

ORDERS ON MEMO

The counsel for defendant No.1 and defendant No.2 and 3 filed a separate memo stating that the plaintiff has filed suit seeking the recovery of money and also the injunction against one of the defendants based on the transaction of Chit whereby the parties to the suit has claim and the adverse objections to it under the Chit agreement and more so the Chit Fund act applicable to the nature of the transaction alleged by the plaintiff.

It is further averred that, in the gist of the nature of the suit, the transaction and the claim, the suit of the plaintiff is bad in law being brought before this Court for want of jurisdiction. The transaction alleged being a Chit Transaction, which is a commercial transaction and hence, if at all the plaintiff has any claim the same has to be sought for before the appropriate Court. Even otherwise, it is to be further submitted that the plaintiff has sought for an injunction not to seek recovery of defaulted or due amount by one of the defendant i.e., the Chit Fund Company as

under the process of law against the plaintiff and this relief also needs to be looked into under the available provisions/remedy under the Chit Fund Act with its jurisdiction with the concerned Registrar of Chits.

2. On the otherhand, the counsel for plaintiff filed objections taken contention that, the memo filed by the defendant is not maintainable and the contents of the plaint be treated as objections to the said memo.

3. On perusal of the entire materials available on record and memo as well as objections of the parties it is noticed to the Court that the crucial question is the nature of the plaintiff's cause of action. Admittedly, It is an ordinary civil suit for recovery of money based on an independent loan transaction between the plaintiff and defendant No. 1. Such a suit is maintainable before the civil court. If the plaintiffs case is he is the subscribed to chit, received the prize money from the chit company and thereafter personally lent that amount to the defendant No.1

and defendant No.1 agreed to repay the plaintiff then the dispute is not between the subscriber and chit foremen, nor is it a dispute arising under the chit funds at 1982.

Section 64 of the Chit Funds Act requires certain disputes relating to the management or conduct of a chit to be referred to the Registrar. However, a private money claim between two individuals is not one of those disputes merely because the source of the money was a chit amount.

The defendant's plea that the suit is barred by law would succeed only if the plaint itself discloses that the dispute is one exclusively covered by the Chit Funds Act. That is not so.

As regards of the defendants contention that it is a "commercial transaction," merely describing it as commercial does not oust the jurisdiction of the civil court. Whether the suit is to be tried by a Commercial Court depends upon the Commercial Courts Act and the

nature of the transaction; it does not make the suit non-maintainable.

Accordingly, the memo seeking dismissal of the suit as barred by law is liable to be rejected. The objections raised by the defendant may constitute matters of defence to be decided after evidence, but they do not show that the civil court lacks jurisdiction or that the suit is barred under the Chit Funds Act.

Therefore, the dispute is not one contemplated under Section 64 of the Chit Funds Act; and the plaint discloses a valid cause of action for recovery of money; Hence, the jurisdiction of the civil court is not barred; and the defendant's memo seeking dismissal of the suit as barred by law deserves to be rejected and I proceed to pass the following:

ORDER

Memo's filed by the counsel for the defendant No.1, 2 and 3 are hereby rejected.

sd/-

*(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge and JMFC.,
Hubballi.*