



HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE TWELFTH DAY OF MAY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION NO: 13191 OF 2023

Between:

1. BACHINA SURENDRA BABU S/o.Chenchaiah, Aged about 39 years,
Occ.Asst Lineman, R/o.H.No.22-4/1,K. Ageraharam,Ponalluru(MD),
Prakasam District.

...PETITIONER(S)

AND:

1. THE STATE OF ANDHRA PRADESH rep., by its
Principal Secretary, Revenue (Registration-II) Department,
Secretariat Buildings, Velagapudi,
Amaravathi, Guntur District.
2. The Registrar of Chits, Government of Andhrapradesh,
O/o. Commissioner and Inspector General
Registration and Stamps, Vijayawada- 521151
3. The Deputy Registrar of Chits/ Arbitrator, Prakasam District at
Markapuram.
4. M/S.Kapil Chits (Kosta) Pvt Ltd., (Formerly Known as Kapil Chit Funds
Pvt Ltd)
having Its Registered Office at D.no.40-6-4A,
1st floor, Moghal Rajupuram, Vijayawada-520010,
having branches all over the State of Andhra Pradesh and
one of such branch situated at markapuram, Prakasam Dist
Rep.By Its Zonal Legal Officer,P. Rajeswar Rao,
S/o. Radha Krishnaiah, aged 45 about years, R/o. Ongole
5. Muppa Raju Venkateswarlu, S/o. Ramalah,
Aged about 37 Years,Occ.Milk Business, Cultivation,
R/o.H.No.1-39,Samaripalem,Anandapram post,
Kandukur,Prakasam (Dist).
6. Shaik Sabjohn S/o. Khadar Moh Aged about 51 Years,Occ.Lineman,
Kandukur Division, R/o.H.No.14-2-5,
Ulavarapadu Sub. Station, APSPDCL,Prakasam (Dist).
7. Gummadi Rajarao, S/o.Subbalah, Aged about 55 Years, Occ.
WorkInspector(RandB),Section, Kondepi,
R/O.H. No.11-2-5,Brundavan Nagar,
Work Inspector(RandB), Kandukur,Prakasam (dist).
8. Mandhapati Seetha Rama Raju , S/o. Ramchandra Raju, Aged about 52
Years, Occ. Assistant Lineman,
Kandukur Division, R/O.H.Nc.12-3-4, ASST Lineman, OSD/ Kandukur,
Prakasam (Dist).
9. Kanakati Kumara Swamy, S/o.Balamallu,
Aged about 32 Years,Occ. F.M.Kapil Chit Funds Pvt Ltd, Nellore,
R/O.Kapil Infra Avenues Pvt Ltd, Nellore.

...RESPONDENTS

Counsel for the Petitioner(s): BALIBOYINA SRAVANI

Counsel for the Respondents: GP FOR REVENUE

The Court made the following: ORDER



THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION NO. 13191 OF 2023

JUDGMENT:-

1) Heard Ms. Baliboyina Sravani, learned Counsel for the Petitioner and Sri. V. Farook, learned Assistant Government Pleader for the Respondent Nos. 1 to 3.

2) This Writ Petition under Article 226 of the Constitution of India is filed challenging the Award, dated 31.03.2016, in Dispute No. 04 of 2014, passed by the Deputy Registrar of Chits, under Section 64 of the Chit Funds Act, 1982, [in short '**the Act 1982**'] as also the E.P. No. 104 of 2016 proceedings for execution of the Award, on the file of the Senior Civil Judge at Markapuram.

3) The 5th Respondent – Muppa Raju Venkateswarlu, is the Principal Subscriber of the chit of the 4th Respondent – M/s. Kapil Chits (Kosta) Private Limited, vide chit series No.FKNT04J-35, subscribed to ticket No. 35 in the chit group, for a value of Rs.5,00,000/- which is payable at the rate of Rs.10,000/- per month for a period of 50 months.



The Petitioner is the guarantor No. 4 [Opponent No. 5 in Dispute No. 04 of 2014], which was at the instance of the 4th Respondent on the ground that the Principal Subscriber committed default.

4) Summons were issued on 11.03.2014 to the Opponents in Dispute No. 04 of 2014. On 26.03.2014, fresh summons were issued, *inter alia*, to the Petitioner and awaiting service, the proceeding were adjourned on 09.05.2014 and 23.05.2014. Fresh summons were issued on 11.06.2014. Awaiting the report, the matter was adjourned on 22.08.2014 and 09.09.2014. On 24.09.2014, order for paper publication was passed. On 10.10.2014, the paper publication with bill was filed. The Petitioner was absent and was set *exparte* for trial, posting the matter to 29.10.2014. After few dates, the Award was passed on 31.03.2016. Thereafter, the 4th Respondent filed E.P. No.104 of 2016, which is pending.



5) Challenging the Award, learned Counsel for the Petitioner, Ms. B. Sravani, raises the following arguments:

5.1 Under Section 66 of the Chit Funds Act, 1982, the dispute under Section 64, is to be settled by the Registrar himself or he may refer it for disposal to a person appointed by him, referred as his 'nominee'. For appointment as Registrar's Nominee, Rule 48 of the A.P. Chit Funds Rules, 2008 [for short '**the Rules, 2008**'], lays down the qualifications under Sub-Rule (1) and such appointment shall be made by notification in the official gazette under Sub-Rule (2). But, there was no such notification in the official gazette, appointing the Deputy Registrar, as Registrar's Nominee. Consequently, the Award is without jurisdiction, *void ab initio*.

5.2 The Award is passed without serving any notice and so it is contrary to law and against the principles of natural justice.



6) Sri. V. Farook, learned Assistant Government Pleader submits as follows:

6.1 The Award was passed in the year 2016. The Petitioner is approaching in 2023, belatedly. Writ Petition suffers from unexplained laches.

6.2 The Award was passed after due opportunity of hearing, after paper publication, but the Petitioner did not turn up. He was set exparte. There is no violation of the principles of natural justice and the Award is not without jurisdiction.

7) I have considered the submissions advanced by the learned Counsels for the parties and perused the material on record.

8) The following points arise for consideration:

8.1 – Whether the Writ Petition deserves to be dismissed on the ground of laches?

8.2 – Whether the Award, dated 31.3.2016, is without jurisdiction, in the absence of the appointment of the Deputy Registrar as Registrar's Nominee under Section



66 (1) of the Chit Funds Act, 1982 read with Rule 48 of the A.P. Chit Funds Rules, 2008?

8.3 – Whether the Award is without service of notice of the case on the Petitioner and in violation of the principles of natural justice?

Point No. 8.1

9) The Award was passed on 31.03.2016. The Petitioner is approaching this Court in the year 2023. However, the Award has yet not been executed for which E.P. is pending. In ***State of Jammu And Kashmir Vs. R.K. Zalpuri And Others***¹, the Hon'ble Apex Court held that, the question of delay and laches in all kinds of cases would not curb or curtail the power of writ court to exercise the discretion. It is not an absolute impediment.

10) It is apt to refer paragraph No. 24 of ***State of Jammu and Kashmir*** [supra] as under:

“24. At this juncture, we are obliged to state that the question of delay and laches in all kinds of cases would not curb or curtail the power of writ court to exercise the discretion. In ***Tukaram Kana Joshi And Ors. Vs. Maharashtra Industrial Development Corporation & Ors*** it has been ruled that:-

¹ (2015) 15 Supreme Court Cases 602



“Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience”.

And again:-

“No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred,



for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. **(Vide Durga Prashad v. Chief Controller of Imports and Exports, Collector (LA) v. Katiji, Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur, Dayal Singh v. Union of India and Shankara Coop. Housing Society Ltd. v. M. Prabhakar.)**”

11) In ***Vetindia Pharmaceuticals Limited Vs. State of Uttar Pradesh And Another***², the hon’ble Apex Court held that, there is no doubt that the High Court in its discretionary jurisdiction may decline to exercise the discretionary writ jurisdiction on the ground of delay in approaching the court. But it is only a rule of discretion by exercise of self restraint evolved by the court in exercise of the discretionary equitable jurisdiction and not a mandatory requirement that every delayed petition must be dismissed on the ground of delay. The Limitation Act stricto sensu does not apply to the writ jurisdiction. The hon’ble Apex Court further held that, the discretion

² (2021) 1 Supreme Court Cases 804



vested in the court under Article 226 of the Constitution therefore has to be a judicious exercise of the discretion after considering all pros and cons of the matter, including the nature of the dispute, the explanation for the delay, whether any third party rights have intervened etc. The jurisdiction under Article 226 being equitable in nature, questions of proportionality in considering the impugned order merits interference or not in exercise of the discretionary jurisdiction will also arise.

12) Considering that the execution proceeding is pending and the challenge to the award is on the ground of lack of jurisdiction being *void ab initio* and in violation of the principles of natural justice, the Court exercise the discretion to consider the petition on merits of the submissions advanced for doing substantial justice.

Point No. 8.2

13) Section 66 of the Act, 1982, provides for “*Settlement of disputes*”. It reads as under:



“(1) If the Registrar is satisfied that any matter referred to him or brought to his notice is a dispute within the meaning of section 64, he shall, subject to such rules as may be prescribed, **settle the dispute himself, or refer it for disposal to a person appointed by him** (hereinafter in this Chapter referred to as the nominee).

(2) Where any dispute is referred under sub-section (1) for settlement of the nominee, the Registrar may, at any time for reasons to be recorded in writing, withdraw such dispute from the nominee and may settle the dispute himself, or refer it again for settlement to any other nominee appointed by him.”

14) It is evident from a bare reading of Section 66 that, the dispute referred or brought to the notice of the Registrar within the meaning of Section 64, has to be settled by the Registrar himself or he may refer it for disposal to his nominee.

15) Rule 48 of the Rules 2008, provides for the “*Qualifications for appointment as Registrar’s nominees*” and is reproduced as under:

“48. Qualifications for appointment as Registrar's nominees: - (1) The State Government or the Registrar of Chits may appoint a person to be a Registrar's nominee provided that,



- (a) he has practiced as an Advocate, Pleader or Vakil for not less than five years; or
 - (b) he is enrolled as an advocate or holds a degree or other qualification in law of any university established by law or of any other authority which entitles him to be enrolled as an Advocate; or
 - (c) he has held office not lower in rank than that of Sub-Registrar of Chits/Assistant Registrar of Chits for not less than five years; or
 - (d) he possesses good knowledge and experience of chit fund legislation and practice.
- (2) The State Government or Registrar of Chits may by a notification in the Official Gazette, appoint as many persons as may be necessary to act as Registrar's nominees for settlement of disputes arising under the Act.”

16) It is evident from Rule 48 of the Rules 2008 that, the State Government or the Registrar of Chits may by a notification in the Official Gazette, appoint as many persons as may be necessary to act as Registrar's nominees for settlement of disputes arising under the Act.

17) There is no dispute that a person to be appointed as Registrar's nominee, must possess the qualifications as under Rule 48(1) and his appointment must be by a notification published in the official gazette.



18) But, here, the moot point is, *whether the Award has been passed by the Registrar himself or by any person other than the Registrar. If it is not by the Registrar, then certainly it would require consideration, if such person the Deputy Registrar, is the Registrar's nominee as per Section 66(1) of the Act 1982 read with Rule 48 of the Rules, 2008.*

19) Section 2(o) of the Act, 1982, defines "Registrar" as under:

"Section 2": In this Act, unless the context otherwise requires – **("o")** 'Registrar' means, the Registrar of Chits appointed under section 61, and includes an Additional, a Joint, **Deputy** or an Assistant Registrar appointed under that section".

20) So, in view of the definition of 'Registrar' in Section 2(o), the 'Deputy Registrar' is included within the meaning of 'Registrar'. The Registrar includes 'Deputy Registrar'. Consequently, the Award passed by the 'Deputy Registrar' is passed by the 'Registrar' himself under Section 66(1) of the Act 1982.



21) The submission to the contrary, that unless there was notification in the official gazette in favour of the Deputy Registrar under Rule 48, the Award passed by him is without jurisdiction and *void ab initio*, is misconceived and is legally unacceptable. The same is rejected.

Point No. 8.3

22) The Award makes it evident that when after issuance and reissuance of summons, the Petitioner remained unserved, on 24.09.2014, paper publication was ordered. On 10.10.2014, paper publication with bill was filed, Petitioner still remained absent and was set *ex parte* for trial. The Award was passed on 31.03.2016. In view of these facts on record, mentioned in the impugned award, to which there is no denial in the writ pleadings, it cannot be said that the Award was passed without providing an opportunity of hearing to the Petitioner or that the award is in violation of the principles of natural justice.



23) In **Smt.Ram Pyari Devi Vs. IInd Additional Distt. Judge, Azamgarh and Others**³, the Allahabad High Court held that, *service through publication is also a valid service*. Consequently, it was held that, *the trial Court therein was competent to proceed to dispose of the suit ex parte*.

24) In the result, the Writ Petition lacks merit and is **dismissed**.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI, J

Date: 12.05.2023.

Note:

L.R. Copy to be marked.

B/o.

SM./

³ AIR 1989 All 93



THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITON NO. 13191 OF 2023
Date: 12.05.2023

SM.