

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.374 of 2017

Arulmigu Thiruvatteeswarar Thirukkoil,
Rep. By its Executive Officer,
having office at the temple premises at Triplicane,
Chennai 600 005.

... Petitioner

Vs.

1.P.Umapathy

2.The Zonal Officer, Corporation of Chennai,
XII Zone, Alandur,
Chennai 600 016.

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., to set aside the fair and decreetal order dated 30.10.2015 made in I.A.No.851 of 2014 in O.S.No.632 of 2006 on the file of the Additional District Munsif Court, Alandur.

For Petitioner

: Mr.D.R.Sivakumar
for M/s.S.D.Ramalingam

For Respondents : Mr.P.Thiagarajan (For R1)

M/s.R.Gopinath (For R2)

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 30.10.2015 made in I.A.No.851 of 2014 in O.S.No.632 of 2006 on the file of the Additional District Munsif, Alandur.

2.The petitioner/plaintiff filed O.S.No.632 of 2006 on the file of the Additional District Munsif Court, Alandur, for delivery of possession, damages, permanent injunction and mandatory injunction, against the respondents. The 1st respondent filed written statement and contested the suit. The suit was dismissed for default on 19.03.2013. The petitioner filed I.A.No.851 of 2014 to condone the delay of 303 days in filing the petition to restore the suit. According to the petitioner, the present suit was clubbed with O.S.No.630 of 2006 for joint trial. At that stage, the 2nd defendant in O.S.No.630 of 2006 died. The petitioner took steps for impleading the legal heirs of the deceased 2nd defendant in O.S.No.630 of

2006. While so, the present suit was dismissed for non-appearance of the petitioner. According to the petitioner, in view of pendency of interim application for impleading the legal heirs of the 2nd defendant in O.S.No.630 of 2006, the petitioner was under the impression that the present suit will be taken up for trial after disposal of the said I.A., filed for impleading the legal heirs of the 2nd defendant in O.S.No.630 of 2006. The non-appearance of the petitioner and delay in filing the I.A. to restore the suit is neither wilful nor wanton and prayed for allowing the I.A.

3.Before the Trial Court, the 1st respondent remained exparte in I.A.No.851 of 2014, filed to condone the delay in filing the petition to restore the suit. The counsel for the 2nd respondent contended that only to drag on the proceedings, the petitioner has come out with the present I.A. and petition filed by the petitioner is not maintainable and prayed to dismiss the said I.A.

4.The learned Judge, considering the averments in the affidavit and materials on record and judgment of the Hon'ble Apex Court, dismissed the I.A., holding that the reason given by the petitioner is not sufficient.

5.Against the said order dated 30.10.2015 made in I.A.No.851 of 2014 in O.S.No.632 of 2006, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel appearing for the petitioner submitted that there is no limitation for filing suit for recovery of properties belonging to the religious institution. As per the amended Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the limitation Act is not applicable to the application filed to set aside the exparte order of dismissal. The idol of the temple is minor and it is for the Court to protect the interest of religious institution. The learned counsel, in support of his contention, relied on the following judgments:

(i) **1996 1 LW 231 [Sri.Madhavaperumal Devasthanam,**

Mylapore Vs. Dhanalakshmi and others]:

“4. It should not be forgotten that an idol is in the position of a minor. It has been held in Bishwanath Vs. Radha Ballabhji (AIR 1967 SC 1044) that an idol is in the position of a minor and when the person representing it leaves it in lurch, a person interest in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest. The principle would certainly apply in a case where the persons in management of a temple have not been as diligent as is necessary in conducting a litigation on behalf of the temple. The court can taken notice of the fact that Executive Officers who are put in charge of the temple are changed periodically and in many a case, they do not get fully acquainted with the history or affairs of the temple. If there is some slackness on the part of the Executive Officer or even the trustees of the temple, it is the duty of the Court to see that the idol does not suffer thereby. Courts should be astute to protect the interests of an idol in any litigation.”

(ii) **(2004) 1 MLJ 27 [K.S.Selvaraj and others Vs. Sree**

Komaleeswarar Devasthanam]:

“12.In the case of Sankaralingam Vs. VRAhuraman, (2002) 3 C.T.C. 13, the four principles governing the condonation of delay under Section 5 of the Limitation Act and

its aspects were formulated as below:

“(i) Whether petitioner has satisfactorily proved sufficient cause for delay?

(ii) Whether petitioner is guilty of negligence or inaction or want of bona fide?

(iii) Whether valuable right that has accrued to other party is likely to be defeated by condonation of delay? and

(iv) Whether petitioner has arguable points on facts and law?”

13.Considering the above four aspects, the delay has been proved in-as-much as the machinery to protect the interests of the idol was inactive and by having a pragmatic approach, as the idol being compared with a minor, the Courts have an inherent duty to protect its interest, especially when the persons appointed for protecting the interests act against the same.”

7.The learned counsel appearing for both the respondents separately contended that the reason given by the petitioner to condone the delay of 303 days is not sufficient and valid. The intention of the petitioner is not bonafide. Only to drag on the proceedings, the petitioner filed the present I.A. and prayed for dismissal of the Civil Revision Petition.

8.Heard the learned counsel appearing for the petitioner, 1st respondent as well as the 2nd respondent and perused the entire materials on record.

9.It is the contention of the learned counsel appearing for the petitioner that the present suit and O.S.No.630 of 2006 were ordered to be tried together and posted for trial not in the list. The 2nd defendant in O.S.No.630 of 2006 died and petitioner has taken steps to implead the legal heirs of the 2nd defendant. While the said application was pending, the present suit was taken up and dismissed for default. The learned Judge has not considered this contention of the petitioner while deciding the I.A. The petitioner being a religious institution, filed the said suit for delivery of possession and damages of the property belonging to them.

10.It is well settled that application to condone the delay must be considered liberally and parties should not be shut out at the threshold itself. The party must be given an opportunity to putforth their case on merits. The 1st respondent remained exparte before the learned Judge in

the present I.A., to condone the delay in filing the petition to restore the suit. He did not contest the said I.A. Considering the above materials, the fact that the petitioner is religious institution and the judgments relied on by the learned counsel appearing for the petitioner, this Court is of the view that opportunity must be given to the petitioner to put forth their case on merits. For the above reason, the order of the learned Judge dated 30.10.2015, made in I.A.No.851 of 2014 is set aside and the said I.A.No.851 of 2014 is ordered. The learned Additional District Munsif, Alandur is directed to number the I.A. filed for restoration of suit and pass orders on merits and in accordance with law.

With the above direction, this Civil Revision Petition is allowed.

No costs.

Index :: Yes/No
gsa

05.10.2021

To

1.The Additional District Munsif,
Alandur.

2.The Zonal Officer,
Corporation of Chennai,
XII Zone, Alandur,
Chennai 600 016.

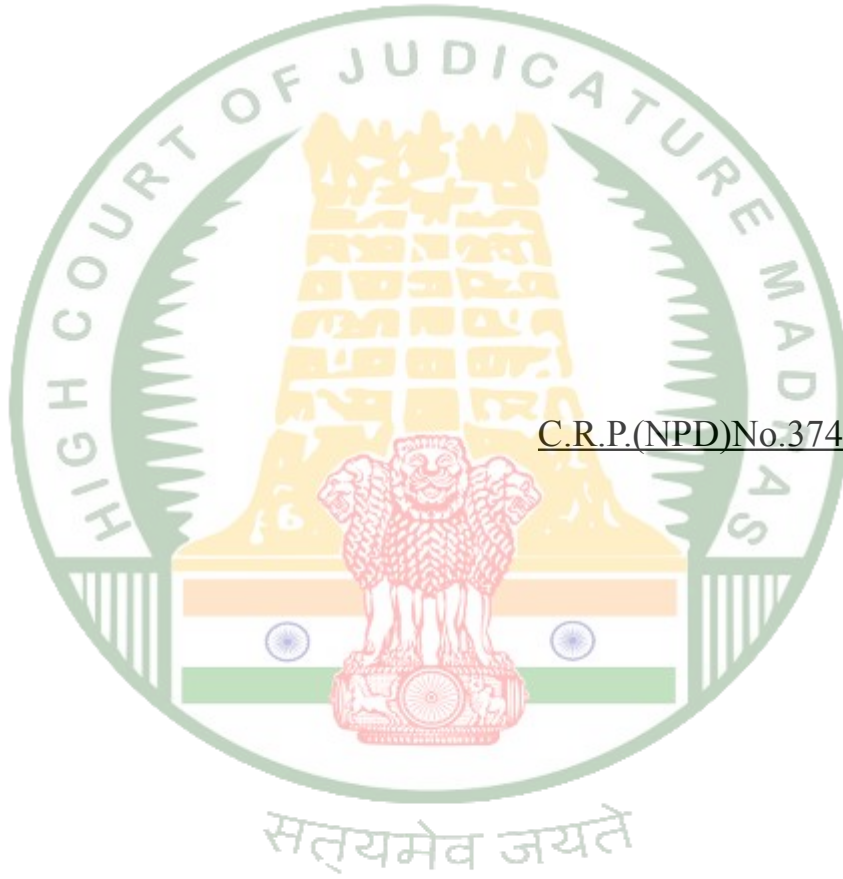


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V.M.VELUMANI, J.

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