



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.09.2021

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.M.P. (MD)No.13064 of 2019

in

REV.APLW(MD)SR.No.37247 of 2019

in

WP(MD)No.8162 of 2018

The District Collector,
Tirunelveli District,
Collectorate Complex,
Tirunelveli

... Petitioner/Petitioner/Respondent

-Vs-

M.Kanagasabapathy,
S/o. G. Muniyandi Thevar,
21/57, Indira 2nd Street,
Sivagiri, Tirunelveli District. ... Respondent/Respondent/Petitioner

Prayer in W.M.P.(MD)No.13064 of 2019: Writ Miscellaneous Petition filed under Section 5 of Limitation Act to condone the delay of 338 days in filing the present Review Application against the order passed in W.P.(MD)No.8162 of 2018 dated 27.04.2018 on the file of this Court.

Prayer in REV.APLW(MD)SR.No.37247 of 2019: Review Application filed under Order 47 Rule 1 and 2, Section 114 r/w 151 of the Code of Civil Procedure, to review the order passed in W.P.(MD)No.8162 of 2018 dated 27.04.2018.

For Petitioner : Mr.B.Ghandiraj
Government Advocate
For Respondent : Mr.C.Arul Vadivel @ Sekar

ORDER

This Writ Miscellaneous Petition has been filed to condone the delay of 338 days in filing the review petition in Review Application W(MD)SR No.37247 of 2019 against the order passed in WP (MD)No.8162 of 2018 dated 27.04.2018.

2.In support of this Writ Miscellaneous Petition, the reason for condoning the delay of 338 days, according to the petitioner herein has been stated at para 4 of the affidavit, which reads thus:



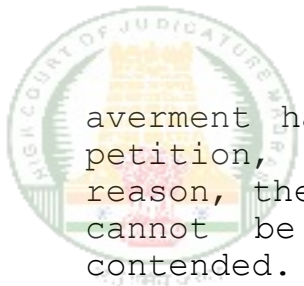
"4.It is humbly submitted that the order passed by this Hon'ble Court dated 27.04.2018, signed by the Sub Assistant Registrar (CS II) on 27.11.2018 and the same was received in the office of the District Collector, Tirunelveli on 15.12.2018. Action was taken to comply with the order and a reasoned order was passed on 31.12.2018. But the Respondent/Petitioner herein filed a contempt petition by suppressing vital fact and hence legal opinion was sought for from the learned Additional Advocate General and as advised by him the present review application is filed with a delay of days. The delay is neither willful nor wanton, but only due to the administrative exigencies and hence the delay is liable to be condoned."

3.The learned Government Advocate appearing for the petitioner in this matter, on instructions, would submit that, in fact the order of this Court made in W.P.(MD)No.8162 of 2018 dated 27.04.2018 having been received by the respondent, was decided to comply with the same, of course on merits and accordingly, an order had been passed by the respondent on 05.01.2019, whereby the plea of the writ petitioner, who is the respondent herein was rejected.

4.Since the plea of the petitioner had been rejected through the said proceedings dated 05.01.2019, the writ petitioner felt aggrieved over the same, on the ground that orders of this Court made in W.P.(MD)No.8162 of 2018 dated 27.04.2018 was not complied with, therefore, on that ground, he had chosen to file a contempt petition in Cont.P.(MD)No.333 of 2019, wherein it seems that notice have been ordered. Therefore, that could be the reason for the official respondent to come out with the present review application, of course after taking the legal advice from the Government Advocate.

5.This is what exactly stated precisely at para 4 of the affidavit filed in support of this petition, which has been quoted hereinabove, the learned Government Advocate contented.

6.I have heard Mr.C.Arul Vadivel @ Sekar, learned counsel appearing for the respondent/writ petitioner, who would submit that, if at all the petitioner herein, who is the respondent in contempt petition has to defend the contempt proceedings on any other plausible ground they can face the contempt in the manner known to law and merely because the contempt petition has been filed by the writ petitioner, the Government authority, who is the petitioner herein cannot invoke the jurisdiction of this Court to file a review application, which can be invoked only if any error apparently on the face of the record is available. Admittedly, even no such



averment had been made in the affidavit filed in support of this petition, except in para 4 of the same and therefore, for such reason, the huge delay of 338 days in filing this review application cannot be condoned. Therefore, this has to be rejected, he contended.

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7.I have considered the said rival submissions made by the learned counsel appearing for both parties and have perused the materials placed before this court.

8.As has been rightly pointed out by the learned counsel for the writ petitioner, who is the respondent in this Writ Miscellaneous Petition that at para 4 of the affidavit filed in support of this petition, the petitioner herein, who is the respondent in the main writ petition has stated that on receipt of the order passed by this Court in the writ petition, they have complied with the order and in this regard, they also passed an order on 05.01.2019 rejecting the plea of the petitioner. Therefore, by passing such proceedings dated 05.01.2019, the issue has been concluded according to the respondent in the main writ petition. However, it is the case of the writ petitioner that the issue is not concluded by passing the order dated 05.01.2019. According to the writ petitioner, infact the official respondent in the writ petition has committed a contempt. That is the reason why he was triggered to file a contempt petition as referred to above in Cont.P.(MD) No.333 of 2019.

9.If such a contempt petition is filed, where notice is ordered to the respondent, it is open to the respondent in the contempt petition to file counter to take a defence as to the action taken on behalf of the respondent in the contempt petition by passing the proceedings dated 05.01.2019 and in that case, this Court will hear the contempt petition on merits and decide the same as to what action to be taken in the said contempt petition. However, in order to overcome the said contempt proceedings, admittedly without any other reason including the very vital reason of alleged error apparently on the face of the record, the petitioner has approached this Court by filing review application. Since the review application has been filed with a delay of more than 300 days, the said attempt now has been made by the present petitioner, who filed this Writ Miscellaneous Petition to condone the delay in filing the Rev.Aplw.SR(MD) No.37247 of 2019 cannot be accepted. Therefore, this Court has no hesitation to dismiss the Writ Miscellaneous Petition and accordingly it is rejected.

10.Whatever the defence the present petitioner, that is the official respondent in the writ petition wants to make in the pending contempt petition No.333 of 2019, it is open to them to take those defence by filing a suitable counter in the contempt petition in that case. That would be heard and decided on its own merits.



11.With these observations, the present Writ Miscellaneous Petition is dismissed. Consequently, Rev.Aplw.SR(MD) No.37247 of 2019 is rejected at the SR stage itself. No costs.

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Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pnm/sm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

The District Collector,
Tirunelveli District,
Collectorate Complex,
Tirunelveli

Order made in
W.M.P. (MD) No.13064 of 2019
in
REV.APLW (MD) SR.No.37247 of 2019
Dated:
02.09.2021

GC (04.10.2021) 4P 2C