

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 29<sup>TH</sup> DAY OF MAY 2012

BEFORE

THE HON'BLE MR. JUSTICE AJIT J GUNJAL

W.P.NO.12507 OF 2012 (GM-CFA)

**BETWEEN**

M/S MARGADARSI CHITS (KAR)  
PVT. LTD.,  
S-801 & 802, SOUTH BLOCK  
MANIPAL CENTRE, DICKENSON  
ROAD, BANGALORE – 42  
BRANCH: BTM LAYOUT BRANCH  
REP BY ITS FOREMAN/MANAGER  
SRI.R.SIVA KUMAR NAIDU, MAJOR.

... PETITIONER

(BY SRI.K.S.BHARATH KUMAR, ADV.)

**AND**

1. MR.V.NARASIMHAMURTHY  
S/O B.VENKATARAMANAPPA  
MAJOR  
NO.390, 6<sup>TH</sup> MAIN, 4<sup>TH</sup> CROSS  
DEVARACHIKKANAHALLI, DEO LAYOUT  
BANGALORE – 560 068
2. MR.N.RAJENDRAN  
MAJOR  
S/O NARASIMHAN, NO.15  
GOKULAM, 11<sup>TH</sup> CROSS  
11<sup>TH</sup> MAIN, VIDYAJYOTHI LAYOUT  
NEAR VIDYAJYOTHI, HONGASANDRA  
BANGALORE – 560 068.
3. MRS.N.BHAGYASHREE  
W/O V.NARASIMHAMURTHY  
MAJOR

NO.390, 6<sup>TH</sup> MAIN, 4<sup>TH</sup> CROSS  
 DEVARACHIKKANAHALLI  
 DEO LAYOUT  
 BANGALORE – 560 068.

4. MR.R.GOPAL  
 S/O RAMASWAMY  
 MAJOR  
 NO.28/2, 3<sup>RD</sup> CROSS  
 NEAR MINERVA MILLS  
 KASTURI NAGAR  
 BANGALORE – 560 023.

5. MR.G.NAGESH  
 S/O GANGADHARAI AH  
 MAJOR  
 NO.20, 3<sup>RD</sup> MAIN, 2<sup>ND</sup> STAGE  
 BAPUJINAGAR, NEAR MAHADEV  
 KANNADA HIGHER PRIMARY  
 SCHOOL, MYSORE ROAD  
 BANGALORE – 560 026

6. MR.K.SHASHIKUMAR  
 S/O A.S.KRISHNAPPA  
 MAJOR  
 NO.19/2, 9<sup>TH</sup> CROSS  
 MAGADI ROAD, CHOLUR PALYA  
 MANJUNATHA NAGAR  
 BANGALORE – 560 061

7. THE DEPUTY REGISTRAR (CHITS)  
 CIRCLE-II, MALLESWARAM  
 MARGOSA ROAD NEAR 8<sup>TH</sup> CROSS  
 BANGALORE – 560 003.

8. THE JONIT REGISTRAR OF  
 CO-OPERATIVE SOCIETIES  
 MAHAKAVI KUVEMPU ROAD  
 CHAMARAJPET  
 BANGALORE.

... RESPONDENTS

(BY SRI.M.KESHAVA REDDY AGA FOR R7 & R8)

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA WITH A PRAYER TO CALL FOR THE RECORDS ON THE FILE OF R8 IN RESPECT OF APPEAL NO.JRB/CHITS/APPEAL/09/11-12 DTD 24.2.12 VIDE ANNEX-K.

THIS W.P. COMING ON FOR *PRELIMINARY HEARING* THIS DAY THE COURT MADE THE FOLLOWING:

### ORDER

The respondent No.1 subscribed to a ticket bearing No.12 in Chit group No.LT003DBT for Chit value of ₹.25,00,000/-, which is payable at the rate of ₹.50,000/- per month for a period of 50 months. The respondent No.1 joined the chit on 3.6.2008 and paid the first installment on that date. The respondent No.1 entered into a chit agreement with the petitioner on 3.6.2008. The respondent No.1 participated in the Chit auction and declared as the prize bidder in the chit auction held on 17.8.2008. The respondent No.1 bid the chit for ₹.7,50,000/- and further received a sum of Rs.17,50,000/- prize money after deducting the bid amount which he had agreed to forgo.

2. Suffice it to say that respondent No.1 after receiving the prize amount was not regular in payment of chit installments and thereafter he became defaulter



from 10.10.2008. Hence, the petitioner raised a dispute before respondent No.7 against respondents 1 to 6 for recovery of ₹.30,56,560/- with interest at 24%.

3. It is to be noticed that respondents 2 to 6 are the guarantors. The said dispute was accepted and award was passed jointly and severally binding the borrower as well as the guarantors to pay the amount. In default, it was open for the petitioner to recover the said amount by executing the award. Two of the guarantors were before the Appellate Authority. The Appellate Authority has tactically confirmed the award passed by the original authority. But however, insofar as the guarantors liability is concerned, observed that it is only after the petitioners exhausted their remedy as against the principle borrower they can proceed against the guarantors to recover the said amount. The said modification is questioned in this writ petition.

4. I have heard the learned counsel appearing for the petitioner.



5. Apparently, the learned counsel for the petitioner is right in submitting that the option is always with the decree holder to proceed as against either the principle borrower or as against the guarantor. His option to recover the amount cannot be limited by having recourse to as against the principle borrower and thereafter as against the guarantors. However, in the case on hand it is to be noticed that only two of the guarantors were in appeal before the Appellate Authority. Indeed, the petitioner in the present set of circumstances is required to proceed, as against the principle borrower and if there is any shortfall then against all the guarantors. However, the order passed by the Appellate Authority modifying the award will not be a precedent in any other case. Petition stands **disposed** of accordingly.

Sd/-  
JUDGE

SS