

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2015

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.28016 of 2015  
and  
M.P.No.1 of 2015

S.Gunasekaran

... Petitioner

-Vs-

1. The Commissioner,  
Hindu Religious and Charitable  
Endowments Department,  
Nungambakkam High Road,  
Chennai - 600 034.
2. The Joint Commissioner,  
Hindu Religious and Charitable  
Endowments Department,  
Nungambakkam High Road,  
Chennai - 600 034.
3. The Assistant Commissioner,  
Hindu Religious and Charitable  
Endowments Department,  
Nungambakkam High Road,  
Chennai - 600 034.
4. The Inspector,  
Hindu Religious and Charitable  
Endowments Department Circle -  
Nungambakkam High Road,  
Chennai - 600 034.
5. Thakkar/The Fit Person,  
The Executive Officer,  
Office at Arulmighu Sakthi Vinayagar Temple,  
KK Nagar, Chennai - 78.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records pertaining to the order of the 1<sup>st</sup> respondent made in D.Dis.Rc.No.5628/2015 (d2) dated 20.08.2015 confirming the order of the 2<sup>nd</sup> respondent R.Dis OA 10/2004/C1 dated 22.10.2013 and quash the same as ultravires, void and unconstitutional.

For Petitioner : Mr.D.Rajagopal  
For Respondents : Mr.P.Sanjai Gandhi  
Additional Government Pleader (HR & CE)

#### O R D E R

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner filed an application under Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, to declare him as a Hereditary Trustee of Arulmigu Sri Kaliyamman @ Pidari Kaliyamman Temple situated in Ashok Nagar, Kodambakka, Chennai - 600 083 before the second respondent and it was dismissed on merits on 22.10.2013 and aggrieved by the same, he filed an appeal under Section 69(1) of the said Act before the Commissioner with the delay of 214 days in filing the appeal. The petitioner in the affidavit filed in support of the application for condoning the delay would state that the order of the 2<sup>nd</sup> respondent was passed on 22.10.2013 and the order containing reasons was neither furnished to him nor furnished to his counsel and he immediately contacted his counsel to get the detailed order and accordingly, copy application was filed on 15.07.2014 and thereafter, the copy was furnished, which resulted for the delay and prayed for condonation of delay. The 1<sup>st</sup> respondent, on taking into consideration the affidavit filed for condonation of delay and taking into consideration the judgment reported in 1998(7) SCC (N.B.Balakrishnana Vs. Krishnamoorthy), dismissed the application and incidentally gone into the merits of the claim also. The petitioner aggrieved by the said order passed by the 1<sup>st</sup> respondent, has filed this writ petition.

3. The learned counsel appearing for the petitioner would submit that since the detailed order has not been furnished neither to the petitioner nor to the counsel, it was applied separately and after getting the same, an appeal was filed before the 1<sup>st</sup> respondent, which had resulted in 214 days and would further add that the first respondent has also incidentally gone into the merits of the matter and he is not expected to do so. The learned counsel appearing for the petitioner, on instruction, would submit that the petitioner is

also preferred to deposit some amount to the temple as a pre-condition for condonation of delay.

4. Per contra, Mr.P.Sanjai Gandhi, learned counsel appearing for the respondents strongly opposes this application by contending that in the absence of any proper and sufficient reason, the delay cannot be condoned at all and prays for dismissal of this writ petition.

5. This Court has carefully considered the rival submissions and also perused the materials placed on record.

6. The reason for delay cited by the petitioner are that the operative portion of the order alone was communicated and detailed order has not been furnished neither to the counsel, who appeared on behalf of him before the 2<sup>nd</sup> respondent nor to him and therefore, instruction was given to his counsel to apply for the detailed order and after furnishing the same, the appeal was filed before the 1<sup>st</sup> respondent, which had resulted in the delay of 214 days. In the considered opinion of this Court, the petitioner has explained the delay but in the affidavit he has not been given the relevant date on which he applied for the detailed order copy.

7. This Court, taking into consideration of the above facts and circumstances, is of the view that the delay in filing the appeal can be condoned by setting aside the impugned order by putting on terms and the same would meet the ends of justice.

8. In the result, this Writ Petition is allowed and the impugned order dated 20.08.2015 passed by the 1<sup>st</sup> respondent is set aside subject to the condition that the petitioner shall deposit a sum of Rs.5,000/- to the Arulmigu Sri Kalliamman @ Pidari Kalliamman Temple, within a period of one week from the date of receipt of a copy of this order and produce the receipt before the 1<sup>st</sup> respondent, who, on receipt of the same, is directed to entertain the appeal, if the papers are otherwise in order and pass orders on merits and in accordance with law within a period of eight weeks thereafter and communicate the decision taken, to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY  
Sd/-  
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

vsm

To

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6. The Executive Officer,  
Sri Kalaiamman @ Pidari  
Kalaiamman Temple,  
Ashok Nagar, Chennai - 83.

+1cc to Mr.D.Rajagopal, Advocate, S.R.No.48377  
+1cc to the Government Pleader, S.R.No.48460

W.P.No.28016 of 2015

GP(CO)  
CA(22/09/2015)