(2006) 05 DEL CK 0226

In the Delhi High Court

Case No : Civil Revision Petition No. 458 of 2005

Sanjiv Kumar APPELLANT

Vs

Ramwa Chit Funds (P) Ltd. RESPONDENT

Date of Decision : 04-05-2006

Acts Referred:

Chit Funds Act, 1982 — Section 1
Civil Procedure Code, 1908 (CPC) — Order 27 Rule 4, Order 47 Rule 1, 114, 115, 141
Constitution of India, 1950 — Article 239
General Clauses Act, 1897 — Section 3(58), 5

Citation : AIR 2006 Delhi 274 : (2006) 130 DLT 170

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Mukul Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—The present revision petition u/s 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code, for short) is directed against order dated 16th August, 2005 dismissing application for review u/s 114 and Order 47 Rule 1 of the aforesaid Code.

2. The respondent herein had filed a suit under Order xxxvII of the Code for recovery of Rs. 2,16,000/- along with interest, costs etc. In the suit it was stated that the petitioner had issued four cheques for Rs. 40,000/-, Rs. 45,000/-, Rs. 35,000/- and Rs. 30,000/- drawn on Bank of Baroda, Shakarpur, Delhi and the said cheques were dishonoured on presentation. It was also stated that the petitioner was a member of different units/groups organized by the respondent and had received chit amount of Rs. 1,62,500/-.

3. Learned Trial Court vide order dated 13th March, 2001 decreed the suit for Rs. 1,50,000/- being the sum total of the four cheques along with the pendente lite and future interest @ 15% per annum with the costs. As per the decree sheet, the petitioner was liable to pay Rs. 2,16,000/- plus costs and future interest.

4. Thereafter, the petitioner filed an application under Order XXVII Rule 4 read with Section 141 of the Code for setting aside of the decree dated 13th March, 2001. The said application was dismissed by the learned Trial Court vide order dated 25th July, 2001.

5. Subsequently, as already stated above, the petitioner filed a review application which stands dismissed by the impugned order dated 16th August, 2005. It is against this review order dated 16th August, 2005 that the present revision petition has been filed. It was also contended that the civil court did not have jurisdiction and, Therefore, the judgment and decree dated 13th March, 2001 (wrongly mentioned as judgment and decree dated 25th July, 2001 in the petition) was a nullity and was without jurisdiction.

6. Learned counsel appearing for the petitioner submitted that chit funds were earlier governed by Madras Chit Funds Act, 1961 and thereafter Chit Funds Act, 1982 (hereinafter referred to as the Act, for short) was passed by the Parliament and notified by publication in the Gazette of India (extraordinary Part-II Section 1 pages 1-34) on 20th August, 1982. It was further submitted that the Act on being gazetted/notified had/has become applicable to Delhi eclipsing the earlier enactment viz. Madras Chit Funds Act, 1961. It was submitted that after the gazette notification dated 20th Aug., 1982, the Madras Chit Funds Act, 1961 had/has ceased to applicable. Reliance was placed upon Section 64(1) and 3 of the Act and it was submitted that jurisdiction of the civil court was barred and, Therefore, the judgment and decree dated 13th March, 2001 was a nullity. It was argued that the Union Territory of Delhi did not have any legislation of its own in 1982 and, Therefore, Union Parliament alone was competent to legislate the Act and once the said Act was duly published in the official gazette, it automatically stood extended to the Union Territory of Delhi and no separate notification extending the Act to Delhi was required.

7. Section 5 of the General Clauses Act, 1987 states that any Central enactment not expressed to come into operation on any particular date, shall come into operation on the date it receives assent of the President. Therefore, a central enactment comes into force or operation on the date it receives presidential assent. This general rule is, however, subject to a specific provision in the enactment to the contrary. The legislature can postpone commencement of an Act to a future date. It can delegate and empower the appropriate government to decide and fix a date on which the entire enactment or parts thereof shall come into force. The central government can also be permitted to fix different dates on which an enactment shall come into force in different parts of the country.

8. Section 1(3) of the Act states that the Act shall come into force on such date as the Central Government by notification in the official gazette appoint and different dates may be appointed for different States. The said Section is reproduced below:

It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States.

9. A bare reading of the above provision shows that the enforcement of the Act was postponed to a date that may be fixed by the Central Government by notification in the Official Gazette. The Central Government has also been given the power to fix different dates on which the said enactment may be enforced in different States. The right to fix the date for commencement of the Act has been delegated and left to the discretion of the Central Government. The Act did not come into operation on being passed by the parliament or by the Presidential assent. The legislative enactment itself provides that the delegatee i.e. the Central Government is empowered to decide when and in which part of the country the enactment should be brought into operation.

10. u/s 1(3) of the Act the Central Government has issued a number of notifications making the provisions of the Act applicable to different areas in the country on different dates. Specific notifications have been issued by the Central Government making the provision of the Act applicable to some of the union territories. The Act is applicable to Union Territory of Chandigarh, Andaman and Nicobar, Dadra and Nagar Haveli and Lakshadweep islands. However, even in these cases different dates were fixed by the Central Government for enforcement of the Act, e.g. the Act became applicable to Union Territory of Chandigarh on 1st May, 1984 and in Union Territory of Dadra and Nagar Haveli on 3rd September, 1984 and in the case of Goa, Daman and Diu on 1st January, 1986.

11. The gazette notification relied upon by the learned Counsel for the petitioner only states that the enactment has been passed by the Parliament and thereafter has received due sanction from the President of India. This is different from the notification required u/s 1(3) of the Act that requires a specific notification to be published in the official gazette appointing a particular date from which the enactment would be applicable and the Central Government also has power and authority to fix different dates on which the said enactment would be applicable to different States. Admittedly, the Central Government has not yet enforced nor any notification has been published in the official gazette appointing a date for enforcement of the Act in the Union Territory of Delhi. The Act has been made applicable by notification in the official gazettes in several States. However, it has not been made applicable to Union Territory of Delhi.

12. As per Section 3(58) of the General Clauses Act, 1897, the word ''State'' includes a State specified in the First Schedule in the Constitution and also includes a Union Territory. Therefore, it is not correct to state that no specific notification in the official gazette is required for appointing the date for implementation of the Act in the Union Territory of Delhi. The contention of the appellant that the Act has become applicable to the Union Territory of Delhi automatically, without specific notification in the Official Gazette, applying the

said Act to Delhi has to be rejected.

13. Madras Chit Funds Act, 1961 may not have been enacted by the Union Parliament but under the Union Territories (Laws) Act,1950, the central government by notification in the official gazette was/is empowered the extend any enactment to the union territory of Delhi with such restriction(s) or modification(s) as it thinks fit.

14. Article 239 of the Constitution of India deals with Union Territories. The Union Territories are administered by the President of India acting through an administrator appointed by him. However, the President of India, who is the Executive Head of the Union Territories, does not function as a head of the Central Government, but under the specific powers conferred under Article 239 of the Constitution of India. The Union Territories though administered by the Central Government do not get merged with the Central Government.

15. The Act Therefore is not applicable to Union territory of Delhi. In view of the above, it cannot be held that the decree passed is a nullity and without jurisdiction. The present revision petition is accordingly dismissed. No costs.