(2003) 11 AP CK 0056

In the Andhra Pradesh High Court

Case No : Company Application No. 947 of 2002 and Company Petition No. 144 of 1999

Sri Krishna Tulasi Chit Fund (P.) Ltd.	APPELLANT
Vs	
Renuka Traders	RESPONDENT

Date of Decision : 17-11-2003

Acts Referred:
Companies (Court) Rules, 1959 — Rule 11, 9
Companies Act, 1956 — Section 446

Citation : (2004) 50 SCL 470

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : Anil Kumar, for the Appellant; Ch. Ravindranath, for the Respondent

Judgement

N.V. Ramana, J.—By this application filed u/s 446(2) of the Companies Act, 1956 read with Rules 9 and 11(b) of the Companies (Court) Rules, 1959, the Official Liquidator representing the company in liquidation, namely M/s. Sri Krishna Tulasi Chit Fund (P.) Limited, praying for (1) direction to the respondents to pay to the applicant, jointly and severally a sum of Rs. 1,51,846 along with interest thereon at the rate of 12 per cent per annum w.e.f. 10-3-1999 till the date of realization and (2) to order attachment of the property standing in the name of respondent No. 2, namely Talari Narayana.

2. By order dated 6-12-1999 made in C.P. No. 144 of 1999, the applicant-company was ordered to be wound up and the Provisional Liquidator was directed to take necessary steps for recovery of the dues of the applicant-company. Thereafter, by order dated 24-11-2000, the Official Liquidator was appointed as Liquidator of the applicant-company.

3. In the affidavit filed in support of the application, it is stated that as per the information furnished in the List of Debtors of Statement of Affairs and Chit Ledger by the ex-Director of the company, respondent No. 1, namely, M/s. Renuka Traders, subscribed to Chit No. 18 of Chit Group KLT-2A, the value of

which is Rs. 5,00,000 with a duration of 50 months and subscription of Rs. 10,000 per month each Respondent No. 1 was the highest bidder and respondent Nos. 2 to 4 stood sureties by excluding joint promissory note and agreement of guarantee in favour of the company. Respondent No. 1 it is stated, had paid an amount of Rs. 3,10,000 towards 31 monthly subscriptions, which is inclusive of dividend for the period commencing from 30-11-1995 to 1-7-1998 and that the accounts also reflect that he had also paid an amount of Rs. 39,000, that the last payment made by him was on 10-3-1999, and he still liable to pay an amount of Rs. 1,51,000.

4. Respondent No. 1, it is further stated that, being the prized subscriber in the auction held on 22-9-1996, was paid an amount of Rs. 2,47,000 on 28-12-1996, which is even evidenced by the Statement of Account furnished by Andhra Bank, and that an amount of Rs. 13,300 and Rs. 39,000 paid by respondent No. 1 vide Receipt Nos. 16119 and 16120 was adjusted towards Chit No. 18 of Chit Group KLT-2A and Chit No. 46 of the same Chit Group respectively. That respondent No. 1 is still due to the applicant a sum of Rs. 1,51,846 in Chit No. 18 of Chit Group KLT-2A and that while taking the prized amount respondent No. 2 deposited title deeds in respect of H. No. 6-74/1, Plot No. 15, Survey No. 11 (Northern Part), Hyderabad, admeasuring 100 Sq.yds. or 83.61 mts. as security.

5. The applicant further states that respondent No. 1 is also subscriber of Chit No. 46 of Chit Group KLT-2A and that in all he paid an amount of Rs. 2,20,000 towards subscription for 22 months, which is inclusive of Rs. 70,000 dividend for the period from 30-11-1995 to 13-5-1998 and that respondent No. 1 is not a creditor in the said chit. In response to the notice dated 17-5-2000 issued by the applicant, it is stated that respondent No. 1 through his Advocate submitted his reply on 22-5-2000 stating that the applicant itself would be liable to pay to respondent No. 1, a sum of Rs. 1,00,000 as the amount lying to his credit in Chit No. 46 had not been paid to respondent No. 1. As the respondents failed to pay the amount in spite of taking out notice to them, the applicant filed the present application praying for the reliefs stated in the preliminary paragraph.

6. In pursuance of the notice ordered by this Court, respondent No. 1 entered his appearance through an Advocate and filed his counter. It is stated by respondent No. 1 in his counter that he is subscriber of two chits, being Chit Nos. 18 and 46 in Chit Group No. KLT-2A and that in all he paid an amount of Rs. 6,00,000 to the applicant towards subscriptions - 38 monthly subscriptions in Chit No. 18 amounting to Rs. 3,80,000 and 22 monthly subscriptions in Chit No. 46 amounting to Rs. 2,20,000. As the applicant-company was closed even before the expiry of the chit period, he had not paid the amounts. Inasmuch as the applicant-company had paid respondent No. 1 only Rs. 2,47,700 towards prized amount, the same if deducted from the amount of Rs. 6,00,000 paid by him towards subscription in two chits, he submits that applicant-company itself will be liable to pay him Rs. 3,52,000. Respondent No. 1 disputed the contention of the applicant that he had paid subscription only for 31 months amounting to Rs.

3,10,000 in Chit No. 18 and another sum of Rs. 39,000, aggregating to a total of Rs. 3,49,000 and that he has to pay balance of Rs. 1,51,000, and submitted that, he had, in fact, paid subscription for 38 months amounting to Rs. 3,80,000, and thus prayed for refund of the amount liable to be paid by the applicant to him and also release the title deeds deposited by him as security for the prized amount.

7. The applicant in support of its case, examined the Assistant working in the Office of the Official Liquidator as P.W. 1 and marked documents Exts. A1 to A20 and on behalf of the respondents, respondent No. 2, who is the proprietor of respondent No. 1, examined himself as R.W. 1 and marked documents Exts. B1 to B6. Heard the learned counsel for the applicant and the learned counsel for respondent No. 1.

8. The learned counsel for the applicant submits that respondent No. 1 is subscriber of Chit No. 18 of Chit Group KLT-2A valued at Rs. 5,00,000. In the auction held on 22-9-1996, respondent No. 1 being the prized subscriber received an amount of Rs. 2,47,000. Respondent No. 1, in all paid 31 monthly subscriptions, amounting to Rs. 3,10,000, which is inclusive of dividend for the period commencing from 30-11-1995 to 1-7-1998. And that apart, respondent No. 1 also paid an amount of Rs. 39,000, and if the said amount is given credit towards subscription, the total amount paid by respondent No. 1 towards subscription of Chit No. 18, comes to Rs. 3,49,000 and he is still liable to pay to the applicant a sum of Rs. 1,51,000. The learned counsel for the applicant does not dispute the fact that respondent No. 1 was subscriber of another chit being Chit No. 46 and that he had paid 22 monthly subscriptions amounting to Rs. 2,20,000 but having regard to the fact that the membership of respondent No. 1 from Chit No. 18 stood terminated, by reason of the letter of the applicant dated 26-8-1998, and having regard to Clause 15(i)(a) of the Chit Agreement entered into between the parties and Clause 11 (a) of the Bye-laws, namely Bye-law No. 2774/95-96, a member whose membership is terminated is entitled to refund of only the actual amount paid by him towards subscription, after deducting 5 per cent of the said amount towards damages for breach of contract, and such member whose membership is terminated, will also not be entitled for the dividend accrued for the subscribed period.

9. The learned counsel for respondent No. 1 on the other hand contended that respondent No. 1 being subscriber of two chits in Chit Group KLT-2A, paid in all an amount of Rs. 6,00,000 - 38 monthly subscriptions in Chit No. 18 amounting to Rs. 3,80,000 and 22 monthly subscriptions in Chit No. 46 amounting to Rs. 2,20,000 and even assuming that no dividend accrued for the balance 12 monthly subscriptions in Chit No. 18 respondent No. 1 will be liable to pay only Rs. 1,20,000, and if the said amount payable by him towards subscription of Chit No. 18 is deducted from the amount of Rs. 2,20,000 payable to him in Chit No. 46 by the applicant, respondent No. 1 would still be entitled to an amount of Rs. 1,00,000 and prayed the Court to dismiss the application and direct the applicant

to pay him the said amount.

Given the undisputed fact that respondent No. 1 is subscriber of two chits of Chit Group KLT-2A, the question that falls for consideration in the light of the submissions advanced by the respective parties, is whether respondent No. 1 is liable to pay the amounts as claimed by the applicant in respect of Chit No. 18 or whether the applicant itself is liable to pay the amounts as claimed by respondent No. 1 in respect of Chit No. 46.

10. There is no dispute about the fact that respondent No. 1 is subscriber of two chits, namely Chit Nos. 18 and 46 for Rs. 5,00,000 each in Chit Group No. KLT-2A and that in respect of Chit No. 18 he is the prized subscriber and that in respect of Chit No. 46 he is not the prized subscriber. Therefore, the evidence let in by the parties with respect to undisputed documents, need not be looked into. Respondent No. 1 though contended that he had paid 38 monthly subscriptions in Chit No. 18 amounting to Rs. 3,80,000, the material produced by him in support of his case, does not suggest so. The original pass book, Ex. B1, reflects the monthly subscriptions made by respondent No. 1. A perusal of the same, shows that respondent No. 1 commencing from 1-11-1995 and closing on 31-5-1998, had paid 31 monthly subscriptions, amounting to Rs. 3,10,000, which is inclusive of dividend of Rs. 1,08,154 for the subscribed period. In the absence of any material produced by respondent No. 1 in the form of receipts etc., evidencing that he had in fact paid monthly subscriptions for 38 months, his contention that he had paid an amount of Rs. 3,80,000 towards 38 monthly subscriptions cannot be accepted. In that view of the matter, the applicant had rightly contended that respondent No. 1 having paid an amount of Rs. 3,10,000 towards 31 monthly subscriptions, which is inclusive of dividend for the subscribed period, is still due and liable to pay to the applicant a sum of Rs. 1,51,846.

11. The applicant does not dispute the fact that respondent No. 1 being subscriber of Chit No. 46 had paid 22 monthly subscriptions amounting to Rs. 2,20,000 and that he is not due to the applicant any amount in respect of the said chit. But, it is required to be noticed whether respondent No. 1 is entitled to be paid the said sum in its entirety or whether any deductions are required to be made, as contended by the applicant. In this context, it would be useful to excerpt Clause 15(a)(i) of the Agreement of Chit entered into between the parties, which reads :

"(a) Payment of Chit instalments and fine and/or penalty for belated payments:

(i) Non-Prized Subscriber : If a non-prized subscriber fails to deposit his/her monthly subscription before the due date, penalty will be charged at the rate of 3 paise per rupee, or part thereof. If the default is continued to second month, penalty will be charged at the rate of 6 paise per rupee or part thereof per month. If default continues for more than two months the subscriber will not be entitled to dividends in addition to the aforesaid penalty charges. A subscriber who has not made up-to-date payments of all the instalments due from him, will not be permitted to bid in the auction.

If a non-prized subscriber fails to pay subscription for three consecutive instalments, he shall be liable to be removed from the list of subscribers and the Foreman, at his option, shall be entitled to substitute a new subscriber in place of defaulting subscriber or may himself subscribe for the ticket and if a defaulted ticket of the chit will be dealt with subject to the bye-laws and the relevant provisions of Chit Funds Act. The Foreman, at his discretion, can waive the penalties partly or fully and also can postpone the removal in suitable and deserving cases. An expelled member may be readmitted on such terms as the Foreman deems proper."

A plain reading of the above clause in the Agreement of Chit, which is marked as Ex. A21, on which respondent No. 1 had appended his signature, would disclose if the subscriber fails to pay the monthly subscription before the due date, penalty will be charged at the rate of 3 paise per rupee and if the default continues for the second month, penalty at the rate of 6 paise will be charged, and if the default continues in succession, the subscriber will not be entitled to dividends apart from charging of penalty and he would also be entitled to participate in the auction. The non-prized subscriber, if he fails to pay subscription in succession for three months, his membership would be liable for removal, and the Foreman would be entitled to substitute a new member in the place of the defaulting subscriber.

12. It is the case of the applicant that the membership of the respondent No. 1 as subscriber of Chit No. 46 was terminated by reason of letter, dated 26-8-1998, which the respondent No. 1 admits to have received, but not replied. By the said letter, the applicant while informing respondent No. 1 about removal of his name from the membership of Chit No. KLT-2A in terms of Bye-law No. 2774/96-97 also informed that the applicant is due to respondent No. 1 only a sum of Rs. 1,24,880. A perusal of the said letter would indicate that respondent No. 1 actually had paid an amount of Rs. 1,49,980, out of which an amount of Rs. 25,000 and Rs. 100 being 5 per cent of the chit amount towards damages for breach of contract and incidental charges was deducted, and net amount of Rs. 1,24,880 is shown as due and payable by the applicant to respondent No. 1. In the absence of any reply having been given by respondent No. 1 to the said notice terminating the membership of the applicant, and respondent No. 1 having accepted the amounts mentioned therein that are said to be due and payable to him by the applicant in respect of Chit No. 46, he cannot be allowed to contend that inasmuch as he has paid 22 monthly subscriptions amounting to Rs. 2,20,000, the applicant is liable to pay the same to him. It thus becomes clear that the respondent No. 1 is entitled to only a sum of Rs. 1,24,880 in respect of Chit No, 46 of Chit Group KLT-2A.

13. In view of my findings above, if the amount of Rs. 1,24,880 which respondent No. 1 is entitled to from the applicant in respect of Chit No. 46 of Chit

Group KLT-2A is adjusted against the dues of Rs. 1,51,846 payable by respondent No. 1 to the applicant in respect of Chit No. 18 of Chit Group KLT-2A, respondent No. 1 will still be liable to pay to the applicant a sum of Rs. 29,966. In that view of the matter, there shall be a decree in favour of the applicant and against the respondents for a sum of Rs. 29,966 along with interest thereon at the rate of 12 per cent per annum. The respondents shall be jointly and severally liable to pay the said sum. In the event the respondents pay the decretal amount, the applicant shall release the title deeds deposited by respondent No. 2 towards security for the prized amount, and if the respondents fail to pay the said amount, the applicant will be at liberty to proceed against the respondents for realization of the decretal dues by attaching the properties which are covered by the title deeds. No costs.

