

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2015

CORAM

THE HONOURABLE MR.**JUSTICE D.HARIPARANTHAMAN**

C.R.P (NPD) No.3278 of 2015

and M.P.No.1 of 2015

Tamil Nadu Weigh Bridge rep. by
its Partner Venkatesan

... Petitioner

VS.

1.Salem Jamia Masjid Trust Board
rep. by its Muthavalli Nasarkhan

2.The Tamil Nadu Wakf Board rep. by
its Secretary having Office at
No.3, Santhome High Road,
Mylapore, Chennai - 4.

.... Respondents

Civil revision petition has been filed as against the fair and
decretal order dated 18.3.2015 made in I.A.No.21 of 2014 in
W.O.P.No.40 of 1999 on the file of the Principal Sub Court, Salem.

For Petitioner : Mr.C.Rajasekaran

ORDER

The revision petitioner is the first respondent in
W.O.P.No.40 of 1999 on the file of learned Principal Subordinate

Judge, Salem (Wakf Tribunal). The first respondent herein filed W.O.P.No.40 of 1999 seeking a direction to the revision petitioner to vacate and hand over vacant possession of the site of the land and the superstructures thereon in the schedule property. The aforesaid W.O.P. is of the year 1999. The revision petitioner remained exparte and an exparte decree was passed on 13.11.2007.

2. Thereafter, the first respondent herein filed an execution petition in REP No.123 of 2010 for delivery and the same was also ordered. While taking delivery, since the revision petitioner obstructed, the first respondent has filed an application for Police aid. In these circumstances, the revision petitioner filed I.A.No.21 of 2014 in W.O.P.No.40 of 1999 to condone the delay of 2384 days in filing an application to set aside the exparte decree passed on 13.11.2007. Counter affidavit was filed by the first respondent herein denying the allegations.

3. After hearing both sides, the Trial Court rejected the application in I.A.No.21 of 2014 in W.O.P.No.40 of 1999 by order dated 18.3.2015. The present revision is filed against the aforesaid order.

4. Learned counsel appearing for the revision petitioner has vehemently contended that the Managing Partner, who was handling the WOP died on 23.9.2008 and hence, the case was not followed. Further, it is the case of the revision petitioner that the counsel who conducted the case also fell ill and he was in coma condition. According to the revision petitioner, since sufficient cause was shown for the delay, the Trial Court ought to have allowed the application. But, the Trial Court committed an error in rejecting the application.

5. I have considered the submissions made by the learned counsel appearing for the revision petitioner.

6. W.O.P.No.40 of 1999 was filed in the year 1999 by the first respondent herein. The revision petitioner is occupying the petition mentioned property and running a business. The said WOP was decreed exparte on 13.11.2007. Thereafter, an execution petition was filed in REP No.123 of 2010 for delivery of possession and delivery was also ordered.

7. Though certain allegations are made by the revision petitioner, he has not chosen to let in any oral or documentary evidence in support of the allegations. There is a huge delay of 2384 days. Hence, there is a heavy burden on the part of the revision petitioner to explain the huge delay. The Trial Court has held that there is a delay of 6 years and 194 days in filing the application to set aside the exparte decree and no satisfactory reason was given. The averments made in the application that the Managing Partner died in the year 2008 and the counsel also fell ill are not sufficient reasons to condone the huge delay of 2384 days. Hence, I am not inclined to interfere with the order of the Trial Court.

8. In the result, the order of the learned Principal Subordinate Judge, Salem, dated 18.3.2015 made in I.A.No.21 of 2014 in W.O.P.No.40 of 1999 is confirmed and the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.10.2015

Index:Yes/No
sbi

To

The Principal Sub Judge,
Salem.

D.HARIPARANTHAMAN, J

sbi

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