(2012) 02 KL CK 0164

In the High Court Of Kerala

Case No : Writ Petition (C) No. 20076 of 2007

Yamuna APPELLANT

Vs

K.S.F.E. and others RESPONDENT

Date of Decision : 23-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Chitties Act, 1975 — Section 12(14), 16, 17, 17(2), 17(5)

Citation : (2012) 2 ILR (Ker) 781 : (2012) 3 KLJ 1

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : P. Haridas, for the Appellant; Babu Varghese (Senior Advocate) and Sri Johnson T. John (S.C., K.S.F.E.), for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice P.R. Ramachandra Menon

1. The prohibitory order issued by the concerned respondent and the notice issued by way of coercive steps, causing the salary of the petitioner to be attached in respect of the alleged default under a chit run by the first respondent is the subject-matter of the dispute in this Writ Petition. The petitioner is working as a teacher in the fourth respondent school and was a subscriber to the chitty bearing No. 4/01-24 run by the respondents 1 and 2, (The Kerala State Financial Enterprises--a State Government concern) in the Chengannur branch, having a prize value of Rs. 3,00,000 (Rupees three lakhs). The monthly installment to be effected was at the rate of Rs. 10,000 (Rupees ten thousand), in tune with the terms of the chit the ''variola'', a copy of which has been produced as Ext. R-1(b). The petitioner has effected the first installment, which undoubtedly has gone to the ''foreman'', as in the case of all subscribers to the chit. In the next month, the petitioner participated in the ''auction'' and the chit was prized in the name of the petitioner on 30-4-2001 as revealed from Ext. R-1(a) produced along with the statement filed by respondents 1 to 3. On prizing the chit as

above, the petitioner was made to execute a receipt for the ''auction difference'', in so far as the chit was prized for a total sum of Rs. 2,10,000 (Rupees two lakhs ten thousand only); thus resulting in a discount of Rs. 90,000 (Rupees ninety thousand). Accordingly, the petitioner executed R-1(a) receipt for the auction difference, stating that she had received a sum of Rs. 90,000 (Rupees ninety thousand) in cash from the concerned respondent.

2. The case of the petitioner is that, when the petitioner approached the second respondent for disbursing the amount, onerous conditions were imposed, virtually making the petitioner impossible to have the security satisfied to obtain the due amount. As such, no agreement was executed and the petitioner did not remit any further installment as well. On enquiry, the petitioner was given to understand that the balance liability, if at all any, will be finalized only on conclusion of the chit.

3. While so, the petitioner was served with a notice in the year 2007, asking her to satisfy the liability stated as due to the respondents in respect of the chit transaction. Pursuant to this, the petitioner filed a complaint/objection on 27-1-2007, pointing out the actual facts and figures. In spite of this, Ext. P-1 notice was issued by the second respondent on 30-3-2007, casting a huge liability upon the petitioner, though the prized amount was never disbursed to the petitioner. Being aggrieved of the same, the petitioner preferred Ext. P-2 complaint before the concerned Minister, which however did not yield any positive result. Ext. P-3 notice dated 13-4-2007 followed and the petitioner was served with Ext. P-3(a) Prohibitory Order, issued by the third respondent, whereby the salary of the petitioner to an extent of Rs. 2,000 (Rupees two thousand) per month was caused to be attached towards the alleged liability, which made the petitioner to approach this Court by filing the present writ petition.

4. The case of the petitioner is that, by virtue of the specific mandate, particularly u/s 17 of the Kerala Chitties Act, 1975 (''Act'' in short), the prized amount was liable to be deposited in a scheduled bank and the failure in this regard on the part of the concerned respondent is to attract penal consequence as well, which is stated as punishable under sub-section 5 of Section 17. Without causing the said amount to be deposited, the respondents have made unlawful gains in some or other manner, finally leading to the coercive proceedings taken on 2007, which is stated as nothing but arbitrary and illegal in all respects.

5. The respondents 1 to 3 have filed a statement through the Standing Counsel, producing a copy of the receipt of the ''auction difference'' amount executed by the petitioner and also a copy of the ''variola'' as R-1(a) and R-1(b) respectively. Paragraph 1 deals with the reason for the belated statement, as the earlier statement, stated as filed, does not form part of the records. Paragraph 2 of the statement just extracts Section 17 and cites some case laws on Section 17. With regard to the contents of paragraph 3 and 4, they are the admitted facts as given by the petitioner (but for a mistake in paragraph 3 as to the actual figure

of the prized amount). Virtually, the only defence/contention taken by the respondents is in ''paragraph 5'', which says that the provisions relied on by the petitioner are not applicable to the case in hand, as the chit was ''auctioned'' by the petitioner for a reduced amount and she was prepared to forego the highest amount including foreman commission, by way of ''auction discount'', to be distributed among the subscribers of the chit, as per Ext. R-1(a) receipt. In other words, nothing is there in the statement, as to the alleged lapse on the part of the respondents in effecting the deposit, i.e., in a bank account in tune with sub-section 2 of Section 17 and the consequence.

6. True, the petitioner is not very much sure about the discount received by her as per Ext. R-1(a) to the tune of Rs. 90,000 (Rupees ninety thousand). The petitioner is liable for effecting the subsequent installments in tune with the relevant provisions of law and the terms of the chit. But then, the question is, to what extent?

Section 17 of the Act reads as follows:

17. Duties of foreman.- - (1) The foreman shall, on a prized subscriber furnishing security as provided for in clause (d) of sub-section(1) of Section 16 for the payment of the future subscriptions, be bound to pay him the prize amount and shall be entitled to get from him an acknowledgment in writing evidencing such payment

Provided that the foreman shall, on demand by a prized subscriber, pay him on the due date the amount which represents the difference between the prize amount and the amount of the future subscriptions without any security whatsoever, and in such case the foreman shall, before the date of the next succeeding installment, deposit in an approved bank mentioned in the variola the amount of future subscriptions and he shall not withdraw the amount so deposited except for payment of future subscriptions.

(2) If, owing to default of a prized subscriber, the prize amount due in respect of any drawing remains unpaid before the date of the next succeeding installment, the foreman shall deposit the same forthwith in any approved bank mentioned in the variola and intimate in writing the fact of such investment together with the following particulars of the investment to the prized subscriber, namely

(a) the number, year and office of registration of the chitty;

(b) the particular installment of the chitty;

(c) the amount due to the subscriber;

(d) the approved bank in which the amount is deposited;

(e) the date of deposit;

(f) the reason for the deposit; and

(g) the conditions of disbursement.

(3) Payment of the prize amount or the investment of the amount of future subscriptions under sub-section (1) or the investment of the prize amount under sub-section (2) shall be intimated to the subscribers at the next succeeding installment and such payment or investment entered in the minutes of proceedings of the installment.

(4) The foreman shall not admit any person as a subscriber to a chitty if, by such admission, the total number of tickets mentioned in the variola is increased.

(5) If the amount of future subscriptions or the prize amount has not been invested in accordance with the provisions of sub-section (1) or sub-section (2), or if the amount so invested has been withdrawn for purpose other than those for which the same has been held in deposit, or if the requirements or sub-section (3) have not been complied with, the foreman shall be punishable with fine which may extend to five hundred rupees.

(6) Any foreman who contravenes the provisions of sub-section (4) shall be punishable with imprisonment for a term which may extend to three months and with fine which may extend to five hundred rupees."

A plain reading of the above provision suggest that there may be circumstances when a prized subscriber may not be in a position to furnish security to the specification of the foreman and the course to be adopted under such circumstances. Disbursing of the prize amount to the prized subscriber is contemplated under Sub-section 1 (on furnishing sufficient security), also casting a duty upon such person to effect payment of future monthly subscriptions as well. In case of default of the prized subscriber to furnish security, there is a duty cast upon the foreman, as given under sub-section (2), to have the prized amount deposited in any ''approved bank'' mentioned in the ''variola'' and to intimate the position ''in writing'' as to such investment, together with the particulars of investment as referred to under clause ''a to g'' of the said subsection. The duty cast upon the foreman under sub-section 2 is mandatory, as revealed from the usage/expression, where it is stated that the foreman shall deposit the same forthwith in any approved bank mentioned in the ''variola'' and intimate ''in writing'', the fact of such investment. Sub-section 5 of Section 17 is more categoric and it says that, if the amount of future subscription or prized amount has not been invested in accordance with the provisions of sub-section 2, or if the amount so invested has been withdrawn for the purpose other than those for which the same has been held in deposit, the foreman shall be punishable with fine, which may extend to five hundred rupees. The question is whether, the respondents 1 and 2 have complied with such requirement.

7. The learned counsel for the respondents submits that Section 17 is not applicable to the case in hand, as it refers only to a ''prize chitty'' and that there is some difference in the present case, insofar as it is an ''auction chitty'', as discernible from Ext. P-2 complaint preferred by the petitioner. The distinction attempted to be drawn by the learned counsel is that, in the case of a ''prize

chitty'', it is by way of ''lot'' and in the case of ''auction chitty'', there is only one subscriber opting for a particular amount. There is no such separate definition of the above terms in the statute. Further, the learned counsel was not able to point out, any such distinction in the matter of disbursement to be effected or as to the course open to the foreman, if there is a default on the part of the prized subscriber in furnishing the security, so as to take different stands in the case of the chitty prized ''by way of lot'' and in the case of the other ''by way of auction''.

8. The scheme of the statute is more discernible from the various definitions as given u/s 2, particularly Section 2(5) defining the term ''drawing''; which includes the mode of ascertaining the prize winner at any installment of the chitty ''by lot'' or ''by auction'' or in such other manner as may be provided in the Variola''. The term ''non-prized subscriber'' is defined under sub-section 7 of Section 2, stating that, it does not include a ''defaulter subscriber''. The above provision clearly shows that the prize winner can be selected ''either by lot or by auction'', as given under sub-section 2(5) and Section 17 does not draw any distinction between the prize winner by way of lot and the prize winner by way of auction. The contention made by the learned counsel across the Bar, which does not find a footing any where in the pleading (more so, when no counter-affidavit has been filed, but for a ''statement'' as mentioned above) is not at all correct or acceptable and is rather against the scheme of the statute.

9. With regard to the question raised by this Court as to the subsequent transactions, the learned counsel for the respondents 1 and 2 submits that, the amount of Rs. 2,10,000 (Rupees two lakhs ten thousand) prized by the petitioner was in fact ''adjusted'' against the liability of the petitioner towards the future subscriptions and since balance was still payable by the petitioner, in view of the liability under the statute and ''variola'', it was sought to be recovered by resorting to coercive steps. The learned counsel also referred to Clauses 3, 4, 8, 13, 15 and 16(a) of Ext. R-1(b) ''variola'', to contend that the course pursued by the respondents is in tune with the terms and conditions stipulated therein. Referring to clause 28 of Ext. R-1(b) ''variola'', the learned counsel submits that the above prized amount of Rs. 2,10,000 (Rupees two lakhs ten thousand) was in fact deposited in the ''Government Treasury'' as prescribed and that the respondents are not supposed to have it deposited in a Bank, which stipulation has been agreed upon and accepted by the petitioner on joining the chit and hence is bound by the same, by virtue of the relevant provisions of the Act, as to the sanctity of the ''variola''. The learned counsel for the petitioner strongly contends that the term ''variola'' has been defined u/s 12(14), while Section 7 of the Act clearly says that there shall not be any condition in the ''variola'' which is inconsistent with the terms of the statute. Any how, this Court does not find anything in Ext. R-1 (b) ''variola'' which absolves the first and second respondents from the mandatory duty of effecting deposit of the prized amount, on failure of the prize winner to furnish security in terms of Section 17.

10. Coming to the alleged deposit in the ''Government Treasury'', as put forth by

the learned counsel for the respondents 1 and 2, this Court finds that nothing has been stated in the ''statement'' as to the deposit, if any effected in the Treasury. The date of deposit; the interest generated; the dates on which the alleged dues were appropriated/set off and such other relevant aspects are not known. There is also no case that any steps were taken by the respondents after prizing the chit in April 2001, in respect of the alleged liability, till the impugned proceedings were pursued in 2007. During the whole period, the prized amount, if at all deposited by the respondents 1 and 2 in the Treasury as alleged, would have been generating interest, with regard to which, nothing is stated in the ''statement''. If it is not deposited, it goes without saying that the respondents 1 and 2 were making use of the said amount, generating funds of their own, which is contrary to the scheme of statute, particularly Section 17(2) and it may give rise to a cause of action for the appropriate authority to proceed against the offender by way of Section 17(5), with regard to which, this Court does not express anything for want of adequate data.

11. Going by the relevant provisions of the Kerala Chitties Act, 1975 and the terms and conditions of Ext. R-1 (b) ''variola'', it cannot be disputed that the petitioner is not entitled to any monthly discount; being a ''defaulter subscriber''. In other words, the liability to satisfy the monthly installment at the prescribed rate of Rs. 10,000 (Rupees ten thousand) stands as it is, and it has to be seen whether the ''prized amount'', with interest if it were deposited by the foreman in the Bank/Treasury, as prescribed, would be enough to satisfy the liability in respect of the defaulted installments. The respondents have failed to plead or establish that, they have effected any deposit in any Bank/Treasury, but for the bald submission across the bar, as observed hereinbefore. The stipulations u/s 17(2)/(3) are quite clear and categoric to the effect that, it is duty of the foreman to intimate the particulars of deposit, with the details as mentioned therein, to the prized subscriber ''in writing'' and such other aspects to those concerned. Since no such particulars are revealed from the ''statement'' filed, it cannot be held that the ''prized amount'' was deposited by the respondents in the Government Treasury as well.

12. To say the least, if the respondents 1 and 2 had acted in tune with the statutory prescription, i.e., under sub-section 2 of Section 17, the prized amount of Rs. 2,10,000 (Rupees two lakhs ten thousand) pursuant to the bid by the petitioner in April 2001, would have generated substantial interest as well and the respondents 1 and 2 could have appropriated the entire dues of the petitioner in respect of the future installments under the chit and if the liability was set off, the balance could have been disbursed or if any further amount was liable to be paid by the petitioner, the same could have been sought to be recovered. This Court finds that no such course has been pursued by respondents 1 to 3 before issuing Exts. P-1 and P-3/P-3(a) proceedings, which hence are not having any legal or factual footing. In the above facts and circumstances, Exts. P-1, P-3 and P-3(a) impugned in the writ petition are set aside. The respondents 1 and 2 are directed to work out the ''interest'' payable

for the whole period, at the maximum rate available for Treasury Fixed Deposits, if the prized amount of Rs. 2,10,000 (Rupees two lakhs ten thousand) were deposited by them in the Government Treasury, as mentioned in clause 28 of Ext. R-1(b) ''variola'' in compliance with Section 17(2) of the Act and add the same to the prized amount of Rs. 2,10,000 (Rupees two lakhs ten thousand); simultaneously working out the liability of the petitioner in respect of the future installments after bidding the chit in April 2001 and see whether there is any balance payment to be disbursed to the petitioner or any further dues to be cleared by the petitioner to the KSFE. The proceedings as above shall be finalized and shall be given effect to, by effecting the refund, if any, passing appropriate orders as above, at the earliest, at any rate within ''two months'' from the date of receipt of a copy of this judgment.

The Writ Petition is allowed. No cost.

