
(1978) 09 BOM CK 0008

In the Bombay High Court

Case No : Civil Revision Application No. 620 of 1976

Navjeevan Chit Fund Pvt. Ltd.

APPELLANT

Vs

Rupchand Bhatia and Others

RESPONDENT

Date of Decision : 04-09-1978

Acts Referred:

Maharashtra Debt Relief Act, 1975 — Section 22

Citation : (1978) 09 BOM CK 0008

Hon'ble Judges : R.M. Kantawala, C.J

Bench : Single Bench

Advocate : H.C. Subnani and D.H. Subnani, for the Appellant; G.K. Masand Advocate for respondent No. 1 defendant No. 1., for the Respondent

Judgement

R.M. Kantawala, C.J.—This revision application has been filed by Navjivan Chit Fund Private Limited, the plaintiffs against an order passed on a chamber summons by the learned Judge of the City Civil Court, Bombay, whereby he held that the debt due and payable by Rupchand Bhatia, defendant No. 1, stood extinguished in view of the provisions of the Maharashtra Debt Relief Act, 1975 (Maharashtra Act No. III of 1976) (hereinafter referred to as the Act), and the proceeding for the recovery of the said debt against defendant No. 1 stood abated.

2. The plaintiffs floated chit fund schemes in various series. In one of such schemes Rupchand Bhatia, defendant No. 1 was enrolled as a subscriber. Under the scheme, according to the plaintiffs, defendant No. 1 authorised the plaintiffs to bid at the auction of the fund that was to be held on August 2, 1965. On behalf of defendant No. 1 the plaintiffs gave the highest bid of Rs. 1150/-. On guarantee given by defendants Nos. 2 and 3, defendant No. 1 was allowed to lift the chit fund amount of Rs. 5000/- on August 19, 1965. It is the cases of the plaintiffs that certain part payments were made by defendant No. 1 in respect of this amount, and ultimately a sum of Rs. 2400/- was due and outstanding from the amount advanced. As the said amount was not paid by defendant No. 1 the

plaintiffs filed a summary suit being Summary Suit No. 529 of 1968, against defendant No. 1, Rupchand Bhatia and two sureties to recover a sum of Rs. 3,024/- consisting of Rs. 2,400/- being the balance from the advance drawn, and 624/- on account of interest upto the date of the filing of the suit. In that Summary Suit, an ex parte decree was passed against defendant No. 1 for the sum of Rs. 3,024/- and costs on August 14, 1974.

3. The Act was given retrospective effect with effect from August 22, 1975. It was the contention of defendant No. 1 that in view of the provisions of the said Act, the debt due by him to the plaintiffs stood discharged. Accordingly, he took out a chamber summons on March 1, 1976, for relief that the ex parte decree passed against him on August 14, 1974 against him should be deemed to have been wholly satisfied and/or the claim under this decree should be deemed to have been wholly discharged under the provisions of the Act. That Chamber Summons has been made absolute by the learned Judge of the City Civil Court by his order dated July 13, 1976 inter alia holding that the debt due under the said decree by defendant No. 1 stood extinguish under the provisions of the said Act. The present revision application is filed by the plaintiffs against the said order passed by the learned Judge.

4. The only contention that has been urged by Mr. Subnani before me is that in view of the provisions of section 22 of the Act as the amount payable under the decree was in relation to a claim arising out of a contract or a transaction not connected with money lending, none of the provisions of the Act would affect the debt or the liabilities of any debtor and he, therefore submitted that the learned Judge was in error in taking the view that the debt due by defendant No. 1 under the decree stood discharged under the provisions of the Act. This is the sole ground on which the present revision application is sought to be supported.

5. The Act was enacted inter alia to provide from relief from in-debteness to certain farmers, rural artisans, rural labourers and workers in the state of Maharashtra. It is not disputed by Mr. Subnani that if the case of defendant No. 1, is not covered by section 22(g) on which reliance is placed by him, then the order passed by the learned Judge is not open to challenge. The only point that has been canvassed before me is based upon the exemption contained in section 22(g) of the Act. Its provision are as under :---

"22. Without prejudice to the provisions of section 19, nothing in this Act shall affect the debts and other liabilities of any debtor or small farmer falling under any of the following matters, namely---

(g) any claim arising out of contract or transaction not concerned with money lending".

The argument that has been put forward by Mr. Subnani before me is that the amount that is payable by defendant No. 1 under the decree is in respect of a claim arising out of a contract not connected with money lending. His submission was that the liability of defendant No. 1 arose to the plaintiffs having regard to

the provisions under which the chit fund scheme was worked and the actual relationship that subsisted between the plaintiffs and defendant No. 1 as the member of the chit fund was not that of a lender and a borrower. In other words, his submission that when defendant No. 1 passed a promissory note for Rs. 5,000/- in favour of the plaintiffs, there was no money lending transaction inter se between them and, therefore since the decree that was passed in the summary suit against defendant No. 1 was not in respect of a money lending transaction the debtor will not be entitled to the provisions of the Act. It cannot be disputed that the decree in the summary suit has been passed against defendant No. 1 in respect of the amount due and payable under a promissory note. That promissory note came to be passed by defendant No. 1, in favour of the plaintiffs having regard to the provisions of the chit fund scheme conducted by the plaintiffs. The only point that has to be considered in this revision application is whether, when defendant No. 1 passed the promissory note in favour of the plaintiffs" the transaction was in the nature of the money lending. If it was not so, then the plaintiffs ought to succeed in this revision application, but if it was otherwise then the plaintiffs must fail.

6. The plaintiffs had floated several chit- fund schemes for various amounts and all the said schemes are governed by the rules and regulations framed in that behalf. Pursuant to an application made by defendant No. 1 on November 23, 1964, defendant No. 1 was enrolled as a subscriber to the plaintiff's chit- fund schemes in B-9 series for Rs. 5000/- the monthly subscription whereof was Rs. 200/-. It is recited in the plaint that defendant No. 1 had participated in more than one auction of the fund held by the plaintiffs. For the auction to be held in August 2, 1965 the defendant No. 1 authorised the plaintiffs to offer on his behalf a bid upto company's limit as he was not in a position to attend personally. The plaintiffs had, on behalf of defendant No. 1 offered a bid of Rs. 1150/-, which was the highest bid and defendant No. 1 was then declared as a successful bidder. Accordingly, defendant No. 1 was allowed to lift the chit-fund amount of Rs. 5000/- on August 19, 1965. It is in the case of the plaintiffs that defendant No. 1 in all paid 13 subscriptions o Rs. 200/- each, aggregating to Rs. 2,600 including also dividends allowed to him for regular payments and he had committed defaults in respect of subscriptions which fell due from November 1, 1965, thereby leaving a sum of Rs. 2,600/- outstanding. It was for this sum together with interest payable thereon that the summary suit was filed in which a decree was passed against defendant No. 1.

7. The short question that has to be considered in this revision application is whether the nature of the transaction between the plaintiffs and defendant No. 1 was a money lending transaction. If it was a money lending transaction it is not disputed before me that defendant No. 1 in view of the provisions of the said Act, will be entitled to have the benefit thereof, and the debt due by him will stand discharged. It was urged by Mr. Subnani that the very scheme of chit fund is such that the relationship of lending money does not come into existence. It is a special type of relationship that has been created by the rules of the chit fund

scheme and such relationship cannot be equated to that a money lending transaction. So far as I am concerned, I have only to consider the nature of the transaction that was entered into between the plaintiffs and defendant No. 1 in respect of which the decree was passed against him in the summary suit. If that transaction in law amounts to money lending then the defence that has been put forward by Mr. Subnani must fail. Rule 11 of the rule and regulations governing the chit fund scheme is as under:

"11. Subscribers shall pay the monthly subscription on the due date after receiving the loan amount. In case of failure to do so they shall forfeit the dividend for the period of default. Such defaulting borrowers shall also be liable to pay interest at 12% per annum from the date of default till the installment is paid with minimum interest of Rs. 50/-. No grace time is allowed for payment of subscription by chit holders who have received the loan under the scheme. In case of such default for more than one monthly subscription and consequently for a period of 2nd month, the subscriber and the executors of surety bond shall be liable to pay jointly and severally the loan amount in lumpsum with interest at 12% till the date of full payment".

What is the real nature of the transaction between a member of the chit fund scheme with the plaintiffs is really indicated by the provisions of this clause. A member who takes money under the scheme is described as a borrower and the amount that has been taken by him is described as a loan amount and it is regarded as having been received as a loan under the scheme. Thus, a mere casual glance of the provisions of Regulation No. 11 by itself indicates that the position of defendant No. 1 when he had passed a promissory note in favour of the plaintiff was that of a borrower because he had taken the amount by way of loan from the plaintiffs. That this was so, is quite evident from the averments in para 10 of the plaint, because the sum of Rs. 2,400/- that was claimed by way of principal was regarded as outstanding from the said advance of Rs. 5000/-. Thus, not only the rules and regulations indicate that the real nature of the transaction is money lending, but the plaintiffs, when they instituted the suit understood the transaction in the same manner and used similar phraseology.

8. It should not be overlooked that as between the plaintiffs and defendant No. 1, whose bid was accepted, there is no other relationship except that of a debtor and a creditor and the suit has been filed by the plaintiffs in respect of the amount that was due as a balance of the money lending transaction between the plaintiffs and defendant No. 1. To such a transaction exemption that has been claimed by Mr. Subnani u/s 22(g) of the Act will not be available. Apart from this, Mr. Subnani has not relied upon any of the provisions of the Act which can prevent the debt due under the decree being discharged under the provisions of the Act.

9. Reliance was placed by Mr. Subnani upon the decision of the Madras High Court in the case of P.N. Raghavan v. S. Arumugham AIR 1935 Mad 385. A Division Bench of the Madras High Court in that case has taken the view upon

the facts before it is that a chit fund transaction is different from a loan transaction. It is no a case of borrowing. At the auction the person bidding the highest discount is regarded as the purchaser of the subject of auction, i.e. present sum of money. The contract is one of sale, the auction purchaser of the subject of auction i.e. present sum of money. The contract is one of sale, the auction purchaser purchasing the subject matter of the chit immediately by offering (1) the highest discount (2) a bond for the future payments of installments. These two things together constitute the consideration for the purchase. This was the view taken by the Division Bench of the Madras High Court before the Indian Sale of Goods Act, 1930, was enacted. The Division Bench has been careful to point out, while taking this view, that different consideration may apply after the coming into force of the Indian Sale of Goods Act, 1930, which excluded money from this class of goods. This observations in the judgment is by itself sufficient to show that the decision relied upon by Mr. Subnani is of no assistance to him.

10. However, in the present case the rule of the transaction has to be decided upon the rules and regulations of the chit fund and as I have indicated earlier, not only Regulations 11 shows that it is in the case of borrowing and a loan transaction, but also the plaintiffs, when they instituted the suit, has so understood it, because the averments in the plaint are more or less consistent with the transaction being regarded as merely a case of borrowing by defendant No. 1. That being the position the decision relied upon by Mr. Subnani is of no assistance to him.

11. In the result the revision application fails and the rule is discharged with costs.