

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.03.2020**

CORAM:  
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

**C.R.P.(NPD) No.1671 of 2012**

1. S.Murugan
  2. Thenmozhi
  3. K.Ganesan
  4. S.Meenakshi
  5. Manickam
  6. Chinnapalani
  7. T.A.Balasubramani
  8. A.Arputharaj
  9. K.Mahalingam
- ... Petitioners

- vs.
1. Salem Jamia Masjid Trust Board,  
represented by its Executive Officer,  
M.Nasar Khan (alias) Aman,  
First Agraharam, Salem – 636 001.
  2. Nawab Ali Khan
  3. Rafiq Mohamed Khan
  4. The Tamil Nadu Wakf Board,  
rep. By its Chief Executive Officer,  
No.3, Santhome High Road,  
Mylapore, Chennai 600 004.
- ..Respondents

(Cause Title in respect of R1 amended vide order dated 24.09.2012 in  
M.P.No.1 of 2002 in C.R.P.(NPD) No.1671 of 2012)

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 26.09.2011 passed by the learned Principal Subordinate Judge, Salem in I.A.No.2 of 2009 in W.O.P.No.22 of 2002.

For Petitioners : Mr.G.Jeremiah  
For 1<sup>st</sup> Respondent : Mr.Syed Aejaaz  
For Respondents 2 & 3 : No appearance  
For 4<sup>th</sup> Respondent : Mr.Mohammed Fayaz Ali

**ORDER**

This Civil Revision Petition is filed challenging the order dated 26.09.2011 passed by the learned Principal Subordinate Judge, Salem in I.A.No.2 of 2009 in W.O.P.No.22 of 2002.

2. Learned counsel for the Petitioner contended that the learned Principal Subordinate Judge, Salem erred in law in dismissing the Petition to condone the delay of 296 days in seeking to set aside the exparte decree dated 05.11.2007.

3. The Court below has rightly held that, for seeking relief under Section 5 of the Limitation Act, the Applicant must satisfy the Court that, they have sufficient cause for not making the Application within the prescribed time. Even assuming that the Petitioner was unable to meet his counsel, the other Petitioners could have met the Counsel and proceeded with the enquiry.

4. Even if the delay is enormous, if there is any justifiable ground, the delay has to be condoned. Assuming that, the delay is very small and the reasons are not germane, the Court cannot condone the same. In a similar circumstance, a Division Bench of this Court, by an order dated 15.02.2018, in the case of **M/s.Ruskim Sea Foods Limited vs. M/s.Evergreen Sea Foods Pvt. Ltd.** in C.M.P.Nos.21784 and 21785 of 2017, which were filed to condone the delay of 765 days in preferring the Appeal, dismissed the said Petitions. Relevant paragraphs of the said decision are extracted hereunder:

“32. Ordinarily, the 'Condonation of Delay' is a matter of discretion to be exercised by the Concerned Court. Also, it is true that the length and breadth of delay is not relevant, but the acceptance of explanation can only be a relevant criterion for the concerned Court to deal with / condone the aspect of 'Condonation of Delay'. However, in this regard, the Petitioner / concerned litigant is to offer / ascribe sufficient reasons or project sufficient cause or good cause to condone the delay with a view to enable the Concerned Court to take a liberal view with a view to secure the ends of justice.

33. It is to be borne in mind that the term 'Sufficient Cause' under Section 5 of the Limitation Act, 1963 is an elastic one to enable the Court to apply the Law in a meaningful fashion, with a view to secure the ends of justice. However, 'Sufficient Cause' / 'Good Cause' is a condition precedent for exercise of discretion by the Concerned Court in regard to the 'Condonation of Delay'. If the delay in question is not

either properly or satisfactorily and convincingly explained, the Court of Law cannot condone the delay on sympathetic ground alone, as per decision of Hon'ble supreme Court **Brijesh Kumar V. State of Haryana reported in AIR 2014 SCC at Page 1612.**

36. The Petitioner has come with unclean hands and the Hon'ble Supreme Court in the decisions, which were cited by the Petitioner, had categorically held that the 'length of delay is not a matter, but the acceptance of explanation is only criteria and length of delay may be long, but if there is justification, long delay can also condoned'. If there is a short delay and the explanation is not satisfactory and if it is on account of smack or malafide or on account of dilatory strategy, this Court cannot help the persons, who come before this Court to condone the delay and protract the proceedings.”

5. In view of the above Division Bench ruling of this Court, and as the reasons assigned on behalf of the Petitioner herein are bereft of necessary qualitative and quantitative details, this Court is of the view that there is no need to interfere with the order passed by the Court below.

6. In view of the foregoing, **this Civil Revision Petition stands dismissed. No costs.**

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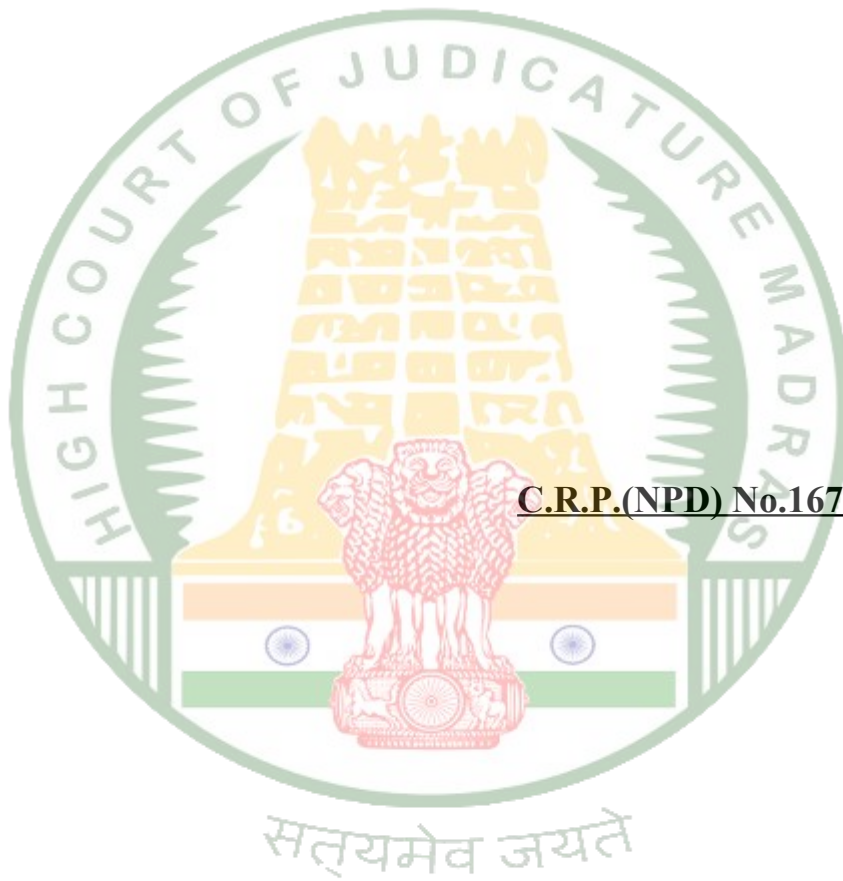
03.03.2020

(aeb)

To: The Principal Subordinate Judge, Salem.

**S.VAIDYANATHAN,J.**

(aeb)



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