
**The Official Liquidator, High Court, Madras the Official Liquidator of
Jannet Chit Funds (P) Ltd., (in liquidation) Vs E. Lakshimipathi and two
others**

Comp. No. 492 of 1976 in Comp. No. 80 of 1972

Court: Madras High Court

Date of Decision: Aug. 4, 1977

Acts Referred:

Companies Act, 1956 " Section 24, 446(2)#Presidency Towns Insolvency Act, 1909 " "
Section 46, 46, 47, 47, 48#Provincial Insolvency Act, 1920 " " Section 46, 47

Hon'ble Judges: Ramaprasada Rao, J

Bench: Single Bench

Advocate: K.J. Palpandian and R. Kamala, for the Respondent

Judgement

Ramaprasada Rao, J.

The Official Liquidator as Liquidator of Jannet Chit Funds Private Ltd. (in liquidation) has taken out this application

and is seeking in the Judge's summons a direction against the respondents to pay a, sum of Rs. 13,668.98 being the amount due by them to the

company in liquidation together with interest thereon and for other incidental reliefs. On 27th October, 1972 in Comp. Appn. No. 349 of 1972 in

Comp. Petn. No. 80 of 1972, the Official Liquidator (the applicant) was appointed as the provisional Liquidator of the Company and by a

subsequent order made on 2nd February, 1973, he was directed to administer the affairs of the company as Official Liquidator. The main objects

of the company in liquidation was to carry on the business by conducting and promoting the auction of the chit funds amongst other financing

schemes. The first respondent was a subscriber in chit group D/2 conducted by the Company for a total value of Rs. 25,000. On 10th December,

1971, he became the successful bidder in the auction conducted by the company his prize amount for the chit being Rs. 11,400. Consequent upon

his having struck at the prize amount and having received the said consideration in advance, the first respondent together with respondents 2 and 3

as sureties executed a promissory note dated 9th March, 1972, in favour of the Company for a sum of Rs. 24,317 being the future instalments due

and payable by him towards the chit as above agreeing to pay interest thereon at 12 per cent per annum. The first respondent paid towards the

subscriptions a sum of Rs. 2,459 between 10th November, 1971 and 7th July 1972, and earned a dividend of a sum of Rs. 2041. The above sum

of Rs. 4500 has been duly credited in the accounts of the company. On and from 10th August, 1972, the first respondent committed default.

Pursuant to the demands made by the Official Liquidator, the second respondent as surety paid a sum of Rs. 925. After sometime, respondents 2

and 3 paid a sum of Rs. 16,305 on 27th November, 1976. After giving credit to all such amounts together with counter interest on the amounts

paid a sum of Rs. 13,666-98 is still due and payable by the respondents under the promissory note executed by them jointly on 9th March, 1972.

The Company was wound up by the orders of Court and the applicant, therefore, as its Official Liquidator is entitled to a direction at prayed for

under S.446(2) of the Companies Act. In the counter statement of respondent 2 and 3, the respondents deny that there was any agreement to pay

interest and as the Company went into liquidation even during the currency of the chit and before the date of termination thereof they are not liable

to pay any future instalments even though the amount is covered by the promissory note. As no chits were conducted and no auction was held on

and after the date of the petition for winding up, it cannot be said that the respondents were in default and the Official Liquidator cannot seek to

enforce the promissory note, as if there was one. It is also said that as under S.24 of the Act, the subscriber is bound to pay the subscription at the

time and place mentioned in the chit agreement and as no office was functioning after 27th October, 1972, the respondents cannot be deemed to

have committed any default. The Official Liquidator is characterised as the agent of the company or as an officer who has stepped into the shoes of

the company for its administration and, therefore, he cannot demand the payment of interest on the alleged defaulted instalments. Their further case

is that in connection with the other chit taken by the first respondent a sum of Rs. 3,000 is lying in credit with the company and in any event that

sum has to be set off as against the present claim made by the Official liquidator. The case is that if the interest is waived, as it is not payable, and if

the sum of Rs. 3,000 which is admittedly with the company to the credit of the first respondent is also taken into account, no amount would be

payable by the respondents to the applicant. The objection is taken against the rate of interest at 12 per cent per annum, as it is against the

provisions of the Tamil Nadu Chit Funds Act of 1961.

2. It is not in dispute that the first respondent after discounting a sum of Rs. 13,600 took a prize chit in group No. D/2, valued at Rs. 25,000 for a

prize money of Rs. 11,400. He along with the second and the third respondents as sureties executed a promissory note dated 9th March, 1972,

for a sum of Rs. 21,317, and it is in respect of this promissory note a net balance towards the principal in the sum of Rs. 20,500 and interest from

12th August 1972, in the sum of Rs. 10,499.37 is due. Towards the said sum, the second respondent individually and along with the third

respondent paid substantial sums in 1976 and the amount as claimed on the promissory note by the Official Liquidator in the Judge's summons in

Rs. 13,666-98. It is also not in dispute that in another group the first respondent became a member and contributed a sum of Rs. 3,000 and could

not continue the same because of the supervening liquidation of the company. It is in these circumstances, the two questions that were argued

before me are that the sum of Rs. 3,000 though paid for a different chit group by the first respondent the same has to be set off against the claim.

Secondly the claim for interest is objected to on the ground that as the company went into liquidation the claim is not justified.

3. A division Bench of this court has expressed the view that in a case where the prize holder along with sureties executes a promissory note, then

that debt having been merged in the suit promissory note and as the promissory note is supported by consideration, the obligations arising therein

have to be respected. Vide Durgachalam v. Jennet Chit Funds (P) Ltd. and others 90 L.W. 565. O.S.A. 28 of 1977. The Division Bench also

expressed that interest is payable on the debt due as the same could be claimed by the Official Liquidator on the basis of the negotiable instrument,

which is the foundation for the claim. It, therefore, follows that the second contention that the respondents are not liable to pay interest does not

survive having regard to the decision of the Division Bench of this court.

4. As regards the first contention, it is necessary to understand the import of the Chit Fund company. Such companies are organised with the co-

ordinated, effort of various subscribing members. There is legislative sanction behind the running and conducting of chits by such companies or

organisations. Madras Act 24 of 1961 is an Act which provides for the regulation of chit funds in the State of Madras. "Clint" has been defined in

S.2(2) of the Act, which is as follows--

(2) "chit" means a transaction whether called chit fund, chit kuri, or by any other name, by which its foreman enters into an agreements with a

number of subscribers that every one of them shall subscribe a certain sum or a certain quantity of grain by instalments for a definite period and that

each subscriber in his turn as determined by lot or by auction or by tender at in such other manner as may be provided for in the agreement, shall

be entitled to a prize amount.

The explanation to the definition of chit brings out the co-operative effort amongst the subscribers. It enables any one of the subscribers in a

particular group chit to draw the amount in what is called on auction held for the purpose of making a discount in accordance with his need and,

thereafter he agrees and promises to pay the stakeholder or the organisation the amount payable by him as and towards the amount borrowed as

well as the future subscriptions. It is a meaningful co-operative effort solely intended for the benefit of its subscribers, no doubt involving a chance

of profit as well. The entire process indulged in by a chit fund organisation creates a common fund which is operated on from time to time by the

stakeholder for the benefit of the subscribers. We are concerned here with a case where the chit fund organisation has been wound up by orders

of court. Under S.33 of the Madras Act 24 of 1961, every non-prized subscriber shall, unless otherwise provided for in the chit agreement, be

entitled to get back his contribution at the termination of the chit without deduction for dividend, if any, received by him and it also speaks of a

fiction whereunder the non-prized subscriber's claim shall be deemed to have arisen on the date on which the chit terminates on a date earlier than

the date originally fixed. That the chit to which the first respondent contributed a sum of Rs. 3,000 has terminated prematurely because of winding

up, is indisputable. Therefore, the right of the first respondent at a non-prized subscriber in that particular chit group has fruited and he has a

right to get back his contributions. It is in this respect that the respondents, who are co-promissors under the promissory note executed by the first

respondent in connection with the prized chit in group D/2, claim a right of set off. We have already seen that the prize chit amount paid to the

highest bidder in particular chit series is not a loan simpliciter but it is an advance from the common fund of the organisation, to each subscriber

who is the prized chit holder. A common fund consists of subscriptions made by all the members and also includes the instalments paid by the

prized chit holder after he bids and which he undertakes to pay after executing the promissory note by himself along with sureties, Every incoming

credit and the outgoing debit is from the common fund of the chit company or organisation. The Company in question was incorporated under the

Companies Act. Under S.529 of the Indian Companies Act in the winding up of an insolvent company the same rules as are in force for the time

being under the law of insolvency with respect to the estates of persons adjudged insolvent shall be observed inter alia with regard to the respective

rights of secured and unsecured creditors. The old Section was S.229. The Rules of Insolvency governing the situation and as is available in the

Presidency Town of Madras is contained in Ss. 46 to 50 of the Presidency Towns Insolvency Act. Even in respect of other matters such as the

priority of debts etc., they have to be determined only with reference to the said Insolvency Act. S.47 of the Presidency Towns Insolvency Act

which is an equivalent of S.46 of the Provincial Insolvency Act, enables a debtor of the Company to claim a set off of such amounts due to him

from the Company in liquidation. A person, therefore, is entitled to claim a set off and adjust rights on the date of commencement of the winding

up. The only requirement which would enable the debtor company to claim such a set off for moneys due by the company to him is that the

dealings between him and the company should be mutual. This is referred to in S.47 of the Presidency Towns Insolvency Act. This leads on to the

question as to what are the mutual dealings.

5. The Official Liquidator would claim that the set off could be only in respect of amounts due under a particular chit series and cannot be generally

claimed by a debtor of the company on the foot that some money is due by the company to him in a series not connected with the debt claimed by

the company against the contributory in a particular chit series; we are unable to accept this contention for the simple reason that the entire concept

of a chit organisation is based upon co-operation and co-ordination amongst subscribers and the entire incoming and outgoing moneys do come

and go from the common pool and such moneys lose their identity when once it gets mixed up with the common fund. In this context, therefore the

term mutual dealings have to be interpreted. Once it is accepted that the fund which is operated by the chit organisation is a common fund and it is

not identifiable which one particular series run by it, then it is easy to accept the contention that the dealings between the company and the

subscriber in whatever chit series it might be should be understood, accepted and viewed as mutual dealings and all rights and liabilities of the

contributory and the company have to be adjusted as on the date of the commencement of the winding up on the above principle.

6. I am unable to agree with Mr. Viswanathan, counsel appearing for the Official Liquidator, that each chit series is an independent transaction

and the mutuality referred to in S.47 of the Presidency Towns Insolvency Act could only be with reference to that particular chit. I have already

given my reasons. My view is supported by the opinion expressed by Kerala High Court and the Karnataka High Court. Even in the Madras High

Court, Gentle, J. in Sundaravaradan v. Official Liquidator, T.N.B. Subsidiary Co. AIR 1940 Mad. 266=50 L.W. 306 dissented from the Bombay

view and held that a debtor in respect of whose debt there is a surety is entitled to set off against moneys owing by the debtor to the company

moneys due to the debtor from the company. I agree with the view expressed by Gentle, J., that the privileges and rights which are created under

S.47 of the Presidency Towns Insolvency Act and S.46 of the Provincial Insolvency Act are based upon equity and fair deal. I quote:

It is recognised that it would be very harsh if the Official Assignee or the Official Liquidator of a company could demand in full, moneys due by a

debtor and at the same time that person being a creditor for an equal or a larger sum, of the company must be content with a dividend dependent

on the distribution which can be made from the assets.....There being moneys which can be set off, this right is not lost when a surety is

obtained in respect of the debtor's debt to the Company.

7. Venkataramiah, J. of the Karnataka High Court, dealing with a chit fund case was of the same view as myself that the set off to the extent of

sums paid by the borrower to the chit company and under other chit fund account is possible. Vide Official Liquidator v. Smt. B. Lakshmikutti

1975-45 Comp. cases 679 (Ker) A Division Bench of the Kerala High Court in Gokul Chit funds v. T.K.O. Vareed 1977-47 Comp. cases 264,

(Ker) observed:

The "mutual dealings" referred to in (S.47 of) the Insolvency Act may consist of several distinct or independent transactions entered into between

the same parties functioning in the same right or capacity. It is not necessary that the debts or claims sought to be set off against each other should

have arisen out of one and the same transaction.

Accepting the ratio in the above decisions and having regard to the opinion expressed by me earlier, I am of the view that the respondents are

entitled to a set off of the sum of Rs. 3000.

8. The Official Liquidator is, therefore, directed to set off a sum of Rs. 3000 as against the amount claimed. There would be, therefore, a direction

as against the respondents to pay the sum claimed in the Judge's summons less Rs. 3000 plus counter interest from the date of liquidation till date.

The balance amount found due after such a reckoning shall be paid by the respondents for which there shall be a decree in terms of Ss. 464 and

446 (2) read with Rule 11-B of the Company Court Rules, 1959. The respondents are permitted to pay the balance of the sum due at Rs. 200 per

ensem. There will be no order as to costs.