

(2013) 11 KAR CK 0032
In the Karnataka High Court
Case No : W.A. No. 4565 of 2010 (GM-WAKF)

Karnataka Muslim Sangarsha Samithi	APPELLANT
Vs	
Khalid Ahmed, Chairman Karnataka State Board of Wakfs and Others	RESPONDENT

Date of Decision : 25-11-2013

Acts Referred:

Citation : (2013) 11 KAR CK 0032

Hon'ble Judges : N.K. Patil, J;Budihal R.B., J

Bench : Division Bench

Advocate : Kaleemulla Shariff, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The appellant, questioning the correctness or otherwise of the order impugned passed by the learned Single Judge, in Writ Petition No. 1476/2010 (GM-WAKF) dated 20th October 2010, has presented this writ appeal. Along with the appeal, learned counsel appearing for appellant has also filed I.A. 1/2013, seeking condonation of delay of 929 days in filing the recalling application.

2. The delay of 929 days in filing the appeal has been explained at paragraphs 2 to 5 of the affidavit filed in support of the application, I.A. 1/2013. Paragraphs 2 to 5 of the said affidavit read thus:

2. The appellant states that, the above writ appeal had posted for non-compliance of office objections on 29-3-2011, since the cause list was not received by the counsel, he could not appear before the court. The appeal was dismissed for non-prosecution. As the counsel for the appellant has renovated his office, by mistakes the appeal memo was mixed with the disposed of matters and he lost track of the case.

3. Appellant states that only when the respondents filed their objections in W.P. No. 33441/2011, producing the copy of the above writ petition. In the meanwhile

no objection was given in W.P. No. 33441/2011 and Mr. R.L. Patil, Advocate filed vakalath, under these circumstances, dismissal of the above W.A. No. 4505/2010 was totally lost from the mind of the counsel. Only now when the respondents in W.P. No. 33441/2011 during the course of arguments on 12-11-2013 raised the question of dismissal of Writ appeal only then it is realized about the dismissal of the writ appeal.

4. The appellant has today filed an application for recalling the order dated 29-3-2011 for the reasons stated above, a delay of about 900 days caused in filing the application for recalling the order dated 29-3-2011.

5. The appellant has got a good case on merits. If the delay is not condoned if the appeal as not restored, he will be put to great hardship.

3. We have heard the learned counsel appearing for appellant and perused the statements made in the affidavit, accompanying the application, I.A. 1/2013.

4. After going through the statements made in the affidavit filed in support of the application, we are of the considered view that the inordinate delay of 929 days in filing the recalling application has not been explained satisfactorily by assigning valid and cogent reasons. The explanation offered at paragraphs 2 to 5 is in a very casual manner. Except making bald statements, no credible or trustworthy reasons are assigned for explaining the delay of 929 days in filing the recalling application for recalling the order dated 29th March 2011. Whenever there is inordinate delay, the party is bound to explain each day's delay in filing the recalling application by setting out the dates and events. In the entire explanation offered, not even a single date is forthcoming. Further, it can be seen that in the affidavit at page 4, in the last paragraph, there is over writing in mentioning "929" days on the typed 900 days, without any signature or permission from the concerned. This establishes the careless and negligent attitude in filing the application for condoning the delay of 929 days in filing the recalling application. In the absence of the clear dates and events in the explanation offered, no credibility can be given to the statements made in the affidavit. Hence, in view of non explanation of inordinate delay in filing the recalling application, in a satisfactory manner, we are of the view that delay cannot be condoned nor the appellant has made out a good case to condone the inordinate delay. Hence, for the foregoing reasons, I.A. 1/2013 is dismissed as misconceived. Consequently, the appeal filed by appellant is liable to be dismissed.

5. However, in the interest of justice and equity, we have gone through the order dated 20th October, 2010, passed by the learned Single Judge in Writ Petition No. 1476/2010 to find out as to whether there is any scope for interference. It is manifest on the face of the same that the learned Single Judge, after critical evaluation of the entire material available on his file, has recorded cogent and valid reasons at paragraphs 5 to 7 of his order for disposing of the said writ petition. The same is well founded and well reasoned. Therefore, interference in

the said order of the learned Single Judge is not called for. Having regard to the totality of the case on hand, the writ appeal filed by appellant is dismissed on the ground of delay and laches as also on merits.

In view of disposal of the main matter, I.A. 2/2013 filed for recalling the order dated 29th March 2011 does not survive for consideration and the same is accordingly disposed of as having become infructuous.