



C.R.P.(PD) No.1260 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (PD) No.1260 of 2019
and C.M.P. No.8212 of 2019

Al Jamiyathus Salafia,
Represented by its Present Secretary K.Aslam Basha,
No.58, Rahmadabad, 1st street,
Pernamput – 635 810,
Vellore District.

.. Petitioner

Vs.

1. Syed Afsar @ Babu
2. Shainaz Begum

Both represented by its Power Agent
N.Riyaz Ahmed,
Asanambut Road, Ambur Town,
Vaniyambadi Taluk,
Vellore District.

.. Respondents

Civil Revision Petition is filed under 115 of Civil Procedure Code, to set aside the impugned order dated 04.12.2018 in I.A. No.3 of 2018 in A.S. No. Nil of 2018 on the file of the Ld. Principal District Judge, Vellore and allow this Civil Revision Petition, so that the appeal be decided on its merits.



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For Petitioner : Mr. Inthu Karunakaran

For Respondents : Mr. T.M.Hariharan

ORDER

Aggrieved by the order in I.A. No.3 of 2018 in unnumbered appeal suit filed by the petitioner as appellant before the Principal District Judge, Vellore, dismissing the application filed to condone the delay of 1551 days in filing the appeal as against the judgment and decree of the Subordinate Judge, Gudiyattam in O.S. No.23 of 2008, this Civil Revision Petition is preferred.

2. Brief facts that are necessary for the disposal of the Civil Revision Petition are as follows:

The revision petitioner is the defendant in suit in O.S. No.23 of 2008 on the file of Sub Court, Gudiyattam. The suit is for declaration of plaintiff's title over the suit property and for recovery of possession. The suit is also for permanent injunction restraining the defendant organization from putting up any kind of construction over the suit schedule property. The further prayer is also for mandatory injunction directing the defendant to demolish and remove all the constructions put up by the defendant within the suit property.



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3. This Court, having regard to the nature of dispute, is able to see that the plaintiff in the suit has filed the suit in respect of the property which is adjacent to the existing mosque constructed by the revision petitioner. The revision petitioner is a Society and it can also be recognised as a Waqf. The suit was contested by the revision petitioner on many grounds. From the averments in the written statement, it is seen that the defendant was made as part or unit of another organization which is also having the same principles of Islam. It is stated by the revision petitioner that there was an attempt by the bigger Organization to keep the revision petitioner as part of their organisation and that the said idea prompted them to claim property right over the property which was purchased for the benefit of the revision petitioner. Though further details are not necessary for the present revision petition, it is admitted that the suit filed by the respondent was decreed by judgment and decree dated 19.08.2013. Three years later, an execution petition in E.P. No.30 of 2017 was also filed. However, as against the judgment and decree, the revision petitioner preferred an appeal with a delay of 1551 days in filing the appeal. The reasons stated in the affidavit filed in support of the condone delay petition was that the newly elected committee which has assumed office



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in December 2017, came to know about the non-filing of appeal just a few days before the application to condone the delay was filed. It is further stated that the then Secretary who was contesting the matter on behalf of the revision petitioner organization failed to file appeal even though it was presumed that an appeal had actually been filed against the judgment and decree in O.S. No.23 of 2008.

4. Though a counter affidavit was filed by the respondent herein denying the averments, this Court is unable to disbelieve the reasons for the delay. The revision petitioner is an organization which is formed as Waqf for the welfare of people who professes Islam and recognised to be part of a particular religious sect. The dispute relates to a piece of a land just in front of the mosque and hence the sentiments of people who are attached to the mosque can be sensed. In such matters, the Court is not expected to take a pedantic approach. The petitioner has given an explanation which cannot be ignored especially in the light of an apology letter given by the erstwhile Secretary of the revision petitioner. Due to inaction of the erstwhile Secretary, the present office bearers are now put to this perilous position. The petitioner's interest to protect the society cannot be ignored.



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5. Having regard to the decree that was granted, the revision petitioner would be put to serious prejudice and it is likely to affect the community interest. In such circumstances, showing lenience, this Court is inclined to exercise its discretion to advance the cause of justice. However, considering the fact that the delay is inordinate and it could have been avoided, this Court is of the view that the respondent should be compensated for the inconvenience put to them. Hence, the revision petitioner shall pay a sum of Rs.10,000/- to the respondent counsel within a period of two weeks from the date of receipt of a copy of this order.

6. Accordingly this Civil Revision Petition is allowed subject to the payment of the above cost indicated above. Consequently, connected miscellaneous petition is closed. The application in I.A. No.3 of 2018 in A.S. No. Nil of 2018, stands allowed on payment of cost above mentioned.

04.01.2022

Speaking order / Non-speaking order

Index: Yes / No

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S.S.SUNDAR, J.,

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To

The Principal District Judge, Vellore.

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