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C.R.P. (NPD) .No.1998 of 20



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 01.12.2021

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

**C.R.P.(NPD).No.1998 of 2014**

Hamidally Street, Arundale Street,  
Masjidh and Madharasha Development Committee,  
Rep by its Secretary,  
Sirajuddin.

.. Petitioner

**Vs.**

1.The Tamil Nadu State Wakf Board,  
Rep by its Secretary, Chennai – 600 004.

S.M.Nizamuddin (died)

2.S.M.Hamaluddin Fakhri (died)

Nazeeruddin Fakhir (died)

3.Ghousia Begum

4.S.M.A.K.Aazam Fakhri

5.S.M.Sabahuddin Fakhri

6.S.M.Nazeefuddin Fakhri (died)

7.Shameem Fakhri

8.S.M.Abdul Khader Fakhri

9.Fathima Zahira Naveen



10.S.M.Naser Fakhri

.. Respondents

[RR 7 to 10 are recorded as LR's of the deceased R6 viz., S.M.Nazeefuddin Fakhri, vide order of this Court dated 30.09.2019 made in C.R.P. (NPD).No.1998 of 2014 and as per memo dated 24.09.2019 in U.S.R.No.28178 of 2019]

**Prayer:** This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 12.12.2013 made in I.A.No.17809 of 2008 in O.S.No.3756 of 1998 on the file of the I Assistant Judge, City Civil Court, Chennai.

|                      |                                                |
|----------------------|------------------------------------------------|
| For Petitioner       | : Mr.N.A.Nissar Ahmed                          |
| For R1               | : Mrs.R.Sripriya<br>for Mr.V.Raghavachari      |
| For R2               | : Died                                         |
| For R3               | : No appearance                                |
| For RR 4, 5, 7 to 10 | : Mr.Hussain Afroze<br>for Mr.Zafferullah Khan |
| For R6               | : Died                                         |

### **ORDER**

(The matter is heard through "Video Conferencing/Hybrid Mode".)

This Civil Revision Petition is filed to set aside the fair and decretal order dated 12.12.2013 made in I.A.No.17809 of 2008 in O.S.No.3756 of



1998 on the file of the I Assistant Judge, City Civil Court, Chennai.

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2.The petitioner is the plaintiff in O.S.No.3756 of 1998. Initially the petitioner society was represented by one S.Nizam as Secretary of petitioner society. Originally the said suit was filed by the petitioner before this Court in C.S.No.544 of 1988 against the 1<sup>st</sup> respondent herein as 1<sup>st</sup> defendant, 2<sup>nd</sup> respondent herein as 3<sup>rd</sup> defendant and two others for declaration that judgments in O.S.No.1538 of 1960 and A.S.No.21 of 1964 on the file of the City Civil Court, Chennai are null and void and not binding on the community at large, declaration that suit property is a wakf property, directing the defendants 2 to 4 to render an account of the income from the suit property from 01.01.1982 till that date or in the alternative to render an account of the income from the suit property and cost of maintenance of the Mosque from 01.01.1982 till that date and to direct the defendants 1 to 4 to pay the cost of the suit. Subsequently, the said suit was transferred to the City Civil Court and re-numbered as O.S.No.3756 of 1998. One Sirajuddin as Secretary of petitioner society filed I.A.No.17809 of 2008 to condone the delay of 2920 days in filing the petition to restore the suit, which was dismissed for non-prosecution on 12.01.2000.



3. According to the petitioner, the said S.Nizam, the earlier Secretary of petitioner society died in the year 1998 and the suit pending on the file of this Court was transferred to the City Civil Court, Chennai and re-numbered as O.S.No.3756 of 1998. The learned counsel for the petitioner society one Mr.Kandasamy also died in the meanwhile. The present Secretary was not aware of the suit proceedings and no file is available in the society. The present Secretary is prosecuting the litigations on behalf of the society before the Wakf Board and other forums. The present Secretary came to know about the suit only while dealing with O.S.No.5371 of 2007 and collected the details from the earlier counsel's office and instructed the present counsel to take proceedings to restore the suit. In view of the above fact, the delay of 2920 days has occurred in filing the application. The delay in filing the application is neither wilful nor wanton. Before the death of earlier Secretary S.Nizam and Advocate Mr.Kandasamy, the petitioner society was prosecuting the case diligently and only due to death of the above two persons, they could not prosecute the case and prayed for condoning the delay in filing the petition to restore the suit.

4. The respondents 3 to 6 herein filed counter affidavit and denied all the averments in the affidavit. The respondents 3 to 6 contended that the



petitioner society was not a party to the suit in O.S.No.5371 of 2007 and even in the averments in the plaint filed in the said suit there is no detail of present suit was mentioned. The petitioner was prosecuting the very same issue in the present petition before the Wakf Board by filing a petition for reopening and the same was dismissed. The petitioner filed O.A.No.3 of 2004 before the Wakf Tribunal and the said O.A.No.3 of 2004 was also dismissed. The present Secretary being member of the society would have been aware of the present suit filed by the earlier Secretary S.Nizam, as resolution would have been passed authorising the said S.Nizam to file the present suit. The petitioner has not furnished any particulars with regard to death of the Secretary and counsel and the reason given by the petitioner is only after thought and are self serving statements and prayed for dismissal of I.A.

5.Before the learned Judge, the present Secretary viz., Sirajuddin examined himself as P.W.1 and one L.Chandrakumar was examined as P.W.2 and did not mark any documents. The respondents did not let in any oral and documentary evidence.

6.The learned Judge considering the averments in the affidavit, counter affidavit and proof affidavit filed, dismissed the I.A., holding that reasons

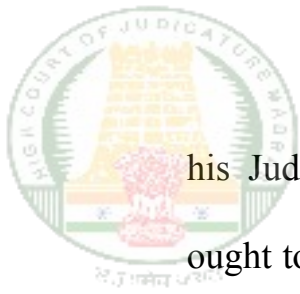


given by the petitioner are not satisfactory.

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7. Against the said order of dismissal dated 12.12.2013 made in I.A.No.17809 of 2008, the petitioner has come out with the present Civil Revision Petition.

8. The learned counsel appearing for the petitioner submitted that the learned Judge ought to have allowed the application filed to condone the delay. The learned Judge failed to see the reason given by the petitioner for condonation of delay. The petitioner has given valid and sufficient reason to condone the delay. The death of the earlier Secretary and learned counsel was not rebutted in the cross examination by the respondents. The learned Judge failed to appreciate the evidence of P.W.1 & P.W.2 let in by the petitioner. Without considering the evidence, the learned Judge erroneously dismissed the I.A. He further submitted that length of delay is not a criteria and acceptability of the explanation is the only criteria for condoning the delay. In every case of delay, there can be some lapse on the part of the litigant concerned and that alone is not enough to dismiss the application. The inconvenience caused to other respondents for the delay could be compensated by awarding exemplary cost. The learned Judge by exercising



his Judicial discretion and adopting lenient, liberal and realistic approach, ought to have allowed the application for condoning the delay. Unless delay is condoned, the interest of Wakf would be greatly prejudiced. In support of his contention, the learned counsel relied on the following judgments and prayed for allowing the Civil Revision Petition.

(i) Judgment of the Hon'ble Apex Court reported in **1998 AIR (SC) 3222, [N.Balakrishnan Vs. M.Krishnamurthy]**;

(ii) Division Bench judgment of this Court reported in **2007 (4) CTC 449, [Arun Alexander Lakshman Vs. A.P.Vedavalli]**;

(iii) Judgment of this Court reported in **2013 (7) MLJ 349, [Karuppusamy and another Vs. K.C.Palanisamy]** and

(iv) Judgment of Madurai Bench of this Court reported in **2016 (2) MLJ 561, [Kottar Chettu Nainar Desika Vinayagar Devaswom Trust rep. by its Trustee 2 to 5 and others Vs. Assistant Commissioner, H.R. and C.E., Department, Nagercoil, Vadiveeswaram Village, Agastheeswaram Taluk, Kanyakumari District and others]**.

9.The learned counsel appearing for the 1<sup>st</sup> respondent made his submission in support of the award passed by the learned Judge and prayed



for dismissal of the Civil Revision Petition.

10.The learned counsel appearing for the respondents 4, 5, 7 to 10 submitted that the present Secretary contested the matter before the Wakf Board, Tribunal and even before the Hon'ble Apex Court. He contested the matter relating to the same issue and the reason given by the petitioner for condoning the huge delay of 2920 days is not sufficient. The learned Judge considered the above fact and rightly dismissed the application. There is no reason to interfere in the award passed by the learned Judge and prayed for dismissal of the Civil Revision Petition.

11.Though notice has been served on the 3<sup>rd</sup> respondent, there is no representation for her either in person or through counsel.

12.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1<sup>st</sup> respondent and the learned counsel appearing for the respondents 4, 5, 7 to 10 and perused the entire materials on record.

13.From the materials on record, it is seen that the petitioner has filed the present I.A. to condone the delay of 2920 days in filing the petition to



restore the suit. According to the petitioner, the suit was filed and prosecuted by earlier Secretary S.Nizam and he fell ill and subsequently he died. Further, the earlier counsel Mr.Kandasamy also died. To prove this, the petitioner has not produced any details as to when the earlier counsel Mr.Kandasamy died. Further, the petitioner has stated that the earlier Secretary S.Nizam died in the year 1998. According to the petitioner, he is functioning as Secretary of petitioner society. He has not given any details from which date he is functioning as Secretary of petitioner society. On the other hand, it is the case of the respondents 4 to 10 that the present Secretary viz., Sirajuddin was prosecuting the very same issue before the Wakf Board, Wakf Tribunal and they filed the C.R.P. before this Court and appeal before the Hon'ble Apex Court. Further, the said Sirajuddin being the member of the society, would have known the authorisation given to earlier Secretary S.Nizam to file the present suit and the present Secretary cannot plead ignorance that he is not aware of the pending suit. The petitioner has not denied the said contention of the respondents. A reading of the affidavit filed in support of the present application to condone the delay shows that affidavit is bereft of particulars and details as to how the delay of 2920 days has occurred. In view of the same, the judgments relied on by the learned counsel appearing for the petitioner do not advance the case of the petitioner. In the present case, the



reason given by the petitioner is not valid, sufficient and bonafide.

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14.It is well settled that length of delay is not a criteria. The reasons given by the party must be valid and acceptable and intention of the party must be bonafide. The learned Judge has considered all the materials and rightly dismissed I.A.No.17809 of 2008. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

15.For the above reasons, the Civil Revision Petition is dismissed. No costs.

**01.12.2021**

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Index : Yes / No

Internet : Yes / No

To

The learned I Assistant Judge,  
City Civil Court,  
Chennai.



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**V.M.VELUMANI, J.**  
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