(2003) 06 AP CK 0078

In the Andhra Pradesh High Court

Case No : Company Application No. 425 of 2002 In Company Petition No. 131 of 2000

Vara Vara Chits Ltd. APPELLANT

Vs

Mrs. Y. Punyavathi RESPONDENT

Date of Decision : 18-06-2003

Acts Referred:
Chit Funds Act, 1982 — Section 40, 42

Citation : (2004) 4 ALD 41 : (2003) 6 ALT 94 : (2004) 49 SCL 548

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : M. Ramanathan, Y. Punyavathi and M. Anil Kumar, for the Appellant; Raj Kumar Rudra, for the Respondent

Final Decision : Allowed

Judgement

T. Ch. Surya Rao, J.—M/s. Vara Vara Chits Limited represented by the Official Liquidator seeks a direction to the respondents to pay jointly and severally a sum of Rs. 31,429 with interest at the rate of 12% per annum from 23-4-2001 till the date of realisation.

2. The facts lie in a narrow compass :

By an order dated 23-4-2001 passed in company petition No. 131 of 2000, the Official Liquidator attached to the Company Court was appointed as Provisional Liquidator of M/s. Vara Vara Chits Limited, the company which was under provisional liquidation, Subsequently on 6-2-2002 the company was ordered to be wound up. Pursuant to the said orders, the Official Liquidator took possession of the assets and books of account of the company. It revealed from the information contained in the statement of affairs and the list of debtors, that the first respondent was a subscriber to chit No. 4 of Chit Group No. VVSL-50G the value whereof was Rs. 50,000, to be subscribed at Rs. 1,000 per month for a duration of 50 months. The chit was commenced in the month of November,

1998. Later, the first respondent became the prized subscriber and the respondents 2 to 4 stood as guarantors to the first respondent. They together executed a promissory note and the respondents 2 to 4 further executed an agreement of guarantee undertaking to repay an amount of Rs. 33,000. By then the first respondent paid an amount of Rs. 17,000 towards monthly subscriptions for 17 months inclusive of the dividend. Therefore, the first respondent has to pay an amount of Rs. 33,000 for the remaining 33 months. The last payment made by him was on 6-3-2000, a month after the final orders of winding up. The Official Liquidator got a notice dated 18-10-2001 issued to the respondents. The notices were served on the respondents 1, 2 and 3. The first respondent got a reply dated 23-10-2001 issued through her counsel mentioning inter alia that she is not liable to pay the interest. Hence, the claim.

3. The first respondent resisted the claim by filing a counter mentioning inter alia that she is not liable to pay any interest and that she is ready and willing to pay the balance instalments after deducting the dividends and that there are no laches on the part of the first respondent and, therefore, she would pay the balance amount by instalments.

The only point that arises for my determination in this case is as to whether the first respondent is entitled to the monthly dividends, having due regard to the fact that the chit fund company was directed to be wound up.

4. Admittedly, the first respondent was the subscriber of chit No. 4 of Chit Group No. VVSL-50G, the value whereof was Rs. 50,000 to be subscribed at the rate of Rs. 1,000 per month inclusive of dividends. The first respondent obviously paid 17 monthly instalments continuously. The last payment she made was on 6-3-2000. Further on 23-4-2001 Provisional Liquidator was appointed in this case and on 6-2-2002 the company was ordered to be wound up. Since the company was not functioning, no laches can be attributed squarely to the first respondent and it is a clear case where there has been no default on the part of the first respondent in paying the monthly subscriptions. On the other hand, it is a clear case where the company did not conduct the monthly auctions. In that view of the matter, the remaining 33 instalments could not be paid by the first respondent. Having regard to the same the claim of the first respondent that she is not liable to pay the interest, seems to be reasonable.

5. Nonetheless, whether or not she is entitled to the dividends is the question to be considered. In the context it is appropriate to refer to certain of the provisions in The Chit Funds, Act, 1982 (''the Act'' for brevity). Chapter-VIII thereof pertains to the termination of chits. Coming in the realm of the said chapter, Section 39 provides for continuation of chits. Where a foreman dies or becomes of unsound mind or is otherwise incapacitated, or is adjudicated as insolvent in which case the subscribers take the place of the foreman and one of them can continue the chit or make other arrangements for the further conduct of the chit. Section 40 deals with termination of chits. According to Section 40, a chit shall be deemed to have been terminated, when the period specified therefore inter

alia in the chit agreement expires; or when all the non-prized and unpaid prized subscribers and the foreman consent in writing to the termination of the chit; or where a foreman dies or becomes of unsound mind or is otherwise incapacitated and the chit is not continued in accordance with the provisions of the chit agreement. In view of the said provision, the chit in this case is deemed to have been terminated. Section 42 deals with the refund of money to the non-prized subscribers. According to the said section, a chit is deemed to have been terminated on account of the foreman becoming incapacitated or a chit is not continued for any reason, every non-prized subscriber is entitled to get back his subscriptions at the termination of the chit without any deduction for dividend, if any, earned by him. It is obvious from Section 42 that when once a chit is deemed to have been terminated, the non-prized subscriber who is entitled to the refund of the amount paid by him is obviously not entitled to dividends, if any, earned by him. Obviously its because, regular auctions at the end of the month are not being conducted and in consequence thereof, there will not be any prized subscribers and there will not be any prized money to be distributed amongst the subscribers. If the non-prized subscriber who has been paying the monthly subscriptions is not entitled to any dividends although he is entitled to receive back the amount subscribed by him on the chit being terminated or deemed to have been terminated in accordance with Section 42 of the Act, I see no reason as to why the prized subscriber is also not entitled to any dividends. I am reinforced in my above view by a Division Bench Judgment of the Madras High Court in C.A. Durgachalam v. Jannet Chit Funds (Pvt.) Ltd. [1979] 49 Comp. Cas. 256 wherein while referring to an earlier judgment of the same High Court it was held thus :

"The question posed in that appeal was whether the stake holder was entitled in law to forfeit the quondam kazar or amount already earned by the prize chit holder. The Division Bench stated that the stake holder cannot unjustly enrich himself. In fact in that case no argument was advanced on the right of the stake holder to recover interest on the defaulted instalments. Even on the question of the right to claim kazar, which is said to be notional in the case we are unable to grant any relief for the reason that the kazar is something which is the bye-product of a commercial activity such as the conduct of auction chits and in the absence of any such continuance of such activity or an allegation that that activity was continued after winding up the question of payment of kazar or dividends which would not arise at all does not arise."

For the above reasons therefore, the plea of the first respondent that she is entitled to the dividends cannot be countenanced,

6. For the foregoing reasons, the Company Application is allowed and there shall be a decree in favour of the applicant for a sum of Rs. 33,000 against the respondents 1 to 4 who are jointly and severally liable to pay the same without any interest. The first respondent is permitted to pay the decretal amount in instalments at the rate of Rs. 1,000 per month commencing from 1 -7-2003 and

in the event of any default consecutively for two months, the respondents 1 to 4 are liable to pay the amount in lump-sum. Under the circumstances, there shall be no order as to costs.

