
(2016) 09 AP CK 0065

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No.4549 of 2016

M/s. Shriram Chits Private Limited

APPELLANT

Vs

B. Durgaprasad Rao

RESPONDENT

Date of Decision : 20-09-2016

Acts Referred:

Chit Funds Act, 1982 — Section 69, Section 70, Section 71
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 26

Citation : (2017) 172 AIC 308 : (2017) 1 ALT 8 : (2017) 1 AndhLD 563

Hon'ble Judges : Sri. C.V. Nagarjuna Reddy and Sri. A. Shankar Narayana, JJ.

Bench : Division Bench

Advocate : N.A, for the Respondent; Mr. Maheswara Rao Kuncham, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

Sri C.V. Nagarjuna Reddy, J. - This Civil Revision Petition arises out of order dated 12.11.2015 in E.A.No.186 of 2015 in E.P.No.178 of 2015 on the file of the Additional Junior Civil Judge, Kukatpally at Miyapur, Ranga Reddy District.

2. At the stage of considering C.R.P.M.P.No. 4147 of 2016 filed for condonation of delay, this Court ordered notices to all the respondents. The learned counsel for the petitioner has filed a memo vide U.S.R.No.5651 of 2016, wherein it is stated that the notices sent to respondent Nos.1 and 3 have been returned with the postal endorsement "not claimed" and the notice sent to respondent No.2 has been returned with the postal endorsement "unclaimed" and that respondent Nos.4 and 5 have received the notices under acknowledgment, but they have not entered appearance. This Court, therefore, condoned the delay while observing that as respondent Nos.1 to 3 have not claimed notices, they are deemed to have been served. Even today, no appearance has been made on behalf of any of the respondents.

3. We have heard Mr. Maheswara Rao Kuncham, learned counsel for the petitioner and perused the record.

4. The petitioner, a Chit Fund Company, has raised a dispute bearing No.260 of 2013 before the Deputy Registrar of Chits/Arbitrator under the Chit Funds Act, 1982, against the respondents for recovery of an amount of Rs.2,14,240/- with future interest @ 18% per annum. Despite publication of notice in the newspaper, the respondents did not appear before the Deputy Registrar of Chits/Arbitrator. Therefore, they were set ex parte by the Deputy Registrar of Chits/Arbitrator on 21.02.2013 and an award was passed on 05.11.2014 in favour of the petitioner for Rs.2,14,240/- with future interest @ 12% per annum besides levy of costs. Based on the said award, a recovery certificate was issued by the Deputy Registrar of Chits/Arbitrator. As the respondents failed to pay the amount under the award, the petitioner has filed E.P.No.178 of 2015 against them for recovery of Rs.2,65,200/- under Order 21, Rule 48 C.P.C. By order dated 06.07.2015, the Additional Junior Civil Judge, Kukatpally, Ranga Reddy District, has issued salary attachment warrants against the respondents and posted the case to 20.08.2015 for filing compliance report. At that stage, the respondents have filed E.A.No.186 of 2015 purportedly under Order 21, Rule 26 C.P.C for stay of all further proceedings in E.P. and for recall of salary attachment warrants. The lower Court has allowed the said E.A based on a Division Bench judgment of this Court in Potlabathuni Srikanth v. Shriram City Union Finance Ltd., 2015 (6) ALT 629 (DB).

5. From the perusal of the order of the lower Court, it would appear that the respondents have raised the objection relating to the jurisdiction of the lower Court in entertaining the E.P by placing reliance on the judgment in Potlabathuni Srikanth (supra). The lower Court, without adjudicating as to whether it has jurisdiction to entertain the E.P, allowed the E.A filed for staying the E.P proceedings. In our opinion, when the issue of jurisdiction was raised, the lower Court was under the obligation to decide the said issue instead of staying the execution proceedings.

6. Be that as it may, as rightly argued by Mr. Kuncham Maheswara Rao, learned counsel for the petitioner, the judgment in Potlabathuni Srikanth (supra) has no bearing on the case on hand. One of us (ASNJ) spoke for the Division Bench in Potlabathuni Srikanth (supra). That was a case, which arose out of the execution proceedings instituted before the Senior Civil Judge, Mangalagiri, for execution of an award passed under the Arbitration and Conciliation Act, 1996 (for short "the Act"). The judgment debtor-respondent in the E.P raised objection to the jurisdiction of the Senior Civil Judge, Mangalagiri, based on the definition of "Court" under Section 2(1)(e) of the Act. In that context, the Division Bench held that as per the definition of "Court" under the said provision, the Principal Civil Court of original jurisdiction in a district i.e., the District Court alone has jurisdiction to entertain the Execution Proceedings and that therefore, the Senior Civil Judge, Mangalagiri, had no jurisdiction to entertain the E.P.

7. Indisputably, in the present case, the award was passed under Section 69 of the Chit Funds Act, 1982. Under Section 71 thereof, every order passed by the

Registrar or the nominee under Section 68 or Section 69 and every order passed by the State Government in appeal under Section 70 for payment of money can be executed on a certificate issued by the Registrar which is deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court.

8. In view of the fact that the Execution Petition was filed by the petitioner before the lower Court under Section 71 (a) of the Chit Funds Act, 1982 and not under the provisions of the Arbitration and Conciliation Act, placing on reliance by the lower Court on the judgment in Potlabathuni Srikanth (supra) is wholly misplaced. It is not in dispute that if the petitioner has obtained a decree from a Civil Court, having regard to the pecuniary value of the decree, it is only the lower Court which has jurisdiction to entertain the E.P. Therefore, under Section 71 (a) of the Chit Funds Act, 1982, it is only the Court below i.e., Additional Junior Civil Judge, Kukatpally, which has jurisdiction to entertain the E.P and adjudicate the same.

9. In the light of the above, the order under revision is set aside. The lower Court is directed to proceed with the E.P on merits and dispose of the same as expeditiously as possible.

10. The Civil Revision Petition is accordingly allowed.