

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.12.2021

PRONOUNCED ON : 23.06.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.M.P.NO.26537 OF 2021

IN

W.P.NO.30954 OF 2014

AND

W.M.P.SR.NO.44502 OF 2021

Purushotham Nagar Alaya Paripalana Sabha,
(Regn.No.340 of 2013)
Represented by its President,
Shri D.Srinivasan,
Sri Vijaya Ganapathy Sri
Lakshminarayana Perumal Temple,
No.5, III Cross Street,
Purushotham Nagar,
Chrompet, Chennai - 600 044.

... Petitioner

.Vs.

1. The State of Tamil Nadu,
Represented by its Secretary,
Tourism, Culture and Religious
Endowments Department,
Government of Tamil Nadu,
Chennai - 600 009.
2. The Joint Commissioner,
Chennai Region,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.
3. The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Chennai - 600 034.

... Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India, praying to condone the delay of 423 days in filing the present Restoration Petition against order dated 24.01.2020 in W.P.No.30954 of 2014.

PRAYER in W.P.No.30954 of 2014:-

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of declaration, declaring that the impugned order dated 21.10.2014 passed in Se.Mu.Na.Ka.No.3820/2014/A1 by the third respondent appointing the Executive Officer of Arulmighu Selva Vinayakar and Kothandaramar Temple of West Tambaram, Chennai as the Fit person for the Sri Vijaya Ganapathy and Sri Lakshmi Narayana Perumal Temple in No.5, III Cross Street, Purushotham Nagar, Chrompet, Chennai - 600 044 administered by the petitioner as ultravires to Articles 14, 15 (1), 25, 26, 29 and 31A (1)(b) of the Constitution of India.

For Petitioner : Mr.Naveen Kumar Murthi
For M/s.S.Varsha

ORDER

This petition has been filed with the prayer to condone the delay of 423 days in filing the restoration petition against the order dated 24.01.2020 in W.P.No.30954 of 2014.

2. By the order dated 24.01.2020, a learned Judge of this Court has passed the following order dismissing the writ petition for non-prosecution.

"The matter is listed under the caption "for dismissal" today. There is no representation on the side of the petitioner. Even on the earlier occasion i.e., on 07.01.2020, there was no representation on the side of the petitioner. It can now be inferred that the petitioner is not interested in prosecuting this writ petition. Accordingly, this writ petition is dismissed for non-prosecution. No costs. Consequently, connected miscellaneous petitions are closed."

3. In order to restore the writ petition on file, the petitioner has filed a restoration petition in W.M.P.Sr.No.44502 of 2021 in W.P.No. 30954 of 2014.

4. Along with the said application for restoration, the petitioner also filed the present petition seeking to condone the delay of 423 days in filing the restoration petition, that is how this miscellaneous petition has been filed.

5. When this miscellaneous petition was moved, this Court, after having gone through the facts of the case, was of the prima facie view that, whether any separate petition is required seeking to condone the delay of whatever days in filing the restoration petition against any order of dismissal of the writ petition for want of prosecution, that was the doubt arisen.

6. In order to delve into the said question, Mr. Naveen Kumar Murthi, learned counsel appearing for the petitioner has submitted that, the writ petition was placed for hearing before the learned Judge on 07.01.2020, on that date since there was no representation on behalf of the petitioner, it was again posted on 24.01.2020 under the caption "for dismissal". Even on that date, since there was no representation on the part of the petitioner, the Court has taken the view that, the petitioner was not interested in prosecuting the writ petition and accordingly, the writ petition was dismissed for non-prosecution.

7. In this context, by relying upon the averment made in the affidavit filed in support of this miscellaneous petition, the learned counsel would contend that, the learned counsel, who was counsel on record previously to the petitioner, seems to have not appeared on 24.01.2020, with the result, the writ petition came to be dismissed for non-prosecution. Thereafter, the petitioner had obtained the case related papers and documents from the erstwhile Advocate on record and handed over the papers to the present counsel through whom the present miscellaneous petition is filed.

8. He has also submitted that, due to the Covid-19 pandemic situation, there was a delay on the part of the previous counsel on record in handing over the related case papers, there arose a delay in filing the miscellaneous application seeking for restoration of the writ petition. Therefore, in order to condone the said delay, this petition was filed to condone the delay of 423 days in filing the restoration petition.

9. Though the said submission was made by the learned counsel for the petitioner, in view of the doubt arisen as stated supra, as to whether such a condone delay petition was required to be filed, the learned counsel would further contend that, as per the Rule framed by the High Court regulating the proceedings under Article 226 of the Constitution of India, there is no such limitation prescribed and moreover the law of

limitation will not be applicable to the writ proceedings under Article 226 of the Constitution and if at all there is any inordinate delay for approaching the Court by invoking the extraordinary jurisdiction under Article 226, only the point of laches alone to be considered by the Court and not the delay by strictly applying the principles of Limitation Act.

10. By making these submissions, the learned counsel would further submit and canvass the point that, the 90 days delay or 30 days delay whatever calculated by the Registry, of course initially was accepted by the petitioner's side for filing a restoration petition against the order of dismissal dated 24.01.2020, however it is not contemplated either under Article 226 of the Constitution or the Rules made by the High Court regulating the proceedings under Article 226 of the Constitution.

11. When that being so, only on the assumption that the Limitation Act will apply to the proceedings under Article 226, this condone delay petition has been filed, hence the learned counsel seeks indulgence of this Court to go into the aspects by construing the legal position and accordingly decide the petition as per Law.

12. In support of his contention, the learned counsel has brought to the notice of this Court the decision of the Hon'ble Supreme Court in Smt.Sudama Devi Vs. Commissioner and others reported in (1983) 2 SCC 1.

13. I have considered the submissions made by the learned counsel appearing for the petitioner and have perused the materials placed before this Court.

14. The main writ petition i.e., W.P.No.30954 of 2014 has been filed for the relief of writ of declaration declaring that the impugned order dated 21.10.2014 passed by the 3rd respondent appointing the Executive Officer of Arulmighu Selva Vinayakar and Kothandaramar Temple of West Tambaram, Chennai as the Fit person for the Sri Vijaya Ganapathy and Sri Lakshmi Narayana Perumal Temple in Chromepet, Chennai - 44 administered by the petitioner, as ultra vires to the Constitution.

15. The said writ petition was pending for sometime i.e., upto the year 2020 and it was listed for hearing on 07.01.2020, on that date since there was no representation on behalf of the petitioner, the learned Judge who heard the matter directed to list the matter i.e., the main writ petition on 24.01.2020 under the caption "for dismissal".

16. Accordingly, when the case came up for hearing under the caption "for dismissal" on 24.01.2020, even on that day also,

since there was no representation on behalf of the writ petitioner, the Court has taken a decision that the writ petitioner was not interested in prosecuting the writ petition, accordingly the writ petition was dismissed for non-prosecution.

17. Though such an order was passed on 24.01.2020, the petition to restore the said writ petition was filed in W.M.P.Sr.No.44502 of 2021, long after, with the present miscellaneous petition i.e., W.M.P.No.26537 of 2021 seeking to condone the delay of 423 days in filing the restoration petition.

18. At the time of filing the restoration petition, the petitioner thought of filing this petition to condone the delay by calculating the delay from the date of order i.e., from 24.01.2020 till the date of filing as per the usual calculation of delay, as if that the provisions of the Limitation Act is applicable to the proceedings filed under Article 226 of the Constitution i.e., writ proceedings.

19. However, this Court, after hearing the learned counsel appearing for the petitioner, has gone through the Rule framed by the High Court regulating the proceedings under Article 226 by its rule making power. The present rule which is in vogue governing the field is the Rule called 'Madras High Court Writ Rules, 2021', which was published in the Tamil Nadu Government Gazette on 8th September, 2021 [hereinafter be called as 'Rules'].

20. Under Rule 32 of the Rules, all previous rules framed by the High Court to regulate proceedings under Article 226 of the Constitution of India including the Madras High Court Writ Rules, 2021, published in the Tamil Nadu Government Gazette Issue No.26 dated 30.06.2021, shall stand repealed. Notifications, circulars and administrative instructions inconsistent with these Rules shall stand repealed to the extent of such inconsistency.

21. Thereby the earlier Rules, notifications, circulars and administrative instructions issued by the High Court are all superseded and therefore, the only available rule is the present Rules of 2021.

22. In the Rules, among other things, Rule 22 speaks about 'Dismissal for default' which reads thus:

"22.Dismissal for default: Immediately on the expiry of the said period of 14 days if no steps have been taken by the party or the Advocate for service of the notice or rule nisi, the Registry

shall forthwith place the matter before the Court for further orders. The Court may, if the party or the Advocate explains the delay, grant further time not exceeding 14 days, except in cases where any of the parties are reported dead, to take necessary steps to get the notice or rule nisi served. If no steps are taken even thereafter the Writ Petition or the Writ Miscellaneous Petition/s, as the case may be, shall stand dismissed without further reference to Court. This shall not, however, preclude the petitioner/s from seeking restoration of the case so dismissed by an appropriate application."

23. On a careful reading of the Rule 22, we can find that, the last line of the Rule states that, this shall not, however, preclude the petitioner/s from seeking restoration of the case so dismissed by an appropriate application.

24. Therefore, under what circumstances a writ proceedings can be dismissed for default and once it is dismissed for default whether it can be restored on application, has been provided under Rule 22 as stated supra.

25. Therefore, the restoration application i.e., W.M.P.Sr.No.44502 of 2021 was filed by the petitioner, of course under Rule 22 of the Rules. However, while filing such application, whether any condone delay petition is required to be filed by the petitioner simultaneously is the question now.

26. In this context, the judgment relied upon by the learned counsel for the petitioner in Sudama Devi case (cited supra) can be pressed into service, where, the Hon'ble Supreme Court in a similar circumstances has passed the following judgment:

" We are of the view that so far as writ petition under Article 226 of the Constitution is concerned, there can be no hard and fast rule of 90 days by way of period of limitation but the general rule of laches alone can be applied and this must necessarily depend on the facts and circumstances of each case. The High Court has said in its order that "the writ petition was beyond time by 136 days. Neither the explanation of 136 days nor the explanation for filling it today, was given." This view does not appear to be correct because the High Court has proceeded on the assumption that there is a period of limitation of 90 days and unless sufficient cause is shown as contemplated under Section 5 of the Limitation Act, a writ petition filed after the expiration of 90 days is liable to be rejected. This assumption is wholly unjustified. There is no period of

limitation prescribed by any law for filing a writ petition under Article 226 of the Constitution. It is in fact doubtful whether any such period of limitation can be prescribed by law. In any event one thing is clear and beyond doubt that no such period of limitation can be laid down either under rules made by the High Court or by practice. In every case it would have to be decided on the facts and circumstances whether the petitioner is guilty of laches and that would have to be done without taking into account any specific period as a period of limitation. There may be cases where even short delay may be fatal while there may be cases where even a long delay may not be evidence of laches on the part of the petitioner. We would, therefore, set aside the order of the High Court and remand the writ petition to the High Court so that the High Court may dispose it of on merits in accordance with law. We accordingly allow the appeal, set aside the judgment and order of the High Court and direct that the writ petition may be disposed of by the High Court on merits in accordance with law. There will be no order as to costs."

27. In the said decision, the Hon'ble Supreme Court has held that, so far as the writ petition under Article 226 of the Constitution is concerned, there can be no hard and fast rule of 90 days by way of period of limitation but the general rule of laches alone can be applied and this must necessarily depend on the facts and circumstances of each case.

28. By holding so, the Hon'ble Supreme Court set aside the order passed by the High Court, which was impugned before the Hon'ble Supreme Court in the said case, where the High Court was of the view that, there is a period of limitation of 90 days in filing a writ petition.

29. The party approached the High Court after the 90 days by assuming that, there was a period of limitation of 90 days had filed a condone delay petition. However, sufficient cause since was not given for condoning the delay under Section 5 of the Limitation Act, that petition filed for condoning the delay was rejected. That action on the part of the High Court was considered to be an unjustifiable order based on the assumption that there was a limitation for writ proceedings.

30. The Hon'ble Supreme Court has further held that, there is no period of limitation prescribed by any law for filing a writ petition under Article 226 of the Constitution. In fact, it is doubtful whether any such period of limitation can be prescribed by law.

31. Therefore, the Hon'ble Supreme Court has further held that, in every case it would have to be decided on the facts and circumstances whether the petitioner is guilty of laches and that would have to be done without taking into account any specific period as a period of limitation.

32. If that is the law declared by the Hon'ble Supreme Court with regard to the point of limitation to be raised on the proceedings initiated under Article 226 of the Constitution, then the question of filing any specific condone delay petition to condone such a delay by calculating a limitation period applying the provisions of the Limitation Act does not arise.

33. The only course of action that has to be undertaken is that, if any restoration petition is filed belatedly i.e., long after the dismissal order passed in this regard by the Court dismissing any proceedings filed under Article 226 of the Constitution, such a restoration petition must be evaluated whether the petitioner has given sufficient cause to file the restoration petition to state that, on the particular date when it was dismissed for default whether any lawful reason available for the petitioner that he was prevented from appearing and thereafter, if the petitioner has not approached the Court within a reasonable time and if there is any long delay in approaching the Court for filing a restoration petition, such a long period can be justifiable or not and in this case, whether the point of laches can be invoked against the petitioner, who filed such restoration petition, alone can be considered and decided that too depending upon the facts and circumstances of a particular case.

34. If these yardsticks are pressed into service, in the present case, there are sufficient cause and acceptable reasons given by the petitioner in filing the restoration petition and to restore the writ petition. With regard to the delay caused or the late approach of the petitioner in filing the restoration petition is concerned, if we look at the circumstances of the case, even the point of laches cannot be put against the petitioner, therefore, on this basis only the restoration petition filed by the petitioner in W.M.P.Sr.No.44502 of 2021 shall be decided.

35. However, absolutely there was no necessity in filing any separate petition seeking to condone the delay on the basis of assumption that, there is a limitation prescribed for proceedings under Article 226 and that limitation is 90 days or 30 days as the case may be and from such date the delay caused in approaching the Court for filing a restoration petition should be treated as a delay and in order to condone the said delay separate petition to be filed, where each and every day

delay has to be explained to the satisfaction of the Court as in the case of other petitions to condone the delay invoking Section 5 of the Limitation Act, all these aspects do not figure in the proceedings under Article 226 of the Constitution in view of the law declared by the Hon'ble Supreme Court as stated supra.

36. That apart, the Rules regulating the proceedings under Article 226 speaks only about the right of the party to file a restoration petition, where there is no limitation prescribed. When that being so, compelling the party to file any petition to condone the delay in filing the restoration petition to restore the writ petition, which was dismissed for default, is beyond the scope of the Rules and also the law declared by the Hon'ble Supreme Court as stated supra.

37. Therefore, this Court is of the considered view that, the present petition in W.M.P.No.26537 of 2021 seeking to condone the delay of 423 days in filing the restoration petition in W.M.P.Sr.No.44502 of 2021 is an unwanted exercise as that petition need not have been filed by the petitioner.

38. Therefore, the Registry is directed to return the condone delay petition filed in W.M.P.No.26537 of 2021 in W.P.No.30954 of 2014 to the petitioner/petitioner's counsel.

39. As a sequel, the restoration petition filed in W.M.P.Sr.No.44502 of 2021 is to be allowed for the reasons stated in the affidavit filed in support of the said petition, accordingly the said restoration petition is allowed. The Registry is directed to give number to the said W.M.P.Sr.No.44502 of 2021 with regular WMP number. Consequently, the main writ petition i.e., W.P.No.30954 of 2014 is restored on the file of this Court. The Registry is also directed to place the main Writ Petition before the concerned Court for adjudication. Accordingly, these Miscellaneous Petitions are disposed of.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Secretary,
Tourism, Culture and Religious
Endowments Department,
Government of Tamil Nadu,
Chennai - 600 009.
2. The Joint Commissioner,
Chennai Region,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.
3. The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Chennai - 600 034.

Copy To:-

1. The Section Officer,
Writ Section,
High Court, Madras.
(To carry out directions
stated in Order)
2. The Sub Assistant Registrar,
Writ A.E. Section,
High Court, Madras - 104.

W.M.P.NO.26537 OF 2021 IN
W.P.NO.30954 OF 2014 AND
W.M.P.SR.NO.44502 OF 2021

AK-II (CO)
PBS/30/06/2022