The Chits Funds Act,1982

[An Act to provide for the regulation of chit funds and for matters connecte d therewith 9th August, 1982]

Be it enacted by Parliament in the Thirty-third Year of the Republic of Indi a as follows :

STATEMENT OF OBJECTS AND REASONS

1-A ‘conventional chit’ is an old indigenous financial institution involving regular periodical subscriptions by a group of persons. It is, in law, a contract between the subscriber s and the foreman which provides that the subscribers shall subscribe a certain sum by periodical instalments f or a definite period. Each subscriber shall, in his turn, as determined by lot or by auction or in such other agr eed manner be entitled to the prize amount. There will be as many periodical instalments as there are members. As there is a mutuality of interest among the small number of subscriber to each chit fund, it constitutes a convenient instrument combining savings and borrowings.

2- In the wider context of examining in depth the activities of the non-banki ng financial intermediaries (which term also includes institutions conducting chit fund or kur ies) , the Banking Commission (1972)had recommended inter alia , that it is essential to have a uniform chit fund legislation applicable to the whole country and as such either an all India Chit Funds Act may be ena cted or a model law may be prepared for adoption by all the states. The Commission also observed that it wou ld be desirable to provide in the legislation that only public limited companies can run chit funds.

3- The recommendations of the Banking Commission were examined by Go vernment. The Reserve Bank, at the instance of the Government, drafted a model Bill to regulate the conduct of chit funds for adoption by all the State Governments. The Reserve Bank also sent the draft Bil

l to the Study Group on non-Banking companies
constituted by it in June, 1974 under the Chairmanship of late Shr
i James S. Raj, the then Chairman of the Unit Trust
of India. The Study Group was unanimously of the view that the Bil
l should be enacted as a Central legislation, as
such a step. Besides ensuring uniformity in the provisions applicab
le to chit fund institutions throughout the country,
would also prevent such institutions from taking advantage either
of the absence of any law governing chit funds in
any State or exploit the benefit of any lacuna or relaxation in an
y State Government concerned which in turn could
seek the advice and assistance of the Reserve Bank on policy matte
rs. Further, there should be according to the
Group no objection to chits being conducted by private limited co
mpanies also and on a limited scale even by
unincorporated bodies, such as, individuals, sole proprietorships an
d partnership firms.

4- The Bill has been finalized after taking into account the views of all th
e State Governments to whom a
Draft Bill was sent for comments. The scheme of the Bill and the
provisions made therein largely follow the pattern
of chit fund legislations in force in some of the States and inclu
des certain new provisions, such as, minimum capital
requirements for companies conducting chit business, prohibiting
chit fund companies from doing any other business,
placing a ceiling on the aggregate chit amounts of chits that are be
ing conducted by

(2)

chit fund institutions, providing for a self-contained machinery for the set
tlement of disputes between a foreman
and the subscribers by means of arbitration, etc. The repeal of the
existing State legislations on the subject has also
been provided for in the Bill.

5.The “Notes on Clauses” appended to the Bill explain in detail the provision
s of the Bill.

Comments
Objects and reasons of the Act.-The objects and reasons of the Act are to be

taken into consideration in
interpreting the provisions of the statute and not the debates in Parliament on the Bill.

The law is well settled that it is permissible to look into the circumstances which prevailed at the time when the law
was passed and which necessitated the passing of that law to determine the pu rpose or object of the legislation.

Penal Statute-Interpretation of –In order to interpret sections of the Indian Penal Code or any other penal statute
the principal applicable is that the Penal Statute must be strictly constr ued in favour of the subject.

The maxim “contemporanea expositio”- Application of.– The maxi m “contemporanea ecpositio” as laid
down by Coke is applied in construing ancient statutes but not to interpreting Acts which are comparatively modern.
Further, it has been observed that in a modern progressive society it would be unreasonable to confine the intention
of a Legislature to the meaning attributable to the word used at th e time the law was made and, unless a contrary
intention appears, an interpretation should be given to the words us ed to take in new facts and situations, if the words
are capable of comprehending them.

CHAPTER – 1

Preliminary

1- Short title and commencement.-(1) This Act may be called the C hit Funds Act, 1982.

2- It extends to the whole of the India except the State of Jammu a nd Kashmir.

3- It shall come into force on such date as the Central Government may, b

y notification in the official Gazette,
appoint and different dates may be appointed for different States.

Constitutional validity of the Act.The Chit Funds Act, 1982, is within the l eigislative competence of the Parliament.
It was declared that Secs.4 (3), 6(3), 7,8,12,16,(2), 17(1), 19,20,21,70,76,7 7 and 84 of the Act challenged
through writ-petitions are constitutionally valid and are not violative of Art s. 14 and 19 (1) (g) of the Constitution.

2- Definitions – In this Act, unless the context otherwise requires,-

(a) " approved bank" means the State Bank of India constituted un der Sec.3 of the State Bank of India Act,
1955 (23 of 1955), or a subsidiary bank constituted under Sec. 3 of the Stat e Bank of India (Subsidiary Banks)
Act, 1959.(38of 1959), or a corresponding new bank constituted under Se c.3of the Banking Companies
(Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or a Re gional Rural Bank established under
Sec. 3 of the Regional Rural Banks Acts, 1976 (21 of 1976), or a

corresponding new bank constituted under Sec. 3 of the Banking Companies (Acquisition and Transfer of
Under takings) Act.1980 (40 of 1980), or a banking company as defined und er Cl.© of Sec.5 of the Banking
Regulation Act. 1949 (10 of 1949) or a banking institution notified by the Central Government

under Sec.51 of the Act or such other banking institution as the State Gov ernment may in consultation with the
Reserve Bank, approve for the purposes of this Act:

(b) "chit"means a transaction whether called chit, chit, fund, chi tty, kuri or by any other name by or under
which a person enters into an agreement with a specified number of persons that every one of them shall subscribe
a certain sum of money (or a certain quantity of grain instead) by way of per iodical instalments over 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 specified in the chit agreement, be entitled to the p
rize amount.

Explanation- A transaction is not a chit within the meaning of this clause,if
in such transaction -

(i) some alone, but not all, of the subscribers get the prize amount without an
y liability to pay future subscriptions: or

(ii) all the subscribers get the chit amount by turns with a liability to pay fu
ture subscriptions;

(a) "chit agreement" means the document containing the articles of agre
ement between the foreman and the
subscribers relating to the chit;

(b) "chit amount" means the sum-total of the subscriptions payable by all
the subscribers for any instalment of a
chit without any deduction of discount or otherwise;

(c) "chit business" means the business of conducting a chit;

(d) "defaulting subscriber" means the subscriber who has defaulted in the
payment of subscriptions due in
accordance with the terms of the chit agreement;

(e) "discount" means the sum of money or the quantity of grain which a p
rized subscriber is, under the terms
of the chit agreement required to forego and which is set apart under the sa
id agreement to meet the expenses
of running the chit or for distribution among the subscribers or for both;

(f) "dividend" means the share of the subscriber in the amount of discou
nt available under the chit agreement for
rateable distribution among the subscribers at each instalment of the chit.;

(g) "draw" means the manner specified in the chit agreement for the purpo
se of ascertaining the prized subscriber
at any instalment of the chit;

(h) "foreman" means the person who under the chit agreement is responsib le for the conduct of the chit and includes any person discharging the functions of the foreman under section.39;

(i)“non-prized subscriber” does not include a defaulting subscriber;

(j) “prescribed” means prescribed by rules made under this Act.;

(l) “prize amount” means the difference between the chit amount and the discount, and in the case of a fraction of a 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 when it becomes payable;

(m) “prized subscriber” means a subscriber who has either received or is entitled to receive the prize amount ;

(n)“Registrar” means the Registrar of Chits appointed under Sec.61, and includes an Additional, a Joint, Deputy or an Assistant Registrar appointed under that section;

(o)“Reserve Bank” means the Reserve Bank of India constituted under the Reserve Bank of India Acr. 1934 (2 of 1934);

(p)“State Government”, in relation to a Union territory, means the administrator of that Union territory appointed by the President under Art.239 of the Constitution.;

(q)“subscriber” includes a person who holds a fraction of a ticket and also a transferee of a ticket or fraction thereof by assignment in writing or by operation of law;

(r)“ticket”, means the share of a subscriber in a chit.

Comments

Chit business.-If the transaction in question is a chit within the m eaning of Cl.(b) of Sec.2 of the Act, then chit business refers to a transaction within the meaning of the word ‘chit’ under Cl.(b) of Sec. 2 of the Act and it would be a chit business as definied Cl.(e) of Sec. 2 of the Act and that chit business is sought to be a regulated under Sec. 4 of the Act.

Kuri transaction – If unconscionable.-The suit was based on a kuri trancaction (Chit Fund). The respondents were subscribers to the kuri. They committed default after they had prized it and realized the kuri amounts. Hence the suit was filed for realization of the principal sum with interest and balance kuri due. The suit was decreed by subordinate Judge by his judgement, dated 24th June. 1965. An appeal was filed before the High Court. A Division Bench of the High Court heard the appeal and partly allowed it by modifying the decree of the Trial Court refixing the interest, largely influenced by the fact that the kuri and the subscribers (defaulters) burdened the subscribers with unconscionable interest and were unreasonable. The kuri system was in vogue in the erstwhile Travancore State and in the Cochin State, prior to the formation of the kerala

State and they were governed in those two areas by the Travancore Chit Act of 1945 (Act 26 of 1120-M.E.) which came into force , on 20th June,1945 and the Cochn Kuries Act of 1106. There was no corresponding Act for Malabar area from which area the present appeal arises. After the formation of the Kerala State, kuri transactions in the State are governed by the Kelala Chitties Act,ddddddddddd 1975, as amended by Act 19 of 1978. The High Court after taking into account the interest stipulated observed that it was unconscionable and a full Bench of the Kerala High Court had occasion to consider the correctness of this view and in a decision reported in 1974 ker. L.T. 806. Such kuri transactions were upheld and the decision of the Division Bench was reserved. According to the Full Bench, there was nothing unconscionable about the contract. Before the full Bench it was contended that this stipulation in the agreement where a subscriber prized his chit, providing that on default the Kuri foreman would be entitled to recover the entire balance amount with 12 perc ent. Interest in a lump sum without giving credit to the subscribers, is penal in nature and held in terrorem f or securing due performance of their promise and hence not enforceable.Eradi, J, as he then was, speaking for the Full Bench held q that a subscriber truly and really becomes a debtor for the Full Bench held that a subscriber truly and really becomes a debtor for the prized amount paid to him that the facility of repayment in instalment is on ly a concessional facility and that stipulation enabling the foreman to withdraw the concessional facility on defa ult of punctual payment of the instalments would not be penal or unconscionable.

3. Act to override other laws, memorandum, articles , etc.-Save as otherwise expressly provided in this Act,

(a) the provisions of this Act shall have effect notwithstanding a nything to the contrary contained in any other law for the time being in force or in the memorandum or articles of a ssociation or bye-laws or in any agreement or resolution whether the same be registered, executed or passed, as th e case may be, before or after the commencement of this Act; and

(b) any provision contained in the memorandum, articles, bye-laws a greement or resolution aforesaid, shall, to the extent to which it is repugnant to the provisions of this Act , become null or be void, as the case may be.