

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 27th DAY OF FEBRUARY 2018

THE HON'BLE MR.JUSTICE S.MANIKUMAR

A. No.587 of 2018
in
C.S. No.314 of 1930

In the matter of the
management and conduct of
charities prescribed under the
Deed Dt.25.04.1919 executed by
M.K.Periyathambi Maracayar -
deceased.

Between

1.K.M.Moulana Abdul Rahiman, represented
by his paternal uncle Abbas Marakayar as his
next friend herein and residing with his step mother
Habiba Bi, defendant 12, herein at No.7 Vadamarakayar
Street, Madras (declared along with defendants 8,12 and
13 herein as the legal representative of defendant 4 herein
(since deceased)

2.The Advocate General of Madras, having its office at
the High Court Building Madras,
(added as per order of Court date 2.2.1939) ... Plaintiffs

And

1.Mohamed Ibrahim residing at No.10, Jones Street, Madras

2.Abdul Rahiman, residing at No.76, Moore Street, Madras

3.Aisha Bi, residing at No.67, Sowrimuthu Street, George
Town, Madras

4.K.M.Fakir Mohideen (since deceased)

5.Jaina Bi, residing at No.67, Sowrimuthu Street, George
Town, Madras.

6.Shaik Bi, residing at No.32, Adam Street, George Town
Madras

7.M.K.Shamsudeen Marakaya, residing at No.2, Muka Street,
Pondicherry

8.Meerammal, residing at No.7, Vadamarakayar Street -
declared along with the plaintiff and defendants 12 and 13

herein as the legal representative of defendant 4 herein,
since deceased

9.V.M.Sundaramurthy, residing at No.1, Sowrimuthu Street,
George Town, Madras

10.T.M.Thameen (since deceased)

11.S.K.Moulvi Sarafuddin Sahib, residing at Vellore

12.Habiba Bi, residing at No.7, Vadamarakayar Street,
George Town, Madras

13. Abdul Rahim, Minor represented by his mother Habiba Bi, defendant 12 herein as his guardian - ad-litem, herein, Nos. 12 and 13 declared along with the plaintiff and Defendant 8 herein as the legal representatives of Defendant 4 herein, since deceased, and brought on record as such (Vide order made herein and dated 25.10.1933)

14.T.M.Mohmed Hussain, since deceased

15.Mohamed Bi,
Nos.14 and 15 residing at No.3, Meer Ail Street, George
Town,Madras brought on record as legal representatives of
defendant 10 herein, since deceased, (Vide Order made
herein and dated 29.07.1935)

16.Egammal, Executrix to the estate of V.Mukunda Pillai, residing at No.1, Sourimuthu Street, Madras, added as party defendant herein (Vide order made herein and dated 09.07.1935).

17.R.Krishnan, Transferee Decree - holder in C.S.No.6 of 1925 on the file of this Court, residing at No.27, Hanumantharayan Koil Street, Triplicane, Madras.

18.Zubeda Bi } Minors represented by

19.Fair Ahmed } Mohamed Bi,

20.Habiba Bi } defendant 15 above

21. Hazran Bi } named, as their

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22.Balisa } guardian-ad-litem
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23. Peer Mahmod Ismail } herein ... Defendants
No.18 to 23 are the legal representatives of T.M. Mahomed
Hussain, Defendant 14, deceased, brought on record as per
order of Court dated 27.07.1937 in A.No.1241 of 1937.

A. No.587 of 2018:-

I.S.Ibrahim,
 S/o.M.K.P.I.Shaheed Hameed,
 No.47/2, Melpadimuthu Street,
 Nungambakkam, Chennai-600 034. ... Applicant

-Versus-

The Official Trustee of Madras,
 High Court Campus, Chennai-600 104. ... Respondent

Application praying that this Hon'ble Court be pleased to enhance the Zikir Allowance from Rs.1,500/- (Rupees one thousand five hundred only) to Rs.9,480/- (Rupees nine thousand four hundred and eighty only) per month for three turn Muthavallis.

This application coming on this day before this Court for hearing, the court made the following order:-

This application is filed to enhance the Zikir Allowance from Rs.1,500/- (Rupees One Thousand Five Hundred Only) to Rs.9,480/- (Rupees Nine Thousand Four and Eighty Only) per month, for three turn Muthavallis.

2. The applicant has submitted that one M.K.Periathambi Maracayar has endowed his properties, through a settlement , dated 25.04.1919 and objects of the said Settlement Deed, are as follows:

(a) On the day of the month of Rafi-ul-awal every year, the life of Prophet Muhamed should be read and food be distributed, without fail.

(b) On the 12th day of the month of Tulkaida; the life of Abdul Hasan Abyush Shadulia Avargal shall be read and food be distributed every year without fail.

(c) Gruel should be prepared and sent to the Mosque during all the 30 days of the month of Ramzan every year without fail and be distributed.

(d) Cloths etc., should be purchased for not less than Rupees one hundred and distributed to the poor.

3. The applicant has further submitted that the scheme suit in C.S.No.314 of 1930, was decreed by this Court on 02.05.1939, appointing the Official Trustee of Tamil Nadu as the Sole Trustee of the Properties of the Trust Estate of M.K.Periyathambi Maracayar in the said Scheme Decree. He is one of the trustees of the Trust Estate of M.K.Periyathambi Maracayar and vide proceedings of the Official Trustee of Tamil Nadu, dated 25.02.2016, he has been appointed as turn trustee, for the period between 01.04.2017 and 31.03.2018 and directed to take charge of the Muthavalli, in the Trust Estate of M.K.P.Maracayer.

4. The applicant has further submitted that Zikir Allowance was enhanced to Rs.150/-, on 01.09.1989, as per the orders of this Court in Application No.2280 of 1989, dated 05.09.1989. Thereafter, Zikir Allowance had not been increased and paid at Rs.150/- per mensum, which according to the applicant, is too low. However, the said allowance

was enhanced from Rs.150/- to Rs.250/-, vide order, dated 01.12.2000 in Application No.4339 of 2000 in C.S.No.314 of 1930.

5. Though the applicant has sought for enhancement from Rs.250/- to Rs.3,200/-, by filing Application No.4617 of 2013 in C.S.No.314 of 1930, this Court, vide order, dated 25.10.2013, has enhanced the Zikir Allowance from Rs.250/- to Rs.750/-. Thereafter, after three years, he filed Application No.230 of 2016 in C.S.No.314 of 1930, seeking enhancement of Zikir Allowance from Rs.750/- (Rupees Seven Hundred and Fifty Only) to Rs.6,080/- (Rupees Six Thousand and Eighty Only) per month. Upon considering the claim, this Court, vide order, dated 15.07.2016 in Appln.No.230 of 2016 in C.S.No.314 of 1930, enhanced Zikir Allowance from Rs.750/- to Rs.1500/-.

6. After the said enhancement, he has approached the Official Trustee of Tamil Nadu, for zikir allowance. In the mean time, his tenure has expired and therefore, the Official Trustee has refused to pay the enhanced Zikir Allowance to his subsequent successor, viz., Mrs.Fathima Bee. Both himself and another trustee, viz., Fathima Bee, have made a joint representation to the Official Trustee of this Court, with a request to enhance Zikir Allowance, by considering the prevailing prices of essential commodities,

but there was no response. According to them, the minimum expenses to perform the Zikir, per day, is as hereunder:

Sl.No.	Commodities	Quantity	Price
1	Jaggery	5 Kgs	Rs.315/-
2	Rice	3 Kgs	Rs.180/-
3	Ghee	1/2 Kg	Rs.250/-
4	Badam	100g	Rs.100/-
5	Cashew	100g	Rs.100/-
6	Cardamom	50g	Rs.100/-
7	Coconut	4	Rs.90/-
8	Vannila Essence	2 Bottle	Rs.50/-
		Total (per day)	Rs.1,185/-

Zikir has to be performed by every Monday and Friday, in a week and therefore, a minimum amount of Rs.9,480/- (Rs.1,185/- x 8 days is required per month).

7. The applicant has further submitted that due to heavy escalation of prices of all the essential commodities and expenditure, like labour charges, it is very difficult to perform Zikir, every week, with minimum expenses of Rs.2,370/- and therefore, a sum of Rs.9,480/- in a month, is required and the same is incurred by him, in a month. According to him, there was no enhancement in Zikir Allowance from the year 2000, till the year 2013. Therefore, the applicant has filed the present application, for the reliefs, as stated supra.

8. The Official Trustee and Administrator General of Tamil Nadu has filed a report, stating that one M.K.Periathambi Maracayar had endowed properties through a settlement deed, dated 25.4.1919. Official Trustee had been appointed as the sole Trustee of the properties of the Trust Estate of M.K.Periathambi Maracayar, vide the Scheme Decree, dated 2.5.1939 in C.S.No.314 of 1930 and thus, the Trust Estate of MKP Marakayar is under the administration of the Official Trustee of Tamil Nadu.

9. Official Trustee of Tamil Nadu has further submitted that the Zikir allowance was enhanced from Rs.750/- per month to Rs.1,500/- per month, vide order, dated 15.07.2016 in A.No.230 of 2016 in C.S.No. 314 of 1930. Accordingly, Zikir allowance of Rs.1500/- is being paid to the applicant. As per the order passed in A.No.5687 of 2011 dated 10.12.2011, the following amounts are being paid by the Official Trustee of Tamil Nadu,

Sl. No.	Description	Payment per month	Payment for 2 persons	Payment per year.
1.	Payment to Pesh Imam (2 persons)	Rs.9,000/- each	Rs.9,000x2=Rs.18,000/-	Rs.2,16,000/-.
2.	Payment to Motheen	Rs. 7,000/-		Rs. 84,000/-
3.	Payment to Moulvi	Rs.7000/-		Rs. 84,000/-
4.	Salary for Scavenger	Rs.3,000/-		Rs. 36,000/-

5.	Zikir allowance (for two turn trustees)	Rs.1500/-	Rs.1500/- x 2 = 3,000/-	Rs. 36,000/-
6.	Payment towards Festivals			
	Ramzan (As per order, dated 22.11.17 in OSA No.283/2017			Rs.40,000/-
	Rabi-UI-Avval(As per order dated 25.1.17 in A.No.6651 of 2016)			Rs.5,000/-
	Zulkaida Festival (As per order dated15.7.16 in A.No.2109 of 2016)			Rs.5,000/-
	Total			5,06,000/-

10. Official Trustee has further submitted the details of the immovable properties, belonging to the Trust Estate of MKP Marakayar and the income received from each of the properties, as hereunder:

Sl.No	Description of the property	Income From the property	Remarks
1.	No.79, Broadway	Rs.30,49,000/-	Arrears of rent pending from July 2014 to till date.
2.	No.80, Broadway	Rs.89,57,620/-	
3.	No.83, Sembudass Street	Nil	Mosque situated
4.	No.19, Adams Street	Rs.1,62,000/- p.a.	Lease ends on 31.03.2018
5.	No.48, Ponnappa Mudali Street	Rs.7,740/- p.a	Long lease for 30 years ending in 2020

As per the records in the Office of the Administrator General and Official Trustee of Tamil Nadu, the funds position of the trust as on 29.12.2017 is as follows:-

Total Fixed Deposits	: Rs.51,24,379/-
<u>Less: Corpus</u>	: Rs. 1,47,000/-

	Rs.49,87,379/-
Cash on hand as on 29.12.2017	Rs. 20,000/-

	Rs.49,97,379/-

11. Official Trustee of Tamil Nadu has further submitted that the rental and lease income are the only sources of income to this trust. Will of the Testator is only to utilize the funds for the performance of Zikir and the amount mentioned in the affidavit is too high. According to her, if Zikir could not be performed at the cost of Rs.1500/- (Rupees One Thousand and Five Hundred only), the present request of the applicant, seeking Rs.9480/- (Rupees Nine Thousand Four Hundred and Eighty Only) for performance of Zikir, is very much on the higher side. Considering the prevailing prices of essential commodities, fund position of this trust account and the other facts and circumstances of this application, the Official Trustee is of the view that Rs.2000/- (Rupees Two Thousand only) would be a reasonable amount for zikir allowance.

Heard the learned counsel appearing for the parties and perused the materials available on record.

12. Records pertaining to C.S.No.314 of 1930, were called for and produced. In Application No.2185 of 1962, among other prayers, the applicants therein, had sought for a direction that the Managers to be paid Rs.50/- each, as remuneration and zikir allowance from the surplus income of the trust. While considering the said prayer, vide order, dated 15.02.1963, this Court, in the above application, ordered as hereunder:

"The third matter relates to increase of remuneration and zikir allowance to the applicants from the surplus income of the Trust. The three applicants are doing duties in connection with the mosque and their remuneration was fixed at Rs.25/- several years ago. Having regard to the nature of the work done by them and the cost of living, the request for payment of Rs.50/- per month is justified and it is ordered accordingly. The Official Trustee states that arrears of Zikir allowance have been paid up to the end of 1962. If the arrears have not been paid the Official Trustee would certainly pay the amount. Costs of the application to come out of the estate."

13. Zikir allowance has been enhanced to Rs.750/- per month. Application No.230 of 2016, has been filed for

enhancement of Zikir Allowance, from Rs.750/- to Rs.6,080/- per month and this Court, vide order, dated 15.07.2016, ordered enhancement to Rs.1,500/- per month, payable from the month of August' 2016. Just two years ago, Zikir allowance has been enhanced to Rs.750/- per month to Rs.1500/- per month, double the amount fixed earlier. Subsequently, on the application filed in Application No.4606 of 2017, this Court, vide order, dated 22.01.2018, ordered as follows:

"Having regard to the submission and the report of the Official Trustee and Administrator General of Tamil Nadu, this Court is of the view that the trustees appointed, under the Orders of this Court, in turn, have to be paid Zikir Allowance, as ordered. Hence, order, dated 15.07.2016 in Application No.230 of 2016 in C.S.No.314 of 1930, requires to be modified. Accordingly, Application No.4606 of 2017, is ordered. Official Trustee is directed to make payment of Zikir Allowance of Rs.1,500/- to the applicant."

14. Zikir (Dhikr) means, "remembrance", in the name of devotional acts in Islam, which short phrases or prayers repeatedly recited, "silently, within the mind or aloud". Contention that the applicant has been incurring expenditure for the purchase of essential commodities and labour charges and therefore, there is a requirement or enhancement of Zikir Allowance from Rs.1,500/- to

Rs.9,480/-, cannot be countenanced for the reason that the applicants are obligated to do only zikir, which this Court has considered and for which, allowance has to be paid.

15. Further, only recently, in Application No.230 of 2016 in C.S.No.314 of 1930, dated 15.07.2016, this Court has considered zikir allowance and enhanced from Rs.750/- to Rs.1,500/-. Contention of the applicant, for the reasons, stated in the accompanying affidavit to Application No.587 of 2018, cannot be accepted, in entirety. Services of zikir, have to be recognized and respected. In 2016, enhancement has been ordered to Rs.1,500/-, per month. There cannot be a rise of zikir allowance from Rs.1,500/- to Rs.9,480/- per month, as claimed. Between 2016 and 2018, this Court does not find any change, in the performance of the Manager/Muthavalli, towards zikir, requiring enhancement from Rs.1,500/- to Rs.9,840/-, as claimed in the instant application. At best, it can be enhanced to Rs.2,000/- per month.

16. In the result, zikir allowance is enhanced from Rs.1,500/- to Rs.2,000/-, to be paid from the month of January' 2018. Official Trustee is directed to pay the same, within two weeks.

17. Hence, Application No.587 of 2018 is ordered accordingly.

Sd./-S.M.K.J

27/02/2018

//Certified to be true copy//

Dated at Madras this the day of 2018.
JJ 08/03/2018

COURT OFFICER(O.S.)

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