company, Any such investigation which would involve the determination of the quantum and quality of the liability would certainly raise a

reasonable presumption that it is a disputed debt. Once such a lingering doubt arises in the mind of the company court that the debt is not a sure

debt but a debt, which could only be ascertained and determined after an investigation into the facts and circumstances of the case, then, unless

there is demonstrative mala fides on the part of the company concerned, the company court cannot undertake the examination as to the quantum of

the liability or the nature of the indebtedness of the company in question to the claimant in a petition u/s 433(e) of the Act.

5. It is for consideration whether such a prima facie dispute has arisen as between the petitioner and the respondent. No doubt, from the

correspondence, it is not clear whether the company has accepted the security of immovable property offered by the petitioner. Whilst Mr.

Panchapagesa Iyer's case is that he forwarded the title deeds of the petitioner's immovable property for acceptance and that it was accepted, the

case of Mr. G. Ramaswami, appearing for the respondent, is that there was no such categorical acceptance or communication. The documents of

title were only being investigated and it was in that context that the company called for additional security, as they could do under the terms of the contract extracted already. It is within the discretion of the foreman of the company to decide about the adequacy or acceptability of the securities or the sureties offered. In this case, the admitted case is that besides the security of immovable property offered by the petitioner, an unreasonable demand for additional security by way of bank guarantee was asked for by the company. Mr. Panchapagesa Iyer initially began his argument by saying that this portion of the contract between the petitioner and the company has to be struck down as unreasonable. I am of the view that exercising jurisdiction as company court, it is not possible to strike down a part of a contract validly entered into between the parties and on that basis, decide the other matters in controversy between the parties. Unless this hurdle is hopped over and a decision rendered in favour of the petitioner that it would be unreasonable and it would also be illegal on the part of the company to ask for additional security and until the company court comes to the conclusion that the right vested in one of the contracting parties in a valid contract, which borders on the discretion of one amongst them, is against public interest or unenforceable in the eye of law, an assumption as to the inability to pay the debts by the respondent-company cannot lightly be assumed. If, therefore, this court, exercising a peculiar jurisdiction, is unable to undertake such an investigation into the question whether the company had the right and the discretion to decide on the adequacy or acceptability of the securities offered by the subscriber then the question whether the demand for additional security made by the company is reasonable or not, cannot be gone into. If that cannot be gone into, then the main question, or the main challenge by the petitioner against the company sought to be liquidated falls to the ground. The sheet anchor of the petitioner's case is that there is an unreasonable demand for additional security by way of bank guarantee, notwithstanding the alleged acceptance of the initial security offered by way of immovable property, the title in which of the petitioner is said to have been accepted. But this is a matter which cannot be gone into here, but only by a civil court. Therefore, the question whether there has been a rescission of the contract by a voluntary act of omission or commission on the part of the respondent-company is a subject which is alien to the relief which is

asked for in this petition and a decision on it cannot be rendered as it would be enquiring into the existence of a debt, either about its quantity or

quality. Prima facie, therefore, there is a dispute about the liability to pay the debt called for by the petitioner.

6. Even if, as alternatively contended by Mr. Panchapagesa Iyer, the petitioner is restricting her claim to the refund of the instalments paid by her

towards the chit, here again there is a fallacy. Earlier, this court took the view in Company Application No. 462 of 1976 in C.P. No. 80 of 1972

[Jannet Chit Funds (P.) Ltd., In re [1979] 49 Comp Cas 261, 265 (Mad) :

...that the prize chit amount paid to the highest bidder in a particular chit series is not a loan simpliciter but it is an advance from the common fund

of the organisation, to each subscriber who is the prized chit-holder. A common fund consists of subscriptions made by all the members and also

includes the instalments paid ,by the prized chit holder after he bids and which he undertakes to pay after executing the promissory note by himself

along with sureties. Every incoming credit and the outgoing debit is from the common fund of the chit company or organisation.

7. This aspect, which is peculiar to a chit organisation, has to be borne in mind before the demand by the petitioner for payment of the instalment

money already paid by her could be sought for when the period of the chit is not over. The contract arising between a subscriber and a chit fund

company is a continuous contract and indivisible one and it cannot be truncated according to the convenience of the parties. Certainly, the chit fund

holder cannot take advantage and seek for certain benefits before the running of the period of the chit as he is bound by the provisions of the Tamil

Nadu Chit Funds Act of 1961 and is also bound by the contract, which he enters into with the subscriber. Reciprocally the subscriber is also

bound to perform her part of the contract under the contract entered into between herself and the chit fund company and cannot, on account of a

situation like the one which has arisen in this case, seek for refund of the instalment money paid by her for the 20 instalments before the date when

she bid at the auction. It is common ground that under the chit fund contract, such amounts have to be repaid at the end of the period and cannot

be sought for by the subscriber at the middle of it; nor the stake holder can, deal with it in any manner as he likes, in the course of the running of the

chit. These reciprocal obligations, therefore, give rise to reciprocal rights. The demand made by the subscriber for the refund of the instalments

already paid by her amounting to about Rs. 20,000, and which, according to her, remained unpaid for a period of 21 days after the demand, is an

amount which is not payable on such demand by the company. Section 434(1)(a) of the Act raises, no doubt, a fiction as to inability to pay debts if

a debt, which is admittedly payable and for which a demand has been raised, is not respected. But in a case where the debt is disputed and also

not payable on demand, as made by the creditor then Section 434(1)(a) of the Act has no application at all.

8. On the ground that the debt has not yet become payable and the demand is premature and also on the ground that the debt is disputed and

disputed questions of fact so as to ascertain the liability of the chit fund holder vis-a-vis the subscriber cannot be entertained by a company court

for purposes of granting a relief u/s 433(e), I agree with the Office that this petition is not maintainable. It is, therefore, dismissed.