(2008) 03 MAD CK 0104

In the Madras High Court

Case No : A.S. No. 1025 of 1996

Lakshmi Srinivas Savings and Chit Funds Syndicate Private Limited	APPELLANT
Vs	
J.S. Raman	RESPONDENT

Date of Decision : 06-03-2008

Acts Referred:
Banking Regulation Act, 1949 — Section 8
Chit Funds Act, 1982 — Section 12, 12(1)

Citation : (2008) 4 BC 198

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : G. Anbumani, for C.A. Diwakar, for the Appellant; T. Mohan, for the Respondent

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—This appeal has been directed against the Judgment and Decree, dated 29.3.1996 made in O.S. No. 156 of 1994 on the file of the District Judge, Uthagamandalam.

2. The appellant herein was the plaintiff before the trial Court. The suit was filed against the respondent herein, directing him to pay a sum of Rs. 70,100/- with subsequent interest and costs.

3. According to the appellant/plaintiff, on 10.11.1991, the respondent herein had borrowed a sum of Rs. 44,000/- from the appellant at Uthagamandalam and executed the suit promissory note, marked as Exhibit A-3, promising to repay the amount with 24% interest. According to the appellant, subsequently, no amount was paid by the respondent and hence, the appellant filed the suit, seeking decree against the respondent herein.

4. According to the respondent, he had not borrowed any amount from the appellant and executed the promissory note, as alleged by the appellant. He has

further contended that the respondent was a subscriber in the chit transaction run by the appellant, nearly 7 or 8 years prior to the date of filing of the suit, for which signed blank promissory notes were obtained from the respondent, since he had been the successful bidder, as security for regular payment of subscription towards the chit. The respondent has further contended that the entire chit amount was repaid by him, however, he signed blank promissory notes entrusted by him were not returned to him by the appellant. According to him, the aforesaid blank promissory note is misused by the appellant for filing the suit. With the above averments, the respondent pleaded for dismissal of the suit.

5. It is seen from the impugned Judgment that the foreman of the plaintiff company was examined as P.W. 1, apart from marking the documents Exhibits A-1 to A-6. On the side of the respondent, the respondent himself was examined as - D.W.1 and Exhibits B-1 to B-7 were marked. The trial Court, considering the oral and documentary evidence, held that the claim of the appellant/plaintiff was not established and accordingly, dismissed the suit. Aggrieved by which, the appeal has been preferred by the plaintiff in the suit.

G. Anbumani, learned Senior Counsel appearing for the appellant submitted that the respondent had obtained loan for a sum of Rs. 44,000/-, as per Exhibit-A-3, promissory note and it being a negotiable instrument, the transaction need not be supported by any other documents.

6. It is not in dispute that in the voucher, Exhibit A-6, it has been printed above the signature made on the revenue stamps as signature of subscriber. As contended by the learned Counsel for the respondent, had the amount received by the respondent was independent to that of chit transaction, there could be no necessity for the printed words "signature of subscriber".

7. The point for determination in this appeal are as follows:

(1) Whether the suit is not maintainable, as held by the trial Court?

(2) Whether the appellant/plaintiff is entitled to a decree as prayed for?

8. It is seen that Exhibit A-6 is a payment voucher, dated 10.11.1991 for a sum of Rs. 44,000/-, said to have been received by the respondent. Exhibit A-3 is the promissory note, dated 10.11.1991 for the aforesaid sum of Rs. 44,000/-. Exhibit A-3 is in printed form, wherein everything is written by typewriter, except the signature available on the revenue stamp. Witness column is available for two witnesses, but admittedly, nobody has signed as witness. The respondent, who was examined as D.W.1 has stated that he was a subscriber in the chit transaction run by the appellant herein and for being a successful bidder for prompt payment of subscription amount, he was asked to execute promissory note, accordingly, he had entrusted blank signed promissory note to the appellant, which was misused for filing the suit.

9. According to P.W.1, he does not know anything in person about the execution

of Exhibit A-3. In the cross-examination, he has stated that the Managing Director of the appellant company Thiru Krishnappa was available at station and he had personal knowledge about the execution of Exhibit A-3, however, for the reasons best known to the appellant, neither the said Managing Director nor any other person conversant with the fact of execution of Exhibit A-3 and for passing of consideration was examined.

10. Exhibit A-4 is the alleged ledger of suit transaction maintained by the appellant and the folio relating to the transaction was marked as Exhibit A-5. It is not in dispute that the appellant company is an Income Tax assesse. However, it has been admitted by D.W.1 that there is no evidence, such as endorsement or seal for the verification of Income Tax authorities available in the ledger, marked as Exhibit A-4 and therefore, as found by the Court below, the genuineness of Exhibit A-4 is doubtful.

11. As per the evidence of P.W.1, the respondent had deposited Rs. 50,000/- with the appellant, out of which on 10.11.1991, a sum of Rs. 44,000/- was paid to him under Exhibit A-3, but no such detail is available in Exhibit A-3. Even in the plaint, the plaintiff has not specifically stated anything that the amount was paid on the basis of the amount deposited by the respondent with the appellant. It is a categorical admission by P.W.1 that the main business done by the appellant was only chit transaction and for doing some other business, no general or special permission had been obtained from the Government. As per the evidence of P.W. 1, the plaintiff, Lakshmi Srinivas Chit Funds and Lakshmi Srinivas Finance are different entities. At one stage of his evidence, he has stated that both are different branches of the same company and no separate company was registered to perform finance business independently.

12. Section 12 of Chit Funds Act, 1982 reads thus:

Prohibition of transacting business other than chit business by a company-

(1) Except with the general or special permission of the State Government, no company carrying on chit business shall conduct any other business.

(2) Where at the commencement of this Act, any company iscarryingon any business in addition to chit business, it shall wind up such other business before the expiry of a period of three years from such commencement:

Provided that the State Government may, if it considers it necessary in the public interest or for avoiding any hardship, extend the said period of three years by such further period or periods not exceeding two years in the aggregate.

As per Section 12 of Chit Funds Act, 1982, it is clear that except with the general or special permission of the State Government, no company carrying on chit business shall conduct any other business. In the instant case, admittedly the plaintiff is a private limited company carrying on chit business and P.W. 1 has also deposed in his evidence that neither general nor special permission of the State Government was obtained to carry on any other business, other than chit business.

13. The Hon''ble Supreme Court in the decision, M/s. Shriram Chits and Investment (P.) Ltd. Vs. Union of India and others, , held as follows:

33. This Section creates a bar for a Company carrying on chit to desist from carrying on any other business. Similar provisions in regard to the ban are contained in Section 8 of the Banking Regulation Act, 1949 which restrain the Banks from carrying on any other business. Sub-section (1) of Section 12 of the Act, however, provides that "with the general or special permission of the State Government" the chit company can carry on any business other than the chit business. This Section is intended to leave discretion with the State Government to decide whether or not to allow the chit company to do any other business....

14. According to the appellant, Exhibit A-3, promissory note was not executed by the respondent in connection with the chit transaction, in which he was a subscriber and therefore, even according to the appellant, the suit promissory note is not related to chit transaction. As contended by the learned Counsel for the respondent, according to the appellant, the suit is not based on chit transaction. There is a bar u/s 12 of Chit Funds Act, 1982, or a company carrying on chit to do any other business, without the general or special permission from the State Government.

15. As per the case of the appellant, the suit transaction is not related to chit business, however, there was no general or special permission obtained from the State Government for running finance business, since it is a business other than chit business and, therefore, this Court is of the view that there is no error in the finding of the trial Court holding that the suit was not maintainable in view of Section 12 of Chit Funds Act, 1982 and answer the first point for determination against the appellant.

16. It is seen that P.W. 1 has admitted in his cross-examination that the originals of Exhibits A-3 and B-3 were also executed by the respondent in favour of M/s. Lakshmi Srinivas Finance & Investment. Exhibit B-3 is the xerox copy of the promissory note said to have been executed by the respondent for a sum of Rs. 44,000/- on 10.11.1991. It is seen that the original of Exhibit B-3 is different from Exhibit A-3. In Exhibit B-3 also the address and other particulars are written by typewriter, however, within two lines, the address of the respondent has been stated, whereas in Exhibit A-3, the address is stated in three lines and the signatures available in both of the promissory notes are different. Similarly, Exhibit A-6, voucher is similar to that of original of Exhibit B-4, voucher dated 10.11.1991. Exhibit B-4 is only a xerox copy and it is seen that the format is different from Exhibit A-6, however, both the sets of documents have been admitted by P.W. 1 in his evidence. There is no explanation from the plaintiff, as to how on the same date, two separate promissory notes, each for Rs. 44,000/- with two separate vouchers for the aforesaid amounts have been obtained by the appellant from the respondent herein.

17. According to the learned Counsel appearing for the respondent, the respondent was a regular subscriber for about 12 years in the appellant''s chit company and he had been the successful bidder in three occasions and as requested by the appellant, he had signed and handed over the stamped blank promissory notes and also vouchers, which had subsequently filled by way of typing and misused by the appellant-company.

18. The only witness examined on the side of the appellant, as P.W. 1 to prove the execution of Exhibit A-3 and passing of consideration has categorically deposed that he did not know anything in person about the execution of Exhibit A-3, promissory note by the respondent and also passing of consideration. Even, he could not say whether he had gone to the office on the alleged date, 10.11.1991. Further, before instituting the suit, there was no legal notice by the appellant for the reasons best known to them. Though the pre-suit notice is not mandatory, it is also a factor to decide the alleged transaction, while considering the genuineness of the relevant documents, based on evidence.

19. It is not in dispute that the respondent herein had filed a petition, original of Exhibit B-1 before the Consumer Disputes Redressal Forum, Nilgiris in C.O.P. No. 13 of 1994 against the appellant herein, based on the fixed deposit made by the respondent for the period from 28.9.1989 to 27.9.1993. On maturity, he claimed Rs. 1,00,000/- from the appellant, who was the respondent therein. According to the respondent, no amount was paid on 10.11.1991 by the appellant, much less than Rs. 44,000/-. The copy of the counter filed by the appellant in C.O.P. No. 13/94 has been marked as Exhibit B-2, wherein the appellant had stated that the respondent had obtained a loan of Rs. 44,000/- and was also co-obligant for a sum of Rs. 75,000/- obtained by one A.C. Ajja Gowder son of Chandra Ajja Gowder of Aravenu. In order to show that the respondent had been co-obligant, no supporting document has been produced by the respondent, though the same was denied by him. Exhibit B-4 is the pass-book issued by the appellant. According to the respondent, as D.W.1, the said pass-book was issued by the appellant.

20. If. It is clear from the evidence, that Exhibit A-3, promissory note is connected with Exhibit A-6, voucher, wherein it has been printed as signature of subscriber. Further, Exhibits B-3 and B-4 are the xerox copies of similar documents for the very same amount on the very same date, which would probablise the case of the respondent that after getting blank signatures in various forms, the matters have been typed even without getting any attestation. The evidence of P.W.1, who does not know anything about the execution of Exhibit A-3 and passing of consideration thereon would not help the case of the appellant/plaintiff. The trial Court considering all these aspects in detail has held that the appellant/plaintiff has not established his case and as such not entitled to a decree as prayed for. The second point for determination is answered accordingly against the appellant.

Considering the findings of the Court below with reference to the evidence both oral and documentary and in the light of the decision of the Hon''ble Apex Court referred to above, this Court is of the view that there is no error or infirmity in the impugned judgment, whereby dismissing the suit filed by the appellant.

21. In the result, the appeal fails and accordingly, the same is dismissed. However, there is no order as to costs.