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C.R.P.No.2388 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2022

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.2388 of 2019

Bysani Madhava Chetty's Charity Fund,
Having its office at,
No.27, General Muthaiah Mudali Street,
Sowcarpet, Chennai – 600 079.
Rep. by its Hony. Secretary.

... Petitioner

Vs.

1. The Commissioner,
Hindu Religious & Charitable Endowment,
(Admn.) Department,
Nungambakkam,
Chennai – 600 034.
2. The Joint Commissioner,
Hindu Religious & Charitable Endowment,
(Admn.) Department,
Nungambakkam,
Chennai – 600 034.
2. Bysani Madhava Chetty's Charity Fund,
Having its office at,
No.27, General Muthaiah Mudali Street,
Chennai – 600 079.
Rep. by its fit person/Executive Officer,



C.R.P.No.2388 of 2019

Amended as per order dated
28.02.2017 in I.A.No.2098,
I.A.No.5079 of 2018 dated
17.04.2018

... Respondents

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 20.09.2018 made in I.A.No.5080 of 2018 in O.S.Sr.No.46567 of 2012 on the file of the learned I Assistant Judge, City Civil Court at Chennai and thereby condone the delay of 1461 days in representing the plaint by the petitioners.

For Petitioner : Mr.S.R.Ragunathan

For Respondents

For R1 & R2 : Mr.C.Sathish
Government Advocate

For R3 : Mr.S.Sithirai Anandam

ORDER

The Civil Revision Petition has been filed as against the order dated 20.09.2018 passed by the learned I Assistant Judge, City Civil Court, Chennai, in I.A.No.5080 of 2018 in O.S.Sr.No.46567 of 2012, thereby dismissing the petition to condone the delay of 1461 days in representing the suit papers.

2. The petitioner filed suit for declaration declaring that the



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performance of 14 items of ceremonies set out at in the plaint are “specific endowment” as defined under Section 6(19) of the Tamil Nadu Hindu Religious and Charitable Endowment Act (herein after referred to as “the HR&CE Act”) and also declare that the petitioner being secular in character would not come within the purview of the HR& CE Act, and declare that the petitioner is not a religious institution as contemplated under Section 6(18) and Section 63(A) of the HR & CE Act. They also prayed to set aside the order dated 17.07.2007 made in O.A.No.10 of 2000 and also confirmed in A.P.No.44 of 2007 dated 19.06.2012, by the respondents 1 & 2 herein.

3. The said suit was returned for want of some corrections. However, it was not represented within the time stipulated by the Court below for the reasons that the petitioner could not trace some of the documents. The petitioner repeatedly requested the respondents and therefore, there was the delay of 1461 days in representing the suit. Therefore, the petitioner filed an application in I.A.No.5080 of 2018 to condone delay and the same was dismissed by the Court below for the reason that the petitioner failed to explain the delay with proper appropriate



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reason each and every day. Hence the petitioner filed this present Civil Revision Petition.

4. The learned counsel appearing for the petitioner submitted that admittedly, the suit was filed in time, challenging the order passed in O.A.No.10 of 2000 and A.P.No.44 of 2007 as contemplated under the HR & CE Act. Further the suit was returned for compliance and the same was represented only after the period of 1461 days. In the meanwhile, the petitioner also sent several requests to obtain the documents and also submit representation before the District Registrar of Societies under Right to Information Act. Thereafter, the petitioner also filed Writ Petition before this Court in W.P.No.30457 of 2015 for direction to direct the District Registrar of Societies to furnish the copies of documents. The same was allowed, however, the petitioner could not serve with any documents. Hence there was a delay and the trial Court ought to have allow the petition. In support of his contention, he relied upon the following reported judgments:-

(i) 1993 (2) A.P.L.J. 464(HC) – K.Prakash Rao Vs. The Singareni



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Collieries Co., Ltd., & anr

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(ii) 1993 TLNJ 375 – Y.Cusbar Vs. K.Subbarayan

Therefore, he prayed to allow this Civil Revision Petition.

5. The learned counsel appearing for the respondents submitted that already the petitioner filed application in O.A.No.10 of 2000 for declaration declaring that the petitioner is not coming under the purview of the HR & CE Act and it was dismissed and the same was also confirmed in the appeal. Therefore, no purpose would be served if the trial Court entertained the suit. Hence, he prayed to dismiss the present revision.

6. Heard Mr.S.R.Ragunathan, learned counsel appearing for the petitioner, Mr.C.Sathish, learned Government Advocate appearing for the respondents 1 & 2 and Mr.S.Sithirai Anandam, learned counsel appearing for the third respondent.

7. The present suit filed by the petitioner is a statutory suit as



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contemplated under Section 70 of the HR & CE Act. It has been filed challenging the order passed in O.A.No.10 of 2000 and A.P.No.44 of 2007.

The suit was filed in time with the following prayers:-

“a. declaring that the performance of 14 items of ceremonies set out at paragraph 5 of the plaint are “specific endowments” as defined under Section 6(19) of the Tamil Nadu Hindu Religious and Endowments Act, 1959;

b. Declaring the plaintiff being secular in character would not come within the purview of the Tamil Nadu Hindu Religious and Endowments Act, 1959;

c. declaring that the plaintiff is not a “religious institution” as contemplated under Section 6(18) and Section 63(a) of the Tamil Nadu Hindu Religious and Endowments Act, 1959;

d. setting aside the order in O.A.No.10 of 2000 dated 17.07.2007 and the order in A.P.No.44 of 2007 D2 dated 19.06.2012, passed by the second and first defendants respectively,

e. passing such further and other orders as this Hon'ble Court may deem fit and proper in the interest of justice.”

8. The learned counsel appearing for the petitioner relied upon the



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judgment reported in **1993 (2) A.P.L.J. 464(HC)** in the case of **K.Prakash**

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Rao Vs. The Singareni Collieries Co., Ltd., & anr., in which the Hon'ble Division Bench of the High Court of Andhra Pradesh held that the time for representation is fixed by the Court itself and not by law. The Court has undoubted power to condone such type of delays in exercise of its power under Section 148 of C.P.C. An order passed by the Court exercising discretion to condone the delay in representation cannot be questioned by the opposite party to the proceedings on the ground of want of notice. Such a plea is plainly untenable. No questions for adjudication either under substantive law or procedural law especially under the law of limitation, arise at that stage.

9. Considering the above judgment, the Court below ought to have allowed the condone delay in representing the plaint. Hence, this Court is inclined to allow this Civil Revision petition. Accordingly, the order dated 20.09.2018 passed by the learned I Assistant Judge, City Civil Court, Chennai, in I.A.No.5080 of 2018 in O.S.Sr.No.46567 of 2012, is hereby set aside. The trial Court viz., the learned I Assistant Judge, City Civil Court,



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Chennai, is directed to number the suit and proceed with the suit in accordance with law.

10. With the above direction, this Civil Revision Petition stands allowed. There shall be no order as to costs.

19.12.2022

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts



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To

1. The I Assistant Judge,
City Civil Court,
Chennai.
2. The Commissioner,
Hindu Religious & Charitable Endowment,
(Admn.) Department,
Nungambakkam,
Chennai – 600 034.
3. The Joint Commissioner,
Hindu Religious & Charitable Endowment,
(Admn.) Department,
Nungambakkam,
Chennai – 600 034.
4. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

rts

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