
(2002) 08 MAD CK 0230
In the Madras High Court
Case No : S.A. No. 1956 of 1989

Malati G. Dhamani

APPELLANT

Vs

Shriram Chits and Investments Pvt. Ltd.

RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Limitation Act, 1963 — Article 37
Tamil Nadu Chit Funds Act, 1961 — Section 25

Citation : (2002) 4 LW 505 : (2003) 1 MLJ 31

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : P. Rathinadurai, for the Appellant; N. Venkataraman, for the Respondent

Final Decision : Dismissed

Judgement

K. Sampath, J.—The respondent herein filed suit O.S.No.4217/83 for recovery of Rs.3075/- from the appellant and respondents 2 and 3 herein as money due in respect of a chit transaction. The appellant/first defendant was the successful bidder at the auction held on 14-7-1979 for Rs.11,700/-. She along with respondents 2 and 3 executed a joint promissory note on 14-8-1979 for Rs.16,000/-, after deducting the 8 instalments already paid by her. Respondents 2 and 3 executed a surety bond for payment of future instalments by the appellant. Before receiving the prized money, she paid Rs.4000/- to the plaintiff and after receiving the prized amount, she paid Rs.13,500/- and afterwards, she failed and neglected to pay the future instalments in spite of repeated demands made on her. For the amount of balance due in a sum of Rs.2500/- with interest, the suit came to be filed.

2. The defence set up by defendants 1 and 3 was as follows:

True and correct statement of account had not been furnished to them; credit to several payments made by the appellant had also not been given; apart from Rs.17,500/- paid by her as disclosed in para 4 of the plaint, there were other

sums which were not given credit to; if a true account was taken, it would be only the plaintiff, who had to pay money to the first defendant. The first defendant had been making periodical payments without any default. The allegations that under the chit agreement the defendants were liable to pay interest at 12% per annum from the date of default, viz. 16-11-1981, were not true. Immediately on the failure to pay two consecutive instalments, the entire money would become due and the suit not having been filed within three years of such default, was barred by limitation.

3. On the above pleadings, the trial Court framed the necessary issues and on the oral and the documentary evidence, held that the suit was barred by limitation. In coming to such a conclusion, the trial Court refused to accept the case of the plaintiff that the dishonoured cheques Ex.A-8 dated 25-8-1980 and Ex.A-9 dated 9-6-1981 related to the suit transaction and that they would not save limitation. So holding by judgment and decree dated 29-4-1985, the trial Court dismissed the suit. However, on appeal in A.S.No.653/87 the learned IV Additional City Civil Judge reversed the decision of the trial Court, allowed the appeal and decreed the suit holding that limitation would run only from the date of last instalment and not from the date of default and the date of the last instalment in the instant case being 21-6-1982, the suit having been filed on 13-6-1983 was in time.

4. It is as against that, the present second appeal has been filed. At the time of admission, the following substantial questions of law were framed for decision in the second appeal:

"1. Whether the term in the chit agreement can be contrary to the provisions of the Tamil Nadu Chit Funds Act?

2. Is not the suit barred by limitation in view of Section 25 of the Tamil Nadu Chit Funds Act?

3. Whether the suit, having been filed claiming also interest on the default, is within the period of limitation?

4. Whether the period of limitation starts running from the date of default or the termination of the chit more particularly in the circumstances when the interest on default is claimed?

5. Whether the suit is maintainable against the insolvent without pleading of the Official Assignee?

5. It is now settled by a Division Bench of this Court in M. Gopal and Another Vs. Sri Vetrivel Chit Funds Pvt. Ltd., that the period of limitation for instituting suit against prized subscriber on default committed by him to pay instalments commences from the date of default committed by him in paying one or more instalments and does not commence after expiry of the period mentioned in notice demanding repayment and that Article 37 of the Limitation Act applies and suit has to be filed within three years from the date of commission of default and

that Section 25 of the Tamil Nadu Chit funds Act, 1961 does not postpone starting point of limitation.

6. However, if it is found that the date of default is within three years prior to the filing of the suit, then the suit would be very well within time. Even as per the written statement of the appellant, the default was on 16-11-1981. If there is such a vital admission by the appellant that she committed default on 16-11-1981, then the suit filed in 1983 is well within time. The plaintiff in its plaint pleading in para 6 has stated that it has claimed interest for the period 16-11-1981 to 13-6-1983 in a sum of Rs.475/- and while meeting this, defendants 1 and 3 have in paragraph 6 of their written statement stated as follows:

"The allegations that under the Chit agreement the defendants are liable to pay interest at 12% per annum from the date of default, i.e. 16-11-1981 are denied."

This would conclusively show that the appellant committed default from 16-11-1981 and consequently, it has to be held that the ultimate conclusion reached by the lower Appellate Court that the suit was not barred by limitation has to be upheld, though for different reasons. The substantial questions of law are answered as follows`

1. The term in the chit agreement cannot be contrary to the provisions of the Tamil Nadu Chit Funds Act.
2. The suit is not barred by limitation.
3. The suit is within time.
4. The period of limitation runs from the date of default.
5. It is not necessary to answer this as no arguments were advanced.
7. The second appeal fails and the same is dismissed. However, there will be no order as to costs.