



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Thirtieth day of January Two Thousand Nineteen

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CMP(MD) No.10546 of 2017

IN

AS(MD) No.SR43572 of 2017

HARI GOVINDAIYAR DHARMA TRUST
CHIDAMBARAM REPRESENTED BY ITS
MANAGING TRUSTEE
R.K.KAMALAKARAN

... PETITIONER/APPELLANT

Vs

1 PERUMAL
2 G.VENKATESAN
3 G.DURAIPANDIAN
4 P.K.MAHENDRAN

... RESPONDENTS/RESPONDENTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 178 days in filing the above Appeal suit and render justice.

PRAYER IN AS(MD) No.SR43572 of 2017:

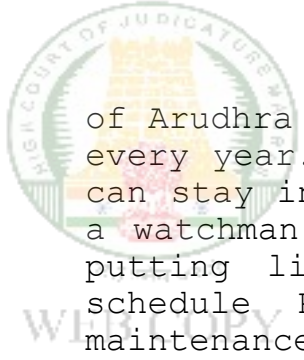
To set aside the Judgment and Decree dated 26.10.2016 passed in IA No.965 of 2015 in O.S.No.131 of 2014 on the file of IV th Additional District Judge, Madurai.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.R.MAHESWARAN, Advocate for the petitioner and of Mr.M.S.SURESH KUMAR on behalf of the Respondents, the court made the following order:-

Heard Mr.R.Maheswaran, learned counsel appearing for the petitioner and Mr.M.S.Suresh Kumar, learned counsel appearing for the respondents.

2.This petition has been filed to condone the delay of 178 days in filing the Appeal suit.

3.On the side of the petitioner, it is stated that during the year 1931, the grandfather of the petitioner by name Hari Govinda Iyer has created a Trust in the name of Hari Govindha Iyer Trust for supplying food for worshippers who are staying in the Trust Chowltry, particularly to Sourashtra Community peoples at the time



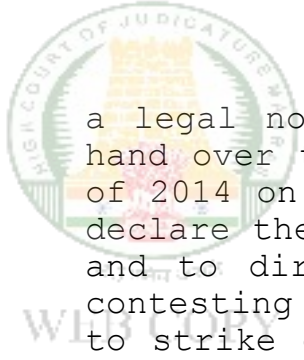
of Arudhra Dharisanam of Sri Natarajan in the tamil month of Margali every year. In the Trust Deed, he has also stated that workshippers can stay in the said Chowltry for 3 to 5 days for worshipping, and a watchman has to be appointed to safeguard the Chowltry and also putting light and the income obtained from the Trust Deed "B" schedule Properties has to be utilized for the charity and maintenance of the trust properties.

4.The Trust Deed clearly reveals that the legal heirs of Hari Govinda Iyer will automatically become next Trustee of the Trust and in addition to hereditary Trustees, the other Trustees can be appointed and no body has got any right to sell or to encumber the Trust property at any point of time. It is stated that additional conditions are incorporated after the death of the founder as per the terms and conditions of the Trust Deed. It is stated that as legal heir of the founder R.H.Krishnamoorthy, father of the petitioner become the Trustees of the above mentioned Trust. After the demise of his father in the year 2013, the petitioner became the Trustee of the above said Trust.

5.It is further stated that during the Trusteeship period of the father, the father sold some of the Trust properties. To fulfil the wish of the founder and to safeguard the Trust, the petitioner has filed a suit in O.S.No.610 of 1987 on the file of the I Additional Subordinate Court, Madurai for the prayer of declaration and to remove the father /1st defendant from the Trusteeship and to direct the defendants 2 to 10 to hand over the possession of the suit properties, and that the suit was partly allowed by the Judgment and Decree dated 08.03.1999. The suit properties were declared as properties of the Trust and the defendants 2 and 3 were directed to hand over the suit premises to the managing trustee of the abovesaid Trust. But the suit was dismissed in respect of the relief to remove the first respondent from Trusteeship.

4.On the side of the petitioner, it is stated that the first respondent who was the encroacher filed an appeal in A.S.No.727 of 1999 and another encroacher Dharmarajan filed an appeal in A.S.No.669 of 1999 and another encroacher, namely Lingaram and 6 others filed an appeal in A.S.No.31 of 2000. It is stated that all the appeals were allowed by a common Judgment and Decree dated 02.01.2008 only on the ground that on the date of filing of the suit, the petitioner is not a Trustee of the Trust and he was not having a locus standi to file a suit.

5.Against this Judgment and Decree, the petitioner filed a review Application No.31 of 2012 and the same was dismissed on 20.06.2012. After the demise of his father, the petitioner become a Trustee and he came to know that Trust properties were purchased by the respondents herein. As per the terms and conditions of the Trust Deed, no body is having the right to sell the trust property. To fulfill the charity, the income from the Trust properties is essential. To safeguard the rights of the Trust, the petitioner sent

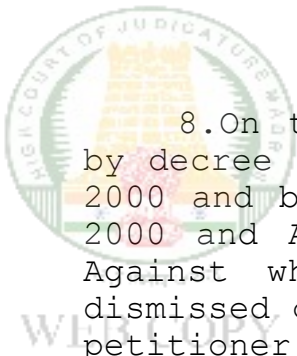


a legal notice to the respondent on 04.07.2014 requesting them to hand over the possession. The petitioner filed a suit in O.S.No.131 of 2014 on the file of the IV Additional District Judge, Madurai to declare the suit properties as properties that belonged to the Trust and to direct the defendants to hand over possession. Instead of contesting the case, the respondents filed Civil Revision Petition to strike off the plaint on the ground of res-judicata. This Court dismissed the petition on 27.07.2015 directing the respondents to file proper petition before the trial Court. Thereafter the respondents filed a petition in I.A.No.965 of 2015 before the learned IV Additional District Judge, Madurai to reject the plaint. The suit was rejected.

5.It is stated that the above said order is incorrect and the petitioner filed this appeal. The respondents taking advantage of the dismissal of the suit is attempting to encumber the property. The petitioner applied for certificate copy on 26.10.2016 and received the same on 13.02.2017. The petitioner was not able to meet his counsel due to some inconvenience and financial crises to persue the litigation further. After steadying the financial position with the help of friends, the petitioner approached this Court and prayed the delay of 178 days to be condoned.

6.On the side of the respondents, it is stated that the petitioner is in the habit of filing vexatious petitions and started a second round of re litigation and he is abusing the process of Court. It is stated that both O.S.Nos.610 of 1987 and 131 of 2014 were filed by the same petitioner. The allegation that there is new plea for the first time regarding some additional conditions stated in the Trust Deed is denied. One R.K.Kamalakaran filed a suit as a Trustee in O.S.No.610 of 1987 before the I Additional Sub Court, Madurai for a prayer of declaration that the suit property belonged to the Trustee as per Trust Deed dated 09.03.1931 and to remove the first respondent from the office of Trusteeship and consequently direct the defendants 2 to 10 to hand over possession. The prayer in O.S.No.131 of 2014 filed before the learned IV Additional District Judge, Madurai is for declaring the suit properties belonged to the Trust as per Trust Deed dated 09.03.1931 and to direct the defendants to hand over the possession of the suit property without any let or hindrance to the plaintiff. The property mentioned in O.S.No.610 of 1987 and the property mentioned in O.S.No.131 of 2014 are the same.

7.On the side of the respondents, it is stated that O.S.No.610 of 1987 was decreed partly and the defendants were directed to hand over the suit property to the Trust. The petitioner has filed E.P.No.310 of 1999 in O.S.No.610 of 1987 and the vendors of the respondents filed E.A.Nos.49, 48 and 481 of 2006 under Section 47 of C.P.C,. and E.P. was dismissed on 13.03.2007 as there was no Trust existing to take possession and the decree could not be executed. The petitioner has filed C.R.P.(MD)Nos.1250 to 1253 of 2009 and on 01.09.2009 and that all the C.R.Ps. were dismissed.



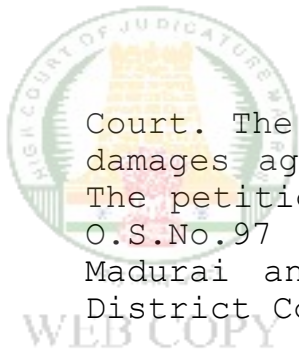
8. On the side of the respondents, it is stated that aggrieved by decree in O.S.No.610 of 1987, the respondents filed A.S.No.31 of 2000 and by common Judgment, all the three Appeals in A.S.No.31 of 2000 and A.S.Nos.727 and 699 of 1999 were allowed on 02.01.2008. Against which, the petitioner has filed SLP and the same was dismissed on 05.05.2008. Again Review Applications were filed by the petitioner in Review Application Nos.29 to 31 and they were also dismissed on 20.06.2012 by this Court.

9. It is further stated that the petitioner filed a petition in E.A.No.711 of 2008 in Unfiled E.P.No.2009 in O.S.No.610 of 1987 to implead the respondent as parties in the E.P. petition. The petitioner has filed E.A.No.45 of 2009 for appointment of a receiver to collect rental income and that E.A. was dismissed. The petitioner filed C.R.P.(MD)No.1060 of 2009 which was dismissed on 03.11.2009.

10. On the side of the respondents, it is stated that the petitioner abused the process of law in filing E.P.No.61 of 2016 in A.S.No.31 of 200 to recover possession. E.P.No.61 of 2016 was struck off by the order made in C.R.P.(MD)No.1110 of 2016 on 03.02.2017. The petitioner has filed I.A.No.31 of 2014 in O.S.No.131 of 2014 seeking for a sum of Rs.38,000/- (Rupees Thirty Eight Thousand only) per month as rent from November 2005. The petition was dismissed by the trial Court. The petitioner filed C.R.P.(MD)No.1030 of 2015 and the same was dismissed.

11. It is further stated that again the petitioners filed I.A.No.1078 of 2015 in O.S.No.131 of 2014 before the trial Court seeking for an order of injunction not to alienate the property and the same was dismissed. The petitioner has not filed any appeal against that order. It is stated that the respondents predecessor in title had sold item 3 of the suit property on 03.02.1944 as per Ex.B2 in O.S.No.610 of 1987 and that the property was sold for the purpose of acquiring another property at Mothilal Street, Arapalayam, Madurai in the name of Trust and that item 3 is the Trust property.

12. On the side of the respondents, it is stated that only reason given in the petition to condone the delay is due to inconvenience and financial crisis, he was not able to meet his advocate to file this appeal in time. But at the same time this petitioner filed writ petitions before the Principal Seat of this Court regarding the property at Chidambaram and he has also filed several petitions before the lower Court as well as before this Court by way of Writ Appeals and Civil Revision Petitions. There is no document to show any financial crisis in business. The petitioner is abusing the process of law and he has fraudulently numbered the petition in E.P.No.61 of 2016. There is no Trust existing as per the finding of the High Court which was confirmed by the Honourable Supreme Court, the petitioner has filed a re litigation on the same ~~verbatim~~ pleadings and he is abusing the process of law. The lower Court has ordered payment of Rs.50,000/- for abusing the process of



Court. The respondent has filed a suit in O.S.No.345 of 2018 seeking damages against the petitioner for filing vexatious re litigation. The petitioner want to file an appeal against the order in the suit O.S.No.97 of 2014 on the file of the IV Additional District Court, Madurai and O.S.No.126 of 2016 on the file of the V Additional District Court, Madurai.

13.The learned counsel appearing for the respondents relied on the Judgment passed by this Court in the case of A.Abitha Nachi and others v. K.S.Saroja and others reported in 2016(3) MWN (Civil) 404, which reads as follows:

"Duty of party seeking condonation of delay is to establish sufficient cause for delay-Sufficient cause not being established by Defendants, dismissed of Application by Trial Court."

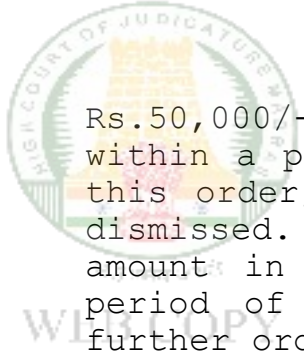
14.The learned counsel appearing for the respondents relied on the Judgment passed by this Court in the case of Flyways and others v. ALM Leather Exports and others reported in 2017 (5) CTC 642, which reads as follows:

"Held, present Application urging same contentions as earlier Application for rejection of plaint cannot be entertained-Application under different provisions of law, urging same ground, which was already negated by this Court is abuse of process of law."

15.From the petition and from the counter, it is seen that there are some other litigations between the same parties regarding the same issue. The question to be decided in all the litigation is a Trust alleged to have been created by one Hari Govinda Iyer in the year 1931. From the records, it is seen that O.S.No.97 of 2014 filed by the petitioner was taken on file in the IV Additional District Court, Madurai and the learned IV Additional District Judge rejected the plaint imposing a cost of Rs.50,000/- (Rupees Fifty Thousand only) to the petitioner. This petition was filed to condone the delay in filing the appeal suit.

16.From the records, it is seen that during the period of delay, the petitioner has approached his counsel for filing various petitions before various Courts and before this Court. The reasons stated in the affidavit is that due to financial problem, the petitioner was not able to contact his counsel. It is the duty of the petitioner to explain each day delay. When the petitioner appeared before all other Courts and was able to file so many petitions and cases before all such Courts, the contention of the petitioner that he was not able to approach his advocate is unsustainable. But the delay is only 178 days and an opportunity for the petitioner is to be given. The lower Court rejected the plaint of the petitioner on cost of Rs.50,000/-.

17.Hence, this Court deems it proper that to prove his genuineness, the petitioner has to be directed to deposit a sum of



Rs.50,000/- (Rupees Fifty Thousand only) before the trial Court within a period of four weeks from the date of receipt of copy of this order, failing which, this petition will automatically stands dismissed. On such deposit, the trial Court is directed to keep the amount in fixed deposit in a nationalised Bank initially for a period of three years and to renew the same periodically until further orders. On the above conditions, this petition is allowed.

sd/-
30/01/2019

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE IV ADDITIONAL DISTRICT JUDGE,
MADURAI.

+1. C.C. to Mr.R.MAHESWARAN Advocate SR.No.2037
+1. C.C. to Mr.M.S.SURESH KUMAR Advocate SR.No.1747

ORDER
IN
CMP (MD) No.10546 of 2017
IN
AS (MD) No.SR43572 of 2017
Date :30/01/2019

TK/JC/SAR-3/26.02.2019/6P/4C