(1951) 09 AP CK 0008

In the Andhra Pradesh High Court

Case No : Revision Petition No. 255 of 1950

Sketna Dev Padmiah APPELLANT

Vs

Firm of Srigiri Venkiah and Others RESPONDENT

Date of Decision : 12-09-1951

Acts Referred:

Companies Act, 1956 — Section 4(2)
Hyderabad Money Lenders Act, 1349 — Section 4(2)(7), 9
Hyderabad Paper Currency Act — Section 15

Citation : (1951) 09 AP CK 0008

Hon'ble Judges : A.M. Ansari, J

Bench : Single Bench

Advocate : Bhimsen Achari, for the Appellant; V.K.V. Sunder Raj, for the Respondent

Judgement

A.M. Ansari, J.—This revision petition arises out of a money suit by the firm of ''Srigiri Venkiah the Organiser of a ''Chit Fund'' which had twelve members, each subscribing Rs. 100/- a month for the period of a year. The Defendant 1 was a member of the fund and held two shares contributing Rs. 200/- a month. Accord ing to the rules of the Chit Fund, it is said, the total amount of subscription collected every month was auctioned among the members, and one who bid the lowest amount, i.e., gave the largest discount, secured the amount bid for. After the conclusion of a successful bid, the purchaser of the lot was required to execute in respect of the annual contribution, as security of the regular payment of the monthly subscription. It was stated in the plaint that Defendant 1 purchased in auction a ''chit'' in the fourth month and another in the sixth month and executed a pronotes on each occasion; and Defendant 2 stood surety for the same. According to the Plaintiffs Defendant 1 did not pay his contribution for the six months following. The Defendant 2 on demand paid Rs. 210/ under the two pronotes, and Defendant 1 paid Rs. 100/- only. Thus the Defendants owe Rs. 1061-13-6 including interest.

2. Defendant 2 died during the pendency of the suit, and his legal

representatives expressed ignorance of the whole transaction. Defendant No. 1 however, admitted the organization of ''Chit Fund'' and his membership with two shares, and securing two chits in the auction, and the execution of both the pronotes. But he claimed that Defendant 2 paid Rs. 575/ to the Plaintiff under the pronotes besides Rs. 100/- paid by himself. He further stated that a sum of Rs. 200/- was paid by himself to Ramaswamy the father of Venkiah, a partner of the Plaintiff''s firm. Thus they have paid in all Rs. 947/- and only Rs. 252/8/- are due by Defendant 1. This could not be paid owing to the Defendant having left the place due to disturbed conditions in the State and the ''Chit Fund'' also having ceased to function. He pleaded that in view of the Plaintiff''s firm not having been registered as a banking company under the Indian Companies Act, and not holding a license under the Hyderabad Money Lenders'' Act, the suit is liable to be dismissed. Further as both the pronotes are payable to the bearer, in contravention of Section 15, Hyderabad Paper Currency Act, they cannot form the basis of the suit.

3. The trial Court rejected these objections but held that payments to the extent of Rs. 465/-were proved, and accordingly passed a decree to the extent of Rs. 954-8-2, against which the Defendant 1 has come to us in revision, and has raised the same points of law, as were pressed before the lower Court.

4. Taking into consideration that the members of the ''Chit Fund'' together with the organisers are less than 20, the registration of the association is not compulsorily registrable u/s 4 (2), Indian Companies Act as was held in Neelamegha Sastri v. Section Appiah Sastri 29 Mad 477. The advocate for the Petitioner also does not press this point. As regards the contention that the pronote in question is a bearer bond, and has been drawn up in contravention of the Hyderabad Paper Currency Act, the advocate of the Respondent admits in principle that the note cannot, form the basis of the suit, but he submits that according to his plaint, his suit is based upon the original transaction, and he has given all the facts relating to it culminating in the drawing up of the pronotes, which were taken only as collateral security. This will have to be decided with reference to the statement made in the plaint. Going through the plaint carefully 1 am of the opinion that the suit is not solely based upon the pronotes but on the transaction of the ''Chit Fund'' also and the Plaintiff has explained under what circumstances the pronotes were drawn up. Therefore, though the pronotes in question are inadmissible in evidence, Plaintiff can prove the actual transaction and the arrears on that account.

5. As regards the second objection of the Advocate of the Petitioner, that the transaction as disclosed by the plaint, is in the nature of a loan, and the Plaintiff not being a licensed money lender, the entire suit is liable to be dismissed u/s 9, Hyderabad Money-lenders'' Act; we will have to consider two things in this connection: whether under Clause 4, Section 2 of the Act, the transaction is that of a loan, and the Plaintiff in respect of this transaction, a money-lender under CI. 7 of the said section. Clause 4 describes what transactions will be deemed to

be loan; and under this, money drawn by the Appellant from the Respondent, is clearly a loan, and does not fall under any of the exemptions. It was argued on behalf of the Respondent that exemptions marked (B) and (E) save this transaction from the definition of a loan

6. Exemption marked (B) is to this effect:

Any loan given to, or obtained from, a Society or association registered under any law, and also any amount in its custody as a trust.

It is obvious that Plaintiffs, the so-called stake holders, are not registered under any law as. stake-holders though they may be a registered, firm for carrying on other business. Exemption (E) also is not at all applicable, as the amount has not been advanced upon any negotiable instrument other than a pronote. It is further argued on behalf of the Respondent that the transaction in question is not that of borrowing and lending in view of the fact that the Respondent is a stake-holder and trustee on behalf of all the members of the ''Chit Fund''. Besides, the Appellant was a purchaser in auction of two chits and not a borrower. Two decisions of P.N. Raghavan Pattar and Others Vs. S. Arumugham by his mother and guardian Singarammal and Another, and Ramanatha Ayyar v. Narayanaswami Ayyar AIR 1937 Madras 364 have been relied upon in this respect. This argument is met by the Appellant by submitting, that the transaction in question is that of borrowing and lending pure and simple. Had it been otherwise, i.e., the pronotes were take a merely as collateral security for the due payment of the monthly instalments, the amount, in the pronotes could not have been Rs. 1200/ cash and interest would have been charged only on installments that remained unpaid and not on the whole amount of the pronotes. It is admitted that the Petitioner bought the first chit in the fourth month, when he was responsible to pay only Rs. 300 being the full amount of the remaining eight instalments of the Chit Fund. Why should he execute a pronote of Rs. 1200/- instead? Similarly, when he bought the second chit, he had to pay only six instalments; but he undertaken to pay Lis. 1200/-together with interest, which could not be due unless and until all the instalments fell in. arrears. So it is clear the pronotes were not executed as mere collateral security for the remaining instalments. In - P.N. Raghavan Pattar and Others Vs. S. Arumugham by his mother and guardian Singarammal and Another, their Lordships were of the opinion that, a ''Chit Fund'' transaction was only buying and selling and not borrowing and lending, for the law, as it then stood, did not exclude money from the category of goods. All the same they refrained from passing any opinion as to whether this reasoning will hold good when the Sale of Goods Act came into force. The Indian Sale of Goods Act is now in force, and a similar Act was in operation in this State when the transaction in question took place, according to which goods means "every kind of movable property other than actionable claims and money " and buyer means ''person, who buys or agrees to buy goods'' & ''seller'' means who sells or agrees to sell goods. Money is necessarily excluded from the definition of ''goods'' because it constitutes the price in exchange for which goods are sold, and owing to its being currency is governed by wholly different principles. In the case of - Ramanatha Ayyar (Seshan Pattar''s son) Vs. G.G. Narayanaswami Ayyar, the other ruling cited by the advocate for the Respondent the scheme was that every member was 1o subscribe Rs. 500/-per month; and the second month''s collection was to go to the stake-holder as a reward for his services in running the Scheme. The Defendant did not pay the second instalment and accepted a pronoto Instead. The stake-holdered for the amount of the second instalment, (SIC) Defendant besides pleading limitation, had intended that the suit was for the enforcement a specific performance and not a suit for money. His Lordship Beasley C.J. concurring with P.N. Raghavan Pattar and Others Vs. S. Arumugham by his mother and guardian Singarammal and Another, which was itself not inclusive on this point, thought that the stake-holder in the case was not a borrower and a contract to pay for the services rendered connection with the ''Chit Fund'' could be forced; but as he had not heard the parties this point he refrained from expressing a finite opinion and dismissed the suit on the point of limitation. Ramanatha Ayyar (Seshan Pattar''s son) Vs. G.G. Narayanaswami Ayyar, likewise, not helpful to us in arriving at a definite inclusion as regards the nature of the transaction and the contract between a ''Chit Fund'' subscriber and the Manager of the Fund.

7. In the case before me the contention of the Plaintiff that the suit is in fact for the realisation of the instalments that had fallen (SIC) and that the pronotes were taken as mere collateral security for the future instalments, not supported by the pronotes themselves had it been so, as is alleged by the Plaintiff (SIC)first note would have been for Rs. 800/-and the second note for Rs. 600/- only; but the notes are for Rs. 1200/- and interest on (SIC)th the notes in chargeable or the whole amount including the installments already paid up. In short, the plaint reveals that the ''Chit Fund'' Scheme was a borrowing and (SIC)nding society, doing the business for mutual benefit; and the so-called auction for the sale and purchase of a Chit was in fact for securing priority of obtaining a loan. Therefore, the advancing of the month''s collections to the Defendant on each occasion was a loan for all (SIC)tents and purposes, and the Organisers of the fund, money-lenders. A license for carrying (SIC) this business, therefore, was necessary. For the breach of the provisions of the Hyderabad Money Lenders'' Act u/s 9, the claim of no plaintiff cannot be decreed. Revision is allowed and the suit dismissed with costs.