(2004) 10 MAD CK 0094

In the Madras High Court

Case No : Writ Petition No. 11928 of 1997

S. Maniam and Co. Chit Funds — APPELLANT

Vs

State of Tamil Nadu — RESPONDENT

Date of Decision : 08-10-2004

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2005) 2 BC 161 : (2004) 5 CTC 738 : (2005) 1 LW 374 : (2005) 1 MLJ 120

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : V. Shanmugham, for the Appellant; R. Chandrasekaran, Government Advocate for R. 1, for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—The above Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent relating to Ra.Mu. No. 531 on their file and to quash the order dated 16.11.1995 made therein and to direct the third respondent to take on file the Arbitration Case No. 17/93 filed by the petitioner and to dispose of the same on merits and in accordance with law.

2. In the affidavit filed in support of the above writ petition, the petitioner would submit that they are carrying on business in conducting chits at Tuticorin, subject to the provisions of the Chit Funds Act and Rules; that in respect of a chit group bearing No. DC/E1 (Chit Agreement No. 41/87), one of the prized subscribers committed default in payment of the instalments; that the said prized subscriber had executed a promissory note and also created an equitable mortgage in respect of certain immovable properties as security for the due repayment of the amounts and hence the petitioner filed an Arbitration Case before the third respondent u/s 64 of the Chit Funds Act seeking for a decree on the mortgage, against the defaulted subscriber and sureties.

3. The petitioner would further submit that in the plaint, the petitioner has alleged that the cause of action arose on 30.4.1989 when the first defendant therein, the subscriber, became the successful bidder and when all the defendants executed the promissory note and created the mortgage and on 2.5.1989 when they committed default; that the Arbitration case was filed on 30.7.1993 and numbered as 17/93; that on 13.9.1993, the third respondent addressed the petitioner stating that since no proof has been filed u/s 65(3) of the Act for the delay in filing the case, the Arbitration Case is rejected as per Section 65(1) for which the petitioner replied on 21.9.1993 stating that since the Arbitration Case is on an equitable mortgage, Section 65(1) has no application and that the relevant provision applicable to a mortgage claim is Section 65(2) and hence the claim is within the period of limitation but since they did not get any communication from the third respondent, the petitioner addressed the second respondent on 28.9.1993 seeking his instructions to the third respondent; that the petitioner was asked to file two original title deeds deposited with them by the subscriber before the third respondent and they had filed the same; that since there was no reply, the petitioner filed a detailed Memorandum of Appeal before the second respondent on 27.10.1993 thereby extracting various provisions of the Act and pointing out the applicability of Section 65(2) to the facts of their claim and on 9.2.1994, the petitioner received a communication from the second respondent stating that if the petitioner is not satisfied with the order of Deputy Registrar, they could seek remedy u/s 70 of the Act and accordingly, the petitioner filed an appeal before the first respondent Government u/s 70 of the Act and since the first respondent has rejected the said appeal by the order dated 16.11.1995 made in P.M. No. 531, the petitioner has come forward to file the above writ petition.

4. During arguments, the learned counsel for the petitioner would submit that the order of the third respondent in rejecting the case of the petitioner is patently wrong and the first respondent ought to have given instructions to the third respondent to take the case on file and dispose the same on merits.

5. The learned counsel for the petitioner would then read out Section 64 of the Chit Funds Act, which is as follows:

"64.disputes relating to chit business:

(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the management of a chit business shall be referred by any of the parties to the dispute, to the Registrar for arbitration if each party thereto is one or the other of the following, namely:-

(a) a foreman, a prized subscriber or a non-prized subscriber, including a defaulting subscriber, past subscriber or a person claiming through a subscriber, or a deceased subscriber to a chit;

(b) a surety of a subscriber, past subscriber, or a deceased subscriber.

Explanation - For the purposes of this sub-section, a dispute touching the management of a chit business shall include -

(i) a claim by or against a foreman for any debt or demand due to him for a subscriber, or due from him to a subscriber, past subscriber or the nominee, heir or legal representative of a deceased subscriber whether such debt or demand is admitted or not;

(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a foreman and recovered from the surety owing to the default of the principal borrower, whether such sum or demand is admitted or not; and

(iii) a refusal or failure by a subscriber, past subscriber or the nominee, heir or legal representative of a deceased subscriber to deliver possession to a foreman of land or any other asset resumed by him for breach of conditions of the assignment.

(2) Where any question arises as to whether any matter referred to for the award of the Registrar is a dispute or not for the purposes of sub-section (1), the same shall be decided by the Registrar whose decision thereon shall be final.

(3) No Civil Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1)."

6. The learned counsel would then read out Section 65 of Act, which is as follows:

"65. Period of limitation - (1) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963), but subject to the specific provisions contained in this Act, the period of limitation in the case of a dispute referred to the Registrar u/s 64, shall -

(a) if the dispute relates to the recovery of any sum, including interest thereon, due to a foreman from a deceased subscriber, be three years, computed from the date on which such subscriber dies or ceases to be a subscriber; or

(b) if the dispute is between a foreman and subscriber or a past subscriber, or the nominee, heir or legal representative of a deceased subscriber, and the dispute relates to any act or omission on the part of either party to the dispute, be three years from the date on which the act or omission with reference to which the dispute arose, took place.

(2) The period of limitation in the case of any dispute other than those referred to in sub-section (1) which are required to be referred to the Registrar u/s 64 shall be regulated by the provisions of the Limitation Act, 1963 (36 of 1963), as if the dispute were a suit, and the Registrar, a civil court.

(3) Notwithstanding anything contained in sub sections (1) and (2), the Registrar may admit a dispute after the expiry of the period of limitation specified therein, if the applicant satisfies the registrar that he had sufficient cause for not referring

the dispute within such period."

7. Reading out both the provisions of law, as extracted supra, the learned counsel for the petitioner would submit that in the case in hand, the prized subscriber has executed a promissory note further depositing the original title deeds of an immovable property thereby creating an equitable mortgage and Section 65(1) of the Act would apply to the dispute relating to the recovery of any sum from a deceased subscriber, but here since the subscriber is very well alive, only the provision of Section 65(2), which provides period of limitation in case of any dispute ''other than those referred to in sub-section (1)'' would become applicable and since it is a matter of mortgage, automatically, under the provisions of the Limitation Act, the period of limitation would be twelve years.

8. The learned counsel for the petitioner would further submit that if the conclusion of the respondent authorities that if every case would fall only u/s 65(1)(b) is accepted, then Section 65(2) would become redundant; that Section 65(2) is applicable to the ''dispute other than those referred to in sub-section(1)'' and therefore the case in hand falls only under the purview of Section 65(2) but not u/s 65(1)(b) as wrongly concluded on the part of the respondent authorities in which event the period of limitation would be 12 years as is prescribed for a mortgage suit under the Limitation Act.

9. Then, reading out Sections 20, 21 and 35 of the Act, the learned counsel for the petitioner would submit that there are many conditions which enjoins the duty on the part of the foreman and it is only those acts or omissions which would fall u/s 65(1)(a) or(b); that in the case in hand, the original subscriber who is prized and defaulter is alive and not insane or has not become of unsound mind, nor is he incapacitated thereby being incompetent to contract, so as to have the necessity of making his nominee, heir or legal representative to step into his shoes; that in the case of a transfer, there can be a past subscriber, while the transferee will be the present subscriber but no such case is there in the case referred by the petitioner; that the case of the petitioner is regarding arrears of collection in respect of defaulted amounts from the original subscriber neither successor as nominee, heir or legal representative nor transferee of any ticket as contemplated u/s 65(1)(b) and therefore only Section 65(2) is applicable to the facts of the case. On such arguments, the learned counsel for the petitioner would pray for the relief extracted supra.

10. On the part of the learned Government Advocate, he would sail with the impugned order passed by the first respondent and would submit that the respondent authorities have considered the case in its right perspective and have arrived at the conclusion that the claim of the petitioner is barred by limitation since it falls only u/s 65(1)(b) and would pray to dismiss the above writ petition.

11. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner and the learned Government Advocate appearing on behalf of the first respondent with

no representation made on the part of the respondents 2 and 3 in spite of service, this Court is able to find that the firm contention of the petitioner is that this case would not fall u/s 65(1) particularly either u/s 65(1)(a) or (b) of the Chit Funds Act so as to attract the limitation of three years prescribed therein but would only fall u/s 65(2) of the Act.

12. It is the further argument of the petitioner that while the petitioner''s case is falling u/s 65(2), the provisions of the Limitation Act, 1963 would become applicable as if the dispute were a suit and the Registrar a civil Court and therefore the limitation prescribed therein since being 12 years, for the third respondent taking on file the arbitration case of the petitioner and to dispose of the same on merits and in accordance with law, there is absolutely no hindrance and hence has come forward to file the above writ petition seeking to the relief sought for besides seeking to quash the order passed by the first respondent dated 16.11.1995.

13. Though it cannot be said, as it is argued on the part of the petitioner, that no other dispute relating to the recovery of any other sum excepting from a deceased subscriber would fall under the purview of Section 65(1) and that too only under the provision of Section 65(2), which provides the period of limitation in case of any dispute other than those referred to u/s 65(1), would only become applicable in general, still, the pertinent point that is driven home on the part of the petitioner is that since the case of the petitioner being a matter relating to the mortgage, such recoveries are not directly covered u/s 65(1) nor would it become applicable in the wake of Section 65(2) specifically providing for such cases arising out of the recovery in a matter of mortgage falling u/s 65(2) under the category of ''other than those referred to in sub-section(1) or Section 65'', it would fall only under the provisions of the Limitation Act wherein the period of limitation prescribed is 12 years and therefore on such strong grounds, the petitioner would claim to the relief prayed for in the above writ petition.

14. A little more discussion need to be held in this regard relating to the limitation question since the case in hand pertains to the limitation under which the case of the petitioner has been rejected by the third respondent and the first respondent as well. It needs to be mentioned that the judicial thinking and the norms set by the upper forums of law particularly that of the Honourable Apex Court are by and large to the effect that no action should suffer on account of failure to file the same in time as prescribed under law or rule or regulation and therefore the rule that is to be adopted even in cases of longer delay wherein no satisfactory explanation has been offered, though, no doubt, that such petitioners or suitors should be punished, the same cannot end up with one of denial of opportunity to prosecute the matter wherein the substantial rights of parties are at stake and such denial would also amount to denial of an opportunity for the party who comes forward to prosecute his case and therefore though for the delay caused, he becomes liable to be punished, it is just and proper to punish such petitioners with only costs and not with denial of

opportunity to prosecute the subject wherein his substantial rights are at stake. No mention need to be made that only in rarest of the rare cases, the rejection of the case of such petitioners would arise that too only under exceptional circumstances wherein either the party is a chronic defaulter in prosecuting the case or prima facie by efflux of time, the claim or the relief sought for is a remote possibility or an impossibility and excepting in such circumstances, it is only desirable to permit the parties to prosecute the case condoning the delay mulcted with costs and if the delay is longer, with such exemplary costs.

15. It could be seen that even the Chit Funds Act provides u/s 65(3), empowering the Registrar, notwithstanding anything contained u/s 65(1) or 65(2), to admit a dispute after expiry of the period of limitation specified therein, if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period. While the law relating to the limitation is so liberal and in the exercise of such discretionary powers granted by law, since the Registrar is also required to decide the same judicially, in application of his judicial mind and in a judicious manner, and passing blunt orders such as one that the third respondent has passed in its order dated 4.3.1994 in proceedings Ni.Mu. No. 9755/A2/93 is only erroneous since nothing is discussed nor made known therein so as to arrive at such a blunt conclusion to reject the case of the petitioner by a one sentence order without having a mind to pass a speaking order, which is deplorable.

16. For all the above discussions held, this Court is of the view that the petitioner is entitled to the relief sought for in the above writ petition and hence the following order:

In result,

(i) the above writ petition succeeds and the same stands allowed.

(ii) The order dated 16.11.1995 made in Ra.Mu. No. 531, dated 16.11.1995 by the first respondent is quashed.

(iii) The third respondent is directed to take on file the arbitration case of the petitioner in No. 17/93 and dispose of the same on merits and in accordance with law.

However, in the circumstances of the case, there shall be no order as to costs.

