

(2006) 11 MAD CK 0117
In the Madras High Court
Case No : C.R.P. (NPD) No. 301 of 2002

Sethupathy and Mani @ Subramnia Bharathy APPELLANT
Vs
C.S. Jeevakumar RESPONDENT

Date of Decision : 30-11-2006

Acts Referred:

Chit Funds Act, 1982 — Section 64, 72
Civil Procedure Code, 1908 (CPC) — Section 47
Limitation Act, 1963 — Section 5

Citation : (2007) 3 LW 45

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : D. Saravanan, for the Appellant; R. Jaikumar, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—This Revision Petition arises out of the Order in E.A. No. 353/2000 in E.P. No. 60/1997 in O.S. No. 209/1991 on the file of the District Munsif Court, Gingee, dismissing the Petition filed u/s 47 CPC. Defendants 5 and 6 are the Revision Petitioners.

2.1. Facts in nutshell are as follows :- The Respondent/Plaintiff has filed the suit O.S. No. 209/1991 claiming a sum of Rs. 14,250/-. Case of the Plaintiff was that the Defendants 1 to 3 are Directors of "Muthamizh Chit Funds and Financiers Private Ltd.", which were running chits, having its office at Gingee Town. The Defendants 5 and 6 approached the Plaintiff to subscribe for a chit and believing their words, the Plaintiff also joined in chit and subscribed for Rs. 15,000/-. The said chit group was for a period of 13 months with a monthly subscription of Rs. 500/- and the Plaintiff is said to have paid Rs. 10,500/-. It is alleged that the Defendants 1 to 6 have not honoured their commitments and a criminal case was lodged in C.C. No. 939/1989 against the Defendants 1 to 4.

2.2. Plaintiff has filed the suit O.S. No. 209/1991, claiming Rs. 14,250/-. Initially, the suit was filed as Pauper O.P. No. 7/89 and the same was ordered to be

instituted as a suit. In the suit, the Plaintiff also sought for creation of charge over the immovable properties of the Defendants 5 and 6. Even at the stage of suit, attachment was ordered. In the suit, Defendants 5 and 6 have filed Written Statement on 25.09.1991. Thereafter the Revision Petitioners/Defendants 5 and 6 did not pursue the suit and they were set exparte and exparte Decree was passed on 04.12.1991. Revision Petitioners filed I.A. No. 834/2005 seeking condonation of delay in filing application to set aside the exparte Decree. That application was dismissed against which, CRP was filed and the CRP was also dismissed.

2.3. Plaintiff has filed Execution Petition No. 60/1997 [E.P. filed even in the year 1994], for execution of the Decree by sale of immovable properties of the Revision Petitioners. The Revision Petitioners entered appearance in the Execution Proceedings also and filed their counter. Later, counsel for the Revision Petitioners reported "no instructions". Sale proclamation was ordered and at the stage, when the matter was adjourned for sale, Revision Petitioners have filed E.A. No. 353/2000 u/s 47 CPC, interalia contending that the suit is not maintainable in view of the express bar under the Chit Funds Act and that according to the Revision Petitioners, they were acquitted in criminal case in respect of the transaction in reference and hence, prayed that the Decree cannot be executed against them or other immovable property.

2.4. Application u/s 47 CPC was dismissed by the Executing Court holding that the exparte Decree dated 04.12.1991 has become final. The Court has further observed that acquittal in criminal case would not render the Decree in-executable.

3.1. Assailing the impugned Order, the learned Counsel for the Revision Petitioner contended that the Revision Petitioners were only employed as employees in the chit fund and they cannot be held liable. It was further submitted that when the Chit fund Company is registered, only Registrar has control and u/s 64(3) of the Chit Funds Act, there is bar for invoking the jurisdiction of the Civil Court. It was further submitted that in the criminal complaint, commission of the offence has not been established and when the criminal case has ended in acquittal, the Decree cannot be executed.

3.2. Countering the arguments, the learned Counsel for the Respondent/Plaintiff has submitted that the Plaintiff has also filed Petition before the Registrar and the same was returned by the Registrar stating that Muthamizh Chit is not a registered one and only thereafter, the Plaintiff has filed the civil Suit. It was further submitted that Chit Fund Registrar himself was made a Defendant, who has also filed the Written Statement stating about the non registration of the Chit Fund. It was further submitted that the acquittal of the accused in Criminal Court would not have any bearing so far as the Civil liability is concerned.

4. The main point urged is that in view of Section 64(3) of the Chit Funds Act, the Decree passed is a nullity. Section 64(3) reads as under:

64(3).No civil Court shall have jurisdiction to entertain suit or other proceedings in respect of any dispute referred to in Section 64(1).

Sections 64 to 72 provide for a self contained machinery for the settlement of dispute arising between a foreman and the subscribers. The Chit Funds Act will be applicable only in case of chit funds registered under the provisions of the Act. The learned Counsel for the Plaintiff has submitted that Plaintiff preferred complaint before the Registrar making his claim and the same was returned stating that Muthamizh Chit is not a registered one. The District Registrar of Chits, North Arcot, was also made a party in the suit, who has also filed the Written Statement. No serious dispute was raised as to the lack of jurisdiction of civil Court.

5. Contending that the Civil Suit is not maintainable and the Civil Court has no jurisdiction to pass Decree, the learned Counsel for the Revision Petitioners has placed reliance upon -

AIR 1977 SC 1201; 2003(4) SCC 147; AIR 1996 SC 1819; 2003 (1) CTC 41

All the above decisions cited on behalf of the Revision Petitioners concerning Section 47 CPC have no relevance to the case on hand.

6. Even at the outset, it is to be pointed out that the Revision Petitioners have exhausted all available remedies both in the suit stage as well as in the Execution Proceedings. Before filing E.A. No. 353/2000, u/s 47 CPC, we may briefly enumerate the various stages in which the Revision Petitioners have participated in the proceedings. In the suit, the Revision Petitioners have filed Written Statement on 25.09.1991 contending that they were only employees and were not responsible in conducting of the chit. In their Written Statement, the Revision Petitioners averred that the suit could be decreed as against the Defendants 1, 2 and 3. No where in the Written Statement the Revision Petitioners have raised the plea regarding lack of jurisdiction of the Civil Court. The suit was decreed ex parte on 04.12.1991. As noted earlier, the Revision Petitioners have filed I.A. No. 834/1995 u/s 5 of the Limitation Act, seeking condonation of delay in filing application to set aside the ex parte Decree. I.A. No. 834/1995 was dismissed, against which the Revision Petitioners have filed the CRP and the same was also dismissed.

7. In this revision, Court has called for back papers and I have carefully examined the records. The E.P. was filed even in the year 1994. Be that as it may, in E.P.s, the Revision Petitioners have entered appearance. The E.P. was adjourned to various dates. Perhaps only at that stage, I.A. No. 834/1995 was filed by the Revision Petitioners. The Revision Petitioners have also filed their counter stating that they have taken steps to set aside the exparte Decree. On 16.04.1999, counsel for the Revision Petitioners reported "no instructions" and the Revision Petitioners were called absent and set exparte on 16.04.1999 and fresh proclamation was ordered. For one reason or other, proclamation was not issued and again fresh proclamation was ordered on 16.10.2000. Thereafter, E.P.

was adjourned to 04.12.2000 and the sale could not be held and again adjourned to 14.12.2000, as per the Order in E.A.No. 338/2004 [nature of E.A. not known from the records], only at that stage, the Revision Petitioners have filed Petition u/s 47 CPC raising objection as to the executability of the Decree. By a mere perusal of the Order Sheet in the E.P., it is quite obvious that Section 47 CPC Petition has been filed only to delay the Execution Proceedings. The objection that the Civil Court has no jurisdiction and that the Decree is a nullity was not at all raised by the Revision Petitioners at early point of time. The Revision Petitioners, who had participated in the proceedings in all stages, cannot raise the objection regarding the executability of Decree by filing Petition u/s 47 CPC.

8. The Executing Court cannot go beyond the Decree, unless it is shown that it is passed by the Court having lack of jurisdiction which would make it a nullity. It is not for the Executing Court to decide whether the Decree passed is legal or illegal or whether it is erroneous or not. As noted earlier, District Registrar of Chits himself was made a party, who is said to have filed the Written Statement stating that Muthamizh Chit Fund was not a registered one. While so, the contention that in view of Section 64(3) of Chit Funds Act, jurisdiction of Civil Court's barred does not merit acceptance.

9. The only point urged is the findings in the Criminal Court in C.C. No. 939/1989. While acquitting the accused, the criminal Court has observed that "The facts of the case clearly falls punishable u/s 64 of the Chit Funds Act and it is not an offence punishable such case or to prosecute the accused. From the evidence, it appears that the Muthamil Chits and Financiers [Private] Ltd., was a registered chit fund run by A1 and 2 others was wound up and P.W.s 1 to 10 who were the subscribers have to seek their relief under the provisions of the Chit Funds Act, 1982 only". Finding of the Criminal Court would not render the civil Suit Decree a nullity. This is all the more so, when the Revision Petitioners have not raised that point in the early stage. As noted earlier, in E.P. No. 60/1997, the Revision Petitioners have filed their counter on 11.03.1998. The accused were acquitted on 27.12.1996. Nothing prevented the Revision Petitioners from raising that plea in their counter filed in E.P. No. 60/1997. That aspect was neither referred in the counter nor the Revision Petitioners pursued the E.P. But by raising frivolous objections, the Revision Petitioners have filed Section 47 CPC Petition which is seemingly to delay the execution proceedings. In consideration of the facts and records, the Executing Court has rightly dismissed the Petition filed u/s 47 CPC. The impugned Order does not suffer from any serious infirmity calling for interference.

10. In the result, the order dated 13.11.2001, made in E.A. No. 353/2000 in E.P. No. 60/1997 in O.S. No. 209/1991 on the file of the District Munsif Court, Gingee, is confirmed and this Revision Petition is dismissed. No costs.