

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.NPD.No.1209 of 2021
and
C.M.P.No.9338 of 2021

1.K.M.Shaul Ahmed

... Petitioners/Petitioners/Respondents 3 &
4/Judgment Debtors 3 & 4 / Legal Heirs of
Deceased Defendant Mr.K.M.Mohammed
Yaseen. Debtor/Plaintiff

Vs

M/s.Azeez Badsha Sahib's Charities,
Rep. by its Secretary.

... Respondent/Respondent/Petitioner/Decree
Holder/Plaintiff

Civil Revision Petition filed under Article 226 of Constitution of India to set aside the fair and decretal order dated 18.12.2020, passed in E.A.No.2 of 2019 in E.P.No.3347 of 2016 in E.P.No.2236 of 2013 on the file of X Assistant City Civil Court, Chennai in O.S.No.4611 of 2003 on the file of the I Assistant City Civil Court, Chennai.

For Petitioner .. Mr.A.Prabhakaran

For Respondent .. No appearance

ORDER

This present Revision Petition has been filed questioning the order dated 18.12.2020 in E.A.No.2 of 2019 which Execution Application has been filed in E.A.No.3347 of 2016 which Execution Application had been filed in E.P.No.2236 of 2013 in O.S.No.4611 of 2003. The said order was passed by the learned X Assistant Judge, City Civil Court, Chennai. The said Execution Application in E.A.No.2 of 2019 had been filed by the present petitioner herein under Section 5 of the Limitation Act to condone the delay of 319 days in setting aside the exparte order dated 08.12.2020 passed against the petitioner herein in E.A.No.3347 of 2016.

2.The respondent which is a Waqf had originally filed O.S.No.4611 of 2003 seeking eviction of vacant possession of the property which was originally mentioned as Door No.20, Begum Sahib Street, Chennai – 600 014. The defendant in the said suit was the father of the present petitioner herein. The suit was decreed. Thereafter, an Appeal was filed in A.S.No.57 of 2006. That Appeal was dismissed on 06.04.2010. Thereafter, a Second Appeal was filed in S.A.No.96 of 2011. The said Second Appeal was also dismissed on 06.09.2011. Pending

adjudication of the Appeal Suit and Second Appeal, the defendant died and the petitioners herein had been impleaded as legal representatives even in the Appeal Suit and in the Second Appeal. Naturally they were aware of the proceedings. Thereafter, they did not abide by the order in the Second Appeal which provided that the respondent should get the vacant possession of the property. Thereafter, an Execution Petition was filed in E.P.No.2236 of 2013. An application had been filed seeking to amend the door number of the property from Door No.20, Begum Sahib Street, Chennai – 600014 to Door No.20A, Begum Sahib Street, Chennai- 600014 and New No.49, Begum Sahib Street, Chennai – 600014.

3.It is the contention of the respondent herein that Old Door No.20, Begum Sahib Street, Chennai – 600014 had been revised to Door No.20A, Begum Sahib Street, Chennai – 600014 and further revised to Door No.49, Begum Sahib Street, Chennai – 600014. There is no doubt about the identity of the property.

4.It is stated by Mr.A.Prabhakar, learned counsel for the petitioner that the petitioner herein was living in a distinct property with distinct

Door No.20A Begum Sahib Street, Chennai – 600014 and that the said property has no connection with Door No.20, Begum Sahib Street, Chennai – 600014. If that had been the case, they would certainly have not taken time to file the counter. They would have put forth that particular stand in the first instance, but they had permitted the Execution Petition to proceed and to be set exparte in the year 2018. Thereafter, in the year 2019 they had opened up and filed an application seeking to condone the delay of 319 days to set aside the exparte order.

5.The learned Judge in the course of the order had stated that the reasons have not been satisfactorily explained and that the Court is not convinced with the reasons given. The learned Judge had also found that the delay from 20.07.2018 till 15.03.2019 had not been satisfactorily explained and had rejected the contention that due to inadvertence, the delay had occurred. When the respondent had been agitating in the Court of law from the year 2003 and as a matter of fact, there was an earlier suit in O.S.No.3750 of 1998 which implies that for more than 20 years, the respondent has been knocking the doors of the Court, I hold that it would be highly inappropriate to encourage the present petition.

6. With the above observations, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

22.06.2021

Internet: Yes/No
Index: Yes/No
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To

The X Assistant City Civil Court, Chennai.



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C.V.KARTHIKEYAN,J.

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