

(2009) 04 KL CK 0011
In the High Court Of Kerala
Case No : A.S. No. 944 of 1996

Gosri Chit Funds Pvt. Ltd.

APPELLANT

Vs

Dharmapalan

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Chit Funds Act, 1982 — Section 1(3), 64, 64(1), 64(3), 85
Criminal Procedure Code, 1973 (CrPC) — Section 20, 9

Citation : (2009) 4 KLT 780

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : Jimmy John Vellanikaran, for the Appellant; George Mathew (Karakunnel), R. Jayaprakash and K.C. Eldho, for the Respondent

Final Decision : Allowed

Judgement

Thomas P. Joseph, J.—In this appeal brought at the instance of the plaintiff from the judgment and decree of Additional Sub Court, Ernakulam question for a decision is whether that court has jurisdiction to try the suit. Learned Sub Judge held that in view of Section 64 of the Central Chit Funds Act, 1982 (for short, "the Act") that court has no jurisdiction and consequently dismissed the suit.

2. Appellant-plaintiff claimed that it had started a Kuri from its branch at Bangalore. Respondent-defendant No. 1 joined that Kuri and prized it on 3.4.1988. He received the amount and executed agreement along with respondents 2 and 3 undertaking to pay the future instalments without default. As per that agreement, respondents were liable to pay interest at the rate of 12% per annum in case of default in payment of future instalments. Alleging that respondent No. 1 defaulted payment from 3.8.1992 onwards appellant laid the suit in the Second Additional Sub Court, Ernakulam for recovery of future instalments with interest. Respondents contended inter alia, that the court has no jurisdiction to try the suit in view of Section 64 of the Act. Learned Sub Judge accepted that contention and dismissed the suit.

3. Section 64(1) of the Act states that 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. It is not disputed before me that the claim made by the appellant against the respondents in this case falls within the expression "dispute touching the management of a chit business" as stated in the explanation to Section 64(1). Section 64(3) states that no civil court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in Sub-section (1).

4. It is contended by learned Counsel for appellant that the view taken by the learned Sub Judge is not correct. According to the learned Counsel, Kuri was started (at Bangalore) at a time when the enforcement of the Act in the State of Karnataka was stayed by the High Court of Karnataka at the instance of the appellant and hence Section 85 of the Act would come into operation. Another contention raised is that the Act is not extended to the State of Kerala by Notification as required by Section 1(3) of the Act and hence, since part of cause of action for the suit has arisen within the territorial jurisdiction of the court below the suit is perfectly maintainable in the that court. Learned Counsel for respondents contended that the Act applies to every Kuri started at Bangalore and hence recovery of the amount can only be in accordance with the provisions of the Act.

5. The Act was brought into force in the State of Karnataka by Notification with effect from 2.1.1984. Appellant filed Writ Petition in the High Court of Karnataka in the year 1986 challenging enforcement of the Act in that State. The High Court granted stay of enforcement of the Act in that State on 10.11.1986. That order of stay was in force till 29.4.1988. The Writ Petition was dismissed and the stay was vacated on 29.4.1988. Though the exact date of commencement of the Kuri from Bangalore is not pleaded in the plaint, there is sufficient indication that it was before the Writ Petition was dismissed on 29.4.1988. For, it is stated in the plaint that respondent No. 1 prized the Kuri on 3.4.1988. Hence the Kuri must have been started prior to 3.4.1988. To be short, the Kuri was started at Bangalore at a time when the interim stay granted in the Writ Petition was in force.

6. As per Section 85(a), the Act has no application to any chit started before the commencement of the Act. Argument of learned Counsel is that though by Notification the provisions of the Act was extended to the State of Karnataka with effect from 2.1.1984, so far as the Kuri started by the appellant is concerned it must be taken that the Act came into force only on 29.4.1988 when the High Court vacated the stay against enforcement of that Act in that State. Since the Kuri was started before 29.4.1988 Section 85(a) applied and the Act has no application.

7. I am afraid, that contention cannot be sustained. Section 1(3) of the Act provides the mode of its enforcement. The Act would come into force on such

date as the Central Government by Notification appoints. The date appointed by the Central Government by Notification for enforcement of the Act in the State of Karnataka is 2.1.1984. When the Writ Petition filed in the year 1986 was dismissed and interim stay was vacated on 29.4.1988, date appointed by the Central Government for commencement of the Act by Notification continued to be 2.1.1984. Hence the contention that Kuri was started before the commencement of the Act cannot be sustained.

8. Does Section 64 of the Act bar the jurisdiction of the courts in the State of Kerala to try the suit for realisation of the amount due under the Kuri started at Bangalore, is the next question for consideration ? Learned Counsel for appellant would contend that the bar of jurisdiction referred to in Section 64(3) of the Act can have application only at a place where the provisions of the Act have been made applicable by Notification. The Act has not been brought into force in State of Kerala. Averments in the plaint reveal that part of the cause of action for the suit arose within the territorial jurisdiction of Additional Sub Court, Ernakulam. Learned Counsel contends that Section 20 of the CPC (for short, "the Code") gave jurisdiction for the court below to try the suit. Reliance is placed on the decisions in *John v. Oriental Kuries Ltd.* 1994(2) KLT 353, *Oommen Panicker v. Muthoot Mini Chit Fund* 1995 (1) KLT 401 (F.B.) and *Krishnamoorthy v. Khaleel Rahman* 1996 (2) KLT 788.

9. In the first two of the decisions referred supra, question considered was whether provisions of the Kerala Chitties Act would apply to a Kuri started at Bangalore. It was held that the Kerala Chitties Act has no application and that Kuri started at Bangalore is governed by the provisions of the Act. In the last of the decisions relied on by learned Counsel, a learned Single Judge of this Court considered the question whether an award passed by the Registrar in accordance with the provisions of Section 64(1) of the Act in respect of a Kuri started at Bangalore can be executed in the courts in Kerala as if the award is a decree. This Court found that since the provisions of the Act have not been brought into force in State of Kerala, award passed by the Registrar u/s 64(1) of the Act cannot be treated as a decree of civil court and enforced through the civil courts in State of Kerala. Learned Counsel wanted me to draw the principle enunciated in the above decisions to hold that the Act has no application to the State of Kerala and cannot bar the institution of the suit in any of the courts in Kerala provided such courts otherwise have got jurisdiction.

10. Section 9 of the Code confers jurisdiction on the courts subject to the provisions contained in that Code to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Exclusion of jurisdiction of civil court is not to be readily inferred. A provision of law ousting the jurisdiction of the civil court has to be construed strictly, it is trite law. No doubt, Section 64(3) of the Act expressly ousts the jurisdiction of the civil court. But that provision can apply on to a place where the Act itself is made applicable. I am unable to think that Section 64(3) of the Act governed suits instituted

before courts situated at a place where the provisions of the Act itself have not been extended. That is the principle enunciated by this Court in the decisions referred supra and relied on by the learned Counsel for the appellant. Section 64(3) of the Act can have no application to suits instituted in the courts in Kerala State where the Act has not been enforced by Notification as provided u/s 1(3) of the Act.

11. That leads me to the question whether the court below has otherwise jurisdiction to entertain the suit. As per Section 20(c) of the Code the court within whose jurisdiction cause of action has wholly or in part arisen has jurisdiction to try the suit. 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. In this case averments in paragraph 5 of the plaint are to the effect that as requested by the respondents and for their convenience to pay the amount at the head office of the appellant at Ernakulam, Kuri amount was paid to the respondents at its head office at Ernakulam on 9.7.1988 and that respondents executed necessary receipt for the same (at Ernakulam). It is further stated that respondents executed the relevant documents the same day at Ernakulam. Paragraph 6 of the plaint states that on receipt of the prized amount, respondents executed an agreement and demand promissory note undertaking to pay the future instalments without default. Paragraph 9 of the plaint states that cause of action has arisen within the jurisdiction of the court below. The materials pleaded in paragraphs 5, 6 and 9 of the plaint give the appellant a right of action. In that way, a part of the cause of action has arisen within the territorial jurisdiction of the court below. That conferred jurisdiction on that court to try the suit. In that view the finding of learned Sub Judge that he had no jurisdiction to try the suit is illegal and cannot be sustained. It is liable to set aside.

12. Since the other issues involved in the case have not been decided by the learned Sub Judge, consequence of my above finding is that case has to go back to the court below for consideration of those issues.

13. Resultantly this appeal is allowed in the following lines:

(i) Judgment and decree under challenge are set aside holding that the court below has jurisdiction to try the suit.

(ii) Case is sent back to the Additional Sub Court, Ernakulam for consideration and decision on other issues involved after giving both sides opportunity to adduce evidence if any.

(iii) Parties are directed to appear in the Additional Sub Court, Ernakulam on 27.5.2009.

Appellant will get refund of the court fee as provided under law.