

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 27TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR. JUSTICE G. BASAVARAJA

CIVIL REVISION PETITION NO.200099 OF 2023

BETWEEN:

SYED MOHAMMED HUSAAIN
S/O LATE S. CHANDA HUSSAINI
AGED 80 YEARS
OCC: MUTHAWALI AND SAJJADA NASHEEN
DARGA HAZRATH SYED SHAMSALAM HUSSAINI
RAICHUR 584 101

...REVISION PETITIONER

(BY SRI DESHPANDE G.V.,
SRI ANANTH S. JAHAGIRDAR,
SRI GANESH S. KALABURAGI, ADVOCATES)

AND:

1. THE KARNATAKA STATE BOARD OF WAQF
NO.6, DARUL AUQAF
CUNNINGHAM ROAD
BANGALORE - 560 052
THROUGH ITS CHIEF EXECUTIVE OFFICER
2. THE DISTRICT WAQF OFFICER
DISTRICT WAQF ADVISORY COMMITTEE
RAICHUR 584 101
3. SYED AHRAF RAZA
S/O CHANDA HUSSAINI

AGE 67 YEARS
OCC; ILLEGALLY APOOINTED AS MUTHAWALLI
OF DARGHA HAZRATH SYED SHAH SHAMSALAM HUSSAINI
RAICHUR 584 101

...RESPONDENTS

(BY SRI LIYAQAT FAREED USTAD, ADVOCATE FOR R1;
SRI SYED JAVEEDA HAQ, ADVOCATE FOR R3;
SRI GOPALKRISHNA B. YADAV, HCGP FOR R2)

THIS CIVIL REVISION PETITON IS FILED UNDER SECTION 83(9) OF THE PROVISO OF THE AUQAF ACT PRAYING TO SET ASIDE THE ORDER DATED 17.08.2019 PASSED IN APPLICATION NO.20/2017 BY THE PRESIDING OFFICER, KARNATAKA WAQF TRIBUNAL, KALABURAGI.

IN THIS PETITION ARGUMENTS BEING HEARD, JUDGMENT RESERVED ON IA.I OF 2023, COMING ON FOR "PRONONCEMENT OF ORDERS", THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The revision petitioner has filed application in IA.I of 2023 under Section 5 of the Limitation Act seeking to condone delay of 593 days in filing this Revision Petition in assailing the order dated 17th August, 2019 passed in Application No.20 of 2017 by the learned Presiding Officer, Karnataka Waqf Tribunal, Kalaburagi. The application is supported by the affidavit of Syed Mohammed Hussaini, in which he has stated that the Petitioner is an Octogenarian and is suffering from various ailments because of which he is not able to travel easily and frequently.

Further, it is stated that there was also COVID-19 pandemic during 2020-2022 and considering his age, he was required to be more cautious and was not advised to travel. The medical records of the revision petitioner are also enclosed with the application. The Revision Petitioner has produced discharge summary issued by SevenStar Hospital and another discharge summary issued by New Era Hospital and Research Institute. Further it is stated that after the impugned judgment, he was under the impression that there is no provision for further Revision and he was not aware about the period in which the Revision Petition can be preferred. He had approached his Counsel only recently and filed this Revision Petition. The delay is due to bonafide reasons which are beyond his control and not intentional. It is also stated that if the delay is not condoned, the Revision Petitioner would be put to huge hardship and irreparable loss and on the other hand, no prejudice would be caused to the other side.

2. On behalf of respondent No.3, statement of objections is filed by way of affidavit of one Syed Ashraf Raza, in

which it is stated that the application filed by the Revision Petitioner is not maintainable either on law or on facts. The contents of the affidavit reveal that the reasons assigned are false and baseless and are created only for the purpose of filing this false case and the same is liable to be rejected. It is further stated that the Revision Petitioner has filed another application under Section 83(2) of the Karnataka Waqf Act, 1995 in Application No.22 of 2019 before the Karnataka Waqf Tribunal, Kalaburagi, against the respondents therein challenging the order dated 04th October, 2019, appointing the respondent No.3 as Muthawalli and Sajjada Nasheen of Dargah Hazrath Syed Shah Shams Alam Hussaini (Rh) Raichur. It is further stated that, in the said Application, the petitioner filed IA.5 under Order VI Rule 17 of the Code of Civil Procedure. The Waqf Tribunal, after hearing both sides, has rejected the said application and the main petition also dismissed the main petition on 30th March, 2022. Further, it is stated that, the order dated 17th September, 2019 passed by the Waqf Tribunal in Application No.20 of 2017, the petitioner filed the Application under Section 83(2) of the Waqf Act, 1995 in Application No.22 of 2019 on 11th October,

2019. It is further stated that, though in the application filed seeking condonation of delay it is stated that the petitioner was suffering from various ailments, but the Medical Discharge Summary clearly shows that the petitioner was discharged on 29th June, 2019. Hence, the contents of the affidavit seeking condonation of delay are totally false, baseless and are contrary to records and there is no sufficient cause made out by the petitioner for condoning the delay. It is further stated that the delay is more than one year nine months, which is nothing but pure negligence on the part of the petitioner. It is further stated that the reasons shown by the petitioner indicates negligence of the party.

Submission of the learned counsel for the petitioner:

3. The learned counsel for the petitioner vehemently submitted that the impugned order was passed on 17th August, 2019, and the petitioner filed this petition before this Court on June 15, 2023. He submitted that if the COVID-19 pandemic period is excluded, the petitioner has filed the revision petition within three years from the date of the impugned order, as

contemplated under Section 137 of the Indian Limitation Act, 1963. Further, he submits that there is absolutely no delay in filing this revision petition. However, with abundant caution, the petitioner has filed this application seeking that, delay if any, be condoned for the reasons assigned in the affidavit. On all these grounds, the learned counsel sought to allow the application by condoning the delay.

Submission of the learned counsel for the respondent No.3:

4. On the other hand, the learned counsel for the respondent No.3 submitted that the limit prescribed under the Limitation Act to prefer revision before this Court is only ninety days from the date of the order impugned passed by the Karnataka Waqf Tribunal. Even excluding the COVID-19 pandemic period, there is a delay of 593 days in filing this revision petition. The revision petitioner has not provided any material to condone the delay in filing this revision petition. The petitioner has produced the copy of the discharge card issued by SafeCure Hospital, which reveals that the petitioner was admitted to the Hospital on February 8, 2022, and was

discharged on February 15, 2022. The discharge summary issued by SevenStar Hospital reveals that the petitioner was admitted on July 20, 2022, and discharged on July 25, 2022, and at the time of discharge, the condition of the patient is shown as "stable". The discharge summary issued by NewEra Hospital and Research Institute reveals that the petitioner was admitted to the hospital on June 28, 2019, and discharged on June 29, 2019. This discharge summary also reveals that, at the time of discharge, the condition of patient was stable. Accordingly, the petitioner has failed to make out sufficient cause to condone the delay in preferring this revision petition. On all these grounds, the respondent sought to dismiss the petition.

5. Having heard the learned counsel for the parties, and on perusal of the material placed before this Court, the following points would arise for my consideration:

- (1) Whether the provision of Article 137 of the Limitation Act, 1963 is applicable to prefer Revision Petition against the order passed by the Karnataka Waqf Tribunal?

(2) Whether the petitioner has made out sufficient cause to condone the delay in filing the Revision Petition?

(3) What order?

6. My answer to the above points are as under:

Point No.(1): in the negative;

Point No.(2): in the negative;

Point No.(3): as per final order.

Regarding Point No.(1):

7. The Karnataka Waqf Tribunal, Kalaburagi, passed the impugned order on August 17, 2019, based on the memo dated July 23, 2019 submitted by respondent No.3, seeking dismissal of the main petition on the ground that the Application had become infructuous. This was due to the final order dated July 4, 2019, passed by the High Court in Writ Petition No.208138 of 2017 and Writ Petitions No.201057-058 of 2018 in the matter of SYED MOHAMMED HUSSAINI v. THE KARNATAKA STATE BOARD OF WAKF AND OTHERS. The petitioner filed this Revision petition under Section 83(9) of the proviso of the Waqf Act on June 15,

2023. The learned counsel for the petitioner submitted that if the COVID-19 pandemic period is excluded, the Revision Petition is preferred within three years from the date of the impugned order, and hence the petition is in time under Article 137 of the Limitation Act, 1963. To substantiate his arguments, he relied on the judgment of the High Court of Judicature of Bombay, Bench at Aurangabad, rendered in Civil Revision Application No.48 of 2021, decided on July 26, 2021.

8. At this stage, it is appropriate to mention as to the provisions of Rule 6 of Chapter-VII of High Court of Karnataka Rules, 1959. The same reads as under:

"Chapter-VII – Petitions

6. (1) Petitions to revise the order or proceedings of any Court for which no period of limitation is prescribed by any law applicable to it shall be presented to the High Court within a period of ninety days from the date of the order complained of in computing which period, provisions of section 12 of the Indian Limitation Act shall apply;

(2) Such petitions presented after the period prescribed by sub-rule (1) shall be accompanied by an

application supported by an affidavit setting forth the grounds on which the petitioner relies to get the delay condoned and the petition entertained by Court. The Court may, if is satisfied that the petitioner was prevented by sufficient cause from presenting the petition within the period prescribed, excuse the delay and entertain the petition with or without issuing the notice of the application to the respondent;

(3) No party shall be added to any such petition after the expiry of the period prescribed under sub-rule (1) except upon an application made for the purpose supported by an affidavit unless the Court itself directs suo motu that such party be added."

9. Though there is no specific period fixed for preferring the Revision Petition under the Waqf Act, 1995, in view of the aforementioned provisions of the High Court of Karnataka Rules, 1959, petitions to revise the order or proceedings of any court for which no period of limitation is prescribed by any applicable law, shall be presented to the High Court within a period of ninety days from the date of the order complained of. In computing this period, the provisions of Section 12 of the Indian Limitation Act shall apply. In view of the aforementioned provisions of the High Court of Karnataka Rules, 1959, the

decisions relied upon by the learned counsel appearing for the Revision Petitioner cannot be made applicable. Accordingly, I answer point No.(1) in the negative.

Regarding point No.2:

10. On calculation of the delay in filing the revision petition, it is shown that there is a delay of 593 days, excluding the COVID-19 pandemic period. Further, the discharge card issued by SafeCure Hospital reveals that the petitioner was admitted to the Hospital on February 8, 2022, and discharged on February 15, 2022. In the discharge summary issued by Seven Star Hospital, it reveals that the petitioner was admitted to the hospital on July 20, 2022, and discharged on July 25, 2023. Further, in the discharge summary issued by New Era Hospital and Research Institute, it is stated that the petitioner was admitted to the hospital on June 28, 2019, and discharged on June 29, 2019. In all these discharge summaries issued by the aforementioned hospitals, it is stated that, at the time of discharge, the condition of the patient was stable. Therefore, the discharge summaries produced by the petitioner are not

sufficient to explain the delay of 593 days in filing the revision petition.

11. Another ground urged by the petitioner in his affidavit is that he is an octogenarian and was not aware that the revision can be preferred before this Court. If the petitioner is aged and suffering from age-related ailments, he could have filed the revision petition through his Power of Attorney, but he has not chosen to do so. In this case also, the petitioner has not appointed a power of attorney to prosecute this case. He has given vakalat to the concerned advocate and filed this revision petition. The petitioner has filed application No.20 of 2017 before the Karnataka Waqf Tribunal through his Advocate. Under the given set of circumstances, the advocate who has appeared on behalf of the revision petitioner would have suggested taking steps against the impugned order within the prescribed time. But he has not done so. Viewed from any angle, the petitioner has not placed any sufficient cause to condone the inordinate delay of 593 days, excluding the COVID-

19 pandemic period. Accordingly, in answer to Point No.(2), in the negative.

Regarding point No.3:

12. For the aforesaid reasons and discussions, I proceed to pass the following:

ORDER

1. Application IA.I of 2023 filed under Section 5 of the Limitation Act, seeking to condone the delay of 593 days in filing the Revision Petition is dismissed.
2. Consequently, the Revision Petition also stands dismissed.
3. In view of the dismissal of the main petition, pending applications, if any, also stand disposed of.

**Sd/-
JUDGE**

Inn