

Mohammad Ahmad Ali Vs Annapoorneswari Chits and Trading P. Ltd.

Court: Andhra Pradesh High Court

Date of Decision: Dec. 3, 1982

Acts Referred: Andhra Pradesh Chit Funds Act, 1971 " Section 2(10), 2(15), 25, 26
Prize Chits and Money Circulation Schemes Banning Act, 1978 " Section 2

Citation: (1983) 1 ALT 184 : (1985) 58 CompCas 80

Hon'ble Judges: M. Jagannadha Rao, J

Bench: Single Bench

Advocate: M. Rama Rao, for the Appellant; Y. Vasudeva Rao, for the Respondent

Judgement

Jagannadha Rao, J.

1. This revision raises a question relating to the Prize Chits and Money Circulation Schemes (Banning) Act of 1978 (Central Act 43 of 1978) and

the A.P. Chit Funds Act, 1971 (Act 9 of 1971). The petitioner is the defendant in the suit O.S. No. 887 of 1981, filed by the respondent, M/s.

Annapoorneswari Chits and Trading P. Ltd., for recovery of a sum of Rs. 21,411.32 with interest. The petitioner filed I.A. No. 994 of 1982 in the

lower court under O. 7, r. 11 read with s. 151, CPC. In the said application, the petitioner contended that the plaint should be rejected on two

grounds. He contended that, firstly, the plaint was not signed by the proper person as it is signed by one E. A. Rahim claiming to be the general

power of attorney holder. The said E. A. Rahim is the regional manager of the respondent company. It is contended that the said Rahim is not

authorised to act as a foreman of the respondent company. Under s. 25 of the A.P. Chit Funds Act, 1971, only a foreman is entitled to demand

and file the suit. The second ground urged by the petitioner in the said I.A. was that the prize chits and money circulation schemes have been

banned by the Central Act, namely, the Prize Chits and Money Circulation Schemes (Banning) Act of 1978, with effect from December 12, 1978,

unless extension of time for winding-up the existing scheme is obtained by the respondent, and as no such extension was obtained in this case, the

suit is barred. According to the allegations in the plaint, the suit transaction took place on November 10, 1978, and by then the Central Act had

come into force. It is contended, therefore, that the suit chit is illegal and, therefore, the instalments due from the petitioner cannot be recovered.

The suit itself is, therefore, barred on these two counts and the plaint should be rejected.

2. The respondent-plaintiff filed a counter in the lower court contending that according to bye-laws 1 and 2 of the bye-laws of the company, the

respondent company itself is the foreman. On behalf of the company, Sri.E. A. Rahim has been authorised to file suits and conduct legal

proceedings. It was also contended that the Central Act 43 of 1978 does not apply to the suit transaction as it is a conventional chit.

3. The lower court framed two points for consideration, viz., firstly, whether the suit is filed by a proper person and if not whether the plaint is liable

to be rejected and, secondly, whether the suit transaction is hit by the Central Act 43 of 1978. On both these points, the court below held against

the petitioner-defendant and dismissed the I.A. It is against the said order that the defendant has preferred this revision.

4. In this revision, the said two contentions have once again been reiterated by Sri M. Ramarao, the learned counsel for the petitioner. It is

contended by him that Mr. Rahim could not represent the respondent company for the purpose of signing in the plaint. It is also contended by him

that the suit transaction amounts to a prize chit and that the suit is barred. He urges that on these two grounds the plaint is liable to be rejected

under O. 7, r. 11(d), CPC.

5. So far as the first point is concerned, the bye-laws of the company show that the company itself is a foreman. Mr. Rahim is the regional manager

in whose favour a general power of attorney was executed by the managing director of the company. The plaintiff has also filed a xerox copy of the

general power of attorney and it is clear from the said document that Mr. Rahim is the regional manager authorised to file suits, sign and verify the

plaints. Section 25 of the A.P. Chit Funds Act, 1971, enables a foreman to demand future subscriptions by written notice and also file suits in that

regard. The ""foremen"" is defined in s. 2(10) as a person who under the chit agreement is responsible for the conduct of the chit and includes any

other person discharging the functions of the foreman under s. 30. It is, therefore, clear that the company itself is the foreman under the bye-laws

and as a juristic person it was entitled to have a general power of attorney holder who could represent it in courts by way of filing suits. It is further

contended by Sri Ramarao that under s. 26 of the A.P. Chit Funds Act, 1971, the general power of attorney has to be treated as invalid. Section

26 of the A.P. Chit Funds Act provides that no transfer of the rights of a foreman to receive subscriptions from prized subscribers shall be made

without the previous sanction in writing of the Registrar, etc. In my opinion, the execution of a general power of attorney only amounts to a

delegation of the power and creates an agency but it does not amount to a transfer of the rights of a foreman in favour of a third party for which a

conveyance or a transfer of the said right is contemplated. Therefore, I hold that the plaint has been validly signed by Mr. Rahim as the general

power of attorney holder of the company which is itself a foreman as per the bye-laws and that the plaint is not liable to be rejected on this ground.

6. The second contention of the learned counsel for the petitioner is that the suit is barred by virtue of the provisions of the Central Act, viz., the

Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (Central Act 43 of 1978). Section 2(a) of the said Act defines a conventional

chit as meaning a transaction whether called chit, chit fund, kuri or by any other name by or under which a person responsible for the conduct of

the chit enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or certain

quantity of grain instead) by way of periodical instalments for a definite period and that each such subscriber shall, in his turn, as determined by lot

or by auction or by tender or in such other manner as may be provided for in the chit agreement, be entitled to a prize amount.

7. The Explanation to s. 2(a) is important. It reads as follows :

Explanation. - In this clause "prize amount" shall mean the amount, by whatever name called, arrived at by deducting from out of the total amount

paid or payable at each instalment by all the subscribers,

(i) the commission charged as service charges as a promoter or a foreman or an agent; and

(ii) any sum which a subscriber agrees to forgo, from out of the total subscriptions of each instalment, in consideration of the balance being paid to

him.

Section 2(e) of the Central Act defines a prize chit. It includes any transaction or arrangement by whatever name called under which a person

collects whether as a promoter, foreman, agent or in any other capacity, monies in one lump sum or in instalments by way of contributions or

subscriptions or by sale of units, certificates or other instruments or in any other manner or as membership fees or admission fees or service

charges to or in respect of any savings, mutual benefit, thrift or any other scheme or arrangement by whatever name called, and utilises the monies

so collected or any part thereof or the income accruing from investment or other use of such monies for all or any of the following purposes namely

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(i) giving or awarding periodically or otherwise to a specified number of subscribers as determined by lot, draw or in any other manner, prizes or

gifts in cash or in kind, whether or not the recipient of the prize or gift is under a liability to make any further payment in respect of such scheme or

arrangement;

(ii) refunding to the subscribers or such of them as have not won any prize or gift, the whole or part of the subscriptions, contributions or other

monies collected, with or without any bonus, premium, interest or other advantage by whatever name called on the termination of the scheme or

arrangement, or on or after the expiry of the period stipulated therein, but does not include a conventional chit.

Section 3 of the Central Act bans prize chits and money circulation schemes or enrolment as members or participation therein.

8. The question that, therefore, arises for consideration is : whether the plaint is liable to be rejected on the ground that the suit transaction is a prize

chit which is banned under s. 3 of the Central Act 43 of 1978.

9. We have to look into the allegations in the plaint alone for purposes of O. 7, r. 11(d), CPC. Reading the plaint in this case, the allegations do not

show that the transaction was one which falls under s. 2(e) because no prizes or gifts were stipulated under the said scheme by the plaintiff

company.

10. A distinction has to be made between the words "prize amount" used in s. 2(a) of the Central Act and the "prizes" mentioned in s. 2(e) of the

Central Act. In a conventional chit, the prize amount to which a subscriber is entitled has got a definite connotation which is mentioned in the

Explanation to the definition of "Conventional chit" in s. 2(a) itself. Further, s. 2(15) of the A.P. Chit Funds Act, 1971, also defines "prize amount

as the difference between the chit amount and the discount and in the case of a fraction of ticket, means the difference between the chit amount and

the discount proportionate to the fraction of the ticket; and when the prize amount is payable otherwise than in cash, the value of the prize amount

shall be the value at the time it becomes payable. A reading of the Explanation to s. 2(a) of the Central Act and s. 2(15) of the A.P. Chit Funds

Act would show that the word "prize amount" used in conventional chits is not the same thing as the prizes or gifts awarded under schemes relating

to prize chits. Therefore, the fact that the plaint discloses that the defendant was entitled to a "prize amount" under the conventional chit which is the

subject-matter of the suit does not amount to an admission that the scheme is one for which prizes or gifts are awarded as in a "prize chit". I am,

therefore, of the opinion that on a reading of the plaint, the fact that the defendant was treated as entitled to the "prize amount" as in a conventional

chit does not amount to an admission that the defendant was entitled to a prize or gift as in a prize chit. The second contention, therefore, fails.

11. I make it clear that these conclusions on the second point are expressed on the basis of the allegations in the plaint which alone are relevant

under O. 7, r. 11(d), CPC. If, however, during the trial, evidence is adduced to show that this is not a conventional chit as contended in the plaint,

but is, in fact, a prize chit which is banned under s. 3 of the Central Act, it shall be open to the petitioner to raise the contention that the suit is

barred, notwithstanding the judgment in this civil revision petition.

12. The revision petition is, therefore, dismissed, but in the circumstances, without costs.