

APPELLATE CIVIL.

*Before Sir Owen Beasley, Kt., Chief Justice, and
Mr. Justice Butler.*

1934,
February 2.

IN THE MATTER OF THE INDIAN COMPANIES ACT (VII OF 1913),
THE UDUMALPET NIDHI LIMITED, BY ITS SECRETARY,
SYED DIWAN KHAJA MOHIDEEN SAHIB (PETITIONER),
APPELLANT.*

*Lottery—What amounts to—Prize chit transaction—Prize
winner ascertained by drawing lots—No liability on prize
winner to pay future subscriptions after prize is won—
Extent of his gain depending on chance of the draw.*

A prize chit transaction, in which the prize winner is ascertained by drawing lots and is under no liability to pay future subscriptions after the prize is won and whose extent of gain depends upon the chance of the draw, amounts to a lottery.

Narayana Ayyangar v. Vellachami Ambalam, (1927) I.L.R. 50 Mad. 696 (F.B.), distinguished.

APPEAL from the order of STONE J., dated 7th April 1933, and made in the Ordinary Original Civil Jurisdiction of the High Court in Original Petition No. 74 of 1933.

M. Krishna Bharati and T. G. Ramaswami Ayyar for appellant.

JUDGMENT.

BEASLEY C.J.

BEASLEY C.J.—This is an appeal from an order of STONE J. made upon a petition by the appellant Nidhi for leave to alter clause 3 of the Memorandum of Association of the Nidhi. Clause 3 sets out the objects for which the Nidhi is established ; and a resolution was passed

* Original Side Appeal No. 90 of 1933.

approving of the alteration of the objects of the Nidhi as set out in schedule B, viz.,

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“to lend at interest monies received from shareholders and others to shareholders and others on the security of deposits, immovable property, goods and sureties, to receive deposits, etc., when necessary and to pay interest and do other banking business, to conduct various kinds of trade should directors decide to establish branches outside, to conduct various kinds of auction chits and prize chits as will be determined by the Board from time to time and to do all acts which will be helpful to the above objects.”

The alteration was approved by STONE J. subject to the deletion of those parts of the clause relating to the conduct of various kinds of trade and prize chits.

With regard to the latter, which, in my opinion, was the most important alteration proposed, the conditions of the prize chit are set out; and it is only necessary to refer to conditions Nos. 1 to 4 which are as follows :—

1. All persons who have attained the age of majority whether males or females irrespective of caste can become members.

2. The prize chits should be subscribed for 50 months continuously at the rate of Rs. 3 a month.

3. The chit amount should be paid by the 15th of every month. Prizes will be drawn on the 19th of each month at 4 p.m. in the presence of subscribers present.

4. The subscriber that gets the prize will be paid the prize amounts as undermentioned after getting from him a receipt for the same. Thereafter he need not pay future subscriptions.

(a) Amount payable to the prize-drawer inclusive of subscriptions paid between—

1 to 15 months	...	...	Rs. 100.
16 to 30 months	...	...	Rs. 150.
31 to 45 months	...	...	Rs. 175.
46 to 50 months	...	...	Rs. 200.

Therefore, any members of the public, subject to their having attained majority, can join the

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chit and, should a subscriber's name be drawn before the termination of the chit, he gets a prize and is no longer liable to subscribe to the chit. Thus the luckiest subscriber, suppose his name or number to be drawn in the first month's drawing, has only subscribed Rs. 3 and nevertheless gets a prize of Rs. 100, and deducting the Rs. 3 he has paid, he gets Rs. 97 as prize. On the other hand, taking the period 1 to 15 months, another subscriber's name may be drawn in the fifteenth month and he also gets Rs. 100. He has paid for 15 months, at the rate of Rs. 3 a month, Rs. 45, and gets Rs. 100 for it. Taking that section 1 to 15 months, the subscriber whose name is drawn earlier gains a very large benefit over the other subscribers whose names or numbers have not been drawn. As the chit progresses, the benefit to the subscriber whose name is drawn earlier becomes further emphasised. It is contended here that this prize chit is not a lottery. If it is a lottery, obviously our learned brother was quite right in deleting that object of the Nidhi from the proposed altered rule. In support of the appellant's argument we were referred to the Full Bench decision in *Narayana Ayyangar v. Vellachami Ambalam*(1). I myself was a member of that Full Bench. It is relied upon as supporting the argument that this prize chit is not a lottery. It does not support that contention at all. The question there considered was whether the chit fund in that case amounted to a contract which was void because it was a wagering contract and not because it was a lottery. In the Full Bench judgment the whole discussion is whether that contract was or

(1) (1927) I.L.R. 50 Mad. 696 (F.B.).

was not a wagering contract. That that is so is clear from a Bench decision of this Court in *Universal Mutual Aid and Poor Houses Association, Ltd., v. Thoppa Naidu*(1). In that case in the judgment it is pointed out that what the Full Bench were considering was whether or not there was there a wagering contract and not whether the scheme was a lottery or not. The scheme in *Universal Mutual Aid and Poor Houses Association, Ltd., v. Thoppa Naidu*(1) was a lottery; and a lottery is there defined as a distribution of prizes by lot or chance without the use of skill, and it is pointed out that a lottery is different from a wager which is a contract between two persons that on the termination of a future uncertain event one shall win from the other and the other shall pay or hand over to him a sum of money or other stake. In the course of the judgment reference was made to a definition of lottery in Webster's Dictionary, viz., a distribution of prizes by lot or chance. Reference was also made to *Sykes v. Beadon*(2), where JESSEL M.R. said at page 190 :

“The holders of certificates are persons who subscribe money to be invested in funds which are to be divided amongst them by lot, and divided unequally. That is, the persons who get the benefit of the drawings get a bond bearing interest and a bonus which gives them different advantages from the persons whose certificates are not drawn, and it depends upon chance which gets the greater or the lesser advantage. It is, therefore, a subscription by a number of persons to a fund for the purpose of dividing that fund between them by chance and unequally.”

It appears to me that the conditions laid down by JESSEL M.R. are present here. The subscribers to this chit fund are investing in a fund which is to be divided amongst them by lot and clearly

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(1) (1932) I.L.R. 56 Mad. 26.

(2) (1879) 11 Ch. D. 170.

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divided unequally. The conditions of the fund have only got to be examined, as they have already been, to make this abundantly clear. The persons who got the benefit of the drawings get a prize and the benefit which such persons get from the drawings gives them different advantages from the persons whose names or numbers are not drawn and this benefit depends upon chance. Chance decides which of the subscribers gets the greater or lesser advantage. Clearly here what is proposed is a subscription by a number of persons to a fund for the purpose of dividing that fund amongst them by chance and unequally. Where those conditions exist, in the opinion of JESSEL M.R., there is a lottery. I am unable to distinguish the conditions of this prize chit fund from what was stated by JESSEL M.R. In my opinion the proposed prize chit is clearly a lottery. That being so, it is quite obvious that the Court cannot sanction a proposal to run such a prize chit. Under these circumstances, this appeal must be dismissed.

We are asked, however, to extend the time for filing documents with the Registrar of Joint Stock Companies. Ordinarily, three months are allowed under section 15 of the Indian Companies Act for that purpose. However, sub-clause 3 of that section gives the Court power to extend the time. Under these circumstances, as the appellants are probably out of time now in which to file the documents, we extend the time for filing documents by three months from this date.

BUTLER J.—I agree.

G.R.