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IN THE COURT OF THE SUB JUDGE, NEDUMANGAD  
PRESENT: SMT. T. R. REENADAS, LL.M., SUB JUDGE  
Thursday, the 13<sup>th</sup> February, 2020/24<sup>th</sup> Magha, 1941.

I.A.No. 111/2019 in O.S. 106/2008.

PLAINTIFF:-

Recovery Manager, M.S. Thoppil Chits Pvt. Ltd.,  
Thoppil Towers, St. Francis Xavier's Church Road,  
Kaloor, Ernakulam, Represented by Anujan Koshi  
'Thomas', Branch Manager, Thoppil Chits., (Pvt.)  
Ltd., Thiruvananthapuram.

By Adv. Sri. Mohan Chacko

DEFENDANTS:-

1. Biju. B. S. Nair, aged 34, S/o Balakrishnan Nair, Rama Vilasam, Kadambanadu, CheriyaKonni, Aruvikkara.
2. Smitha. R, aged 25, W/o Biju. B. S. Nair, Rama Vilasam, Kadambanadu, CheriyaKonni, Aruvikkara.
3. Balakrishnan Nair, aged 60, S/o Raman Pillai, Ramavilasam, Kadambanadu, CheriyaKonni, Aruvikkara.
4. K. S. Sunilkumar, aged 35, S/o Sukumaran Nair, Jaya Mandiram, Chellamcodu, Poovathoor, Nedumangad.

By Adv. Sri. S. Sreelal

This Petition coming on for final hearing 04<sup>th</sup> February, 2020 and having stood over for consideration to 13.02.2020 the court passed the following.

ORDER

1. This is an application filed by the 3<sup>rd</sup> defendant on behalf of other defendants in the suit under section 151 C.P.C to hear the question of

maintainability as a preliminary issue.

2. Here in this case suit has been filed by the plaintiff. The suit is for realisation of money. The plaintiff is a private limited company incorporated under the Companies Act 1956, having its registered office at Kaloor, Kochi. The 1<sup>st</sup> defendant subscribed chitty from the plaintiff institution and committed default in payment. The plaintiff filed the suit inorder to realize the defaulted amount with interest from the 1<sup>st</sup> defendant and his sureties, defendants 2 to 4. The defendants already filed written statement contenting the maintainability of suit.

3. Defendants contented that this Court has no jurisdiction to try this case in view of S.64 of the The Chit Funds Act, 1982. Further there exists a Statutory Authority to settle the disputes in the said Act. The dispute in this case is concerned with chitty business and only the Registrar is the Authority in settling the disputes. Heard both sides.

4. Following points were raised.

1. Whether this court has jurisdiction to try this case ?

2. What is the order ?

5. **Point No.1:-** According to the defendants this court has no jurisdiction to try this case in view of S.64 of the Chit Funds Act, 1982. The Ld counsel for defendants also relied on the decision rendered by Hon'ble Supreme Court reported in 2012 KHC 4282. **State of Kerala**

and Others v. M/s. Mar Appream Kuri Co.Ltd and Another Hon'ble

Court held that " Chit Funds Act was enacted after the Kerala Act - However, Central enactment not enforced in Kerala - In case of repugnancy between the two enactments, whether Central Act would prevail, even in the absence of its enforcement in Kerala - Held, merely because the legislation has postponed the enforcement of the Act, it does not mean that the law has not been made - Repugnancy arises on the making and not on its commencement - Hence, soon after the making of the central Act, Kerala Act became void and stood impliedly repealed. In such circumstance this court has no jurisdiction to try this case.

6. On the other hand Ld counsel for plaintiff placed the decision reported in 2017 (40 KHC 737) Vidyatha Dayini Sabha and Others v. JoshyKumar and Others. In this case, Honble High Court ruled that Chitty Company registered in the State of Kerala and having branch in Kerala - Default in payment. Suit for recovery of amount - Whether maintainable in Kerala - Since Chit Funds Act was not made applicable to State of Kerala, when the transaction has taken place between the parties, suit can be maintainable in Kerala - Under law of contract also, plaintiff is entitled to recover the amount from the person who obtained unlawful enrichment on account of the void agreement.

7. It is to be noted that Hon'ble Apex Court clarified that the Kerala

Chitties Act, 1975 shall continue to apply only in Chits in operation on the date of the commencement of the Central Chit Funds Act, 1982 in the same manner as the Kerala Chitties Act, 1975 applied to chits before such commencement. In the present case the chit was commenced in the year 2007 i.e., after the commencement of Central Chit Funds Act, 1982. Since as ruled by the Apex court that after the enactment of the Central Act, Kerala State Act became void and stood impliedly repealed and if that be so, I find this court has no jurisdiction to try the case and the plaint is returned U/O.7 R.10 of C.P.C.

In the result, issue no.1 is found against the plaintiff and pliant is returned U/O. 7.R.10 C.P.C.

8. Point No.2:- I.A allowed. No costs.

Dictated to the Confidential Assistant transcribed by her and corrected by me and pronounced in open court this the day of 13<sup>th</sup> February, 2020.

Sd/-  
REENADAS.T.R  
SUBORDINATE JUDGE

APPENDIX:-

NIL

/True Copy/

Id/-  
SUBORDINATE JUDGE.  
  
SUBORDINATE JUDGE.

Typed by: D.S.  
Comp. By: 