

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 4429 of 2023

Applicant :- Devendra Kumar Sharma And Another

Opposite Party :- Ruchi Tiwari, Acj(Senior Division)

Counsel for Applicant :- Ajeet Singh,Kamlesh Kumar

Counsel for Opposite Party :- Chandan Sharma

Hon'ble Rohit Ranjan Agarwal,J.

1. Receivership in the temple town of Mathura has become the new norm. Most of the famous and ancient temples are in the grip of legal battle, restraining the temple trust, its Shebait and the Committee to manage its affairs and are being run by persons appointed by the Court as Receivers under Order XL of Code of Civil Procedure, 1908 (*hereinafter called as 'C.P.C.'*).

2. Out of the list of 197 temples as provided by District Judge, Mathura on 23.05.2024, there are civil litigations pending of these temples situated at Vrindavan, Govardhan, Baldeo, Gokul, Barsana, Maath etc. The litigation ranges from the year 1923 till the year 2024. In these famous temples of Vrindavan, Govardhan and Barasana, practising advocates of Mathura Court have been appointed Receivers. The interest of Receiver lies in keeping the litigation pending. No effort is made to conclude the civil proceedings, as the entire control of temple administration vest in the hands of Receiver. Most of the litigation is in respect of management of temples and appointment of Receivers.

3. A practising lawyer cannot devote sufficient time for the administration and management of a temple, especially of Vrindavan and Goverdhan, which needs skill in the temple management along with full devotion and dedication. It has become a symbol of status in the city of Mathura.

4. The present contempt application under Section 12 of Contempt of

Courts Act has been filed by a stranger for punishing the opposite party on the ground that earlier Writ Court on 23.11.2021, while disposing of Matters under Article 227 No. 4468 of 2021 had set aside the order of Civil Judge (Senior Division), Mathura passed in Original Suit No. 332 of 1999 appointing an advocate as a Receiver who was also the counsel of the plaintiff.

5. The court below was required to decide the application for appointment of Receiver afresh on merits. Pursuant to order of writ Court, the Court below proceeded to decide the application for appointment of Receiver on 28.03.2023, and appointed a Seven Member Committee of Receiver which included three lawyers.

6. The entire thrust of the applicant counsel is that court below should not have appointed a Committee of Receiver, but should have considered the application moved by the applicant for being appointed as a Receiver, it should have appointed any one person connected with temple as Receiver, and not a Committee.

7. Learned counsel then contended that on 18.11.1957 Sri Giriraj Sewak Samiti, Bara Bazar, Govardhan was constituted to manage the affairs of Sri Giriraj Temple, Govardhan, Mathura, which was registered under Societies Registration Act, and the Committee continued till 1998 without any dispute.

8. As dispute arose between office bearers of the Committee, an election petition was filed which was referred to Prescribed Authority on 13.12.1999. The Prescribed Authority on 11.02.2000 held the election to be valid. Against the said order, Writ-C No. 9601 of 2000 was filed. In the meantime, one Govind Prasad filed Original Suit No. 332 of 1999 for declaring him as Manager of the Committee of Management in pursuance of the election dated 21.04.1999. On 10.05.1999, an interim injunction was granted. The Writ Petition No. 9601 of 2000 which was filed

challenging the order of Prescribed Authority was dismissed on 10.02.2006.

9. Unfortunately, Govind Prasad Purohit passed away on 28.11.2006, and one Jitendra Prasad Purohit moved an impleadment application in the original suit setting up his claim to be appointed as Manager of Committee of Management. It was in the year 2021 that one Nand Kishore Upadhyay, Advocate was appointed as Receiver of the temple who was the advocate of Ramakant Kaushik, who was also impleaded in the Original Suit No. 332 of 1992 by removal of Jitendra Prasad Purohit. The order of appointment of Nand Kishore Upadhyay, Advocate dated 30.07.2021 was challenged by way of Matters under Article 227 No. 4468 of 2021 which was disposed of on 23.11.2021 requiring the application to be considered afresh.

10. This Court on 21.05.2024 had required the counsel appearing for Allahabad High Court to seek information from the District and Sessions Judge, Mathura as to pending civil suits in respect of temples situated in District-Mathura, and also furnish complete information in regard to date of institution of suit, stage of suit, appointment of Receiver in the suit along with the date, and also information as to the advocate appointed as Receiver in the said suits.

11. On 24.05.2024, Sri Chandan Sharma, learned counsel appearing for Allahabad High Court placed before the Court the instructions so received by him from District Judge, Mathura along with list of 197 civil suits which are pending in the Civil Court at Mathura in respect of old temples with the entire details of temple name and its location, date of institution of suit, stage of suit, whether Receiver appointed or not, if appointed date of appointment and name and details of advocates appointed as Receiver.

12. Another instruction dated 27.05.2024 has also been received from District Judge, Mathura giving the entire details of the cases mentioned

from Serial No. 1 to 8 of list submitted earlier.

13. Sri Sharma raised a preliminary objection as to the maintainability of the contempt application on the ground that the applicant is neither a party in the suit nor was under the zone of consideration for appointment of Receiver, thus, could not maintain the present contempt application. He then contended that earlier round of litigation was filed by one Dileep Kumar Sharma who was a party to Original Suit No. 332 of 1999 and impleadment application of the applicant till date has not been decided.

14. I have heard respective counsel for the parties and perused the material on record.

15. The concept of appointment of Receiver lies under Order XL of C.P.C. Relevant provision of Order XL Rule 1 reads as under:-

“1. Appointment of receivers.—(1) Where it appears to the Court to be just and convenient, the Court may by order—

(a) appoint a receiver of any property, whether before or after decree;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver; and

(d) confer upon the receiver all such powers, as to bringing and defending suits and for the realisation, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorise the Court to remove from the possession or custody of property, any person whom any party to the suit has not a present right so to remove.”

16. From perusal of provision of Order XL Rule 1 C.P.C., it is clear that the object of appointing a Receiver is to protect, preserve and manage the property during the pendency of a suit. The words “to be just and convenient” have been substituted for the words “to be necessary for the realization, preservation or better custody, or management of any

property, movable or immovable, subject of a suit or attachment”. The effect of this amendment is that the Court may now appoint a Receiver not only in a particular case specified in the old section, but in every case in which it appears to the Court to be just and convenient to do so.

17. The power of the Court to appoint a Receiver under this order is subject to the controlling provision of Section 94 and is to be exercised for preventing the ends of justice from being defeated. Section 94 CPC reads as under;

“94. Supplemental Proceedings.-In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,—

(a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;

(b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;

(c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

(d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

(e) make such other interlocutory orders as may appear to the Court to be just and convenient.”

18. The source of power of the Court to grant interim relief is under Section 94. However, exercise of that power can only be done if the circumstances of the case fall under the rules. Therefore, when a matter comes before the Court, the Court has to examine the facts of each case and ascertain whether the ingredients of Section 94 read with rules, in an order, are satisfied and accordingly grant an appropriate relief.

19. The word ‘may’ gives discretion to the Court where it is alleged that the suit property is under threat and protection, preservation, management and improvement of the property, along with collection of rents and profits is required, then the Court may exercise its power during

the pendency of litigation by appointing any person as Receiver.

20. In **Satyanarayan Banerji & Another Vs. Kalyani Prosad Singh Deo Bahadur & Others**, AIR 1945 CAL 387, the Court held that object and purpose of appointment of a Receiver may generally be stated to be the preservation of subject matter of the litigation pending, a judicial determination of the rights of the parties thereto. The Receiver is appointed for the benefit of all concerned, he is the representative of the Court and of all parties interested in the litigation, wherein he is appointed. The appointment of a Receiver is an act of Court and made in the interest of justice. He is an officer or representative of the Court subject to its order. His possession is the possession of the Court.

21. In **T. Krishnaswamy Chetty (supra)** Madras High Court had laid five principles which can be described as “*panch sadachar*” of our Courts exercising equity jurisdiction in appointing Receivers. Relevant paragraph no. 13 of the judgment is extracted here as under;

“13. The five principles which can be described as the ‘panch sadachar’ of our Courts exercising equity jurisdiction in appointing receivers are as follows:

(1) The appointment of a receiver pending a suit is a matter resting in the discretion of the Court. The discretion is not arbitrary or absolute: it is a sound and judicial discretion, taking into account all the circumstances of the case, exercised for the purpose of permitting the ends of justice, and protecting the rights of all parties interested in the controversy and the subject-matter and based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceeding: — ‘Mathusri v. Mathusri,’ 19 Mad 120 (PC) (Z5); — ‘Sivagnanathammal v. Arunachallam Pillai,’ 21 Mad LJ 821 (Z6); — ‘Habibullah v. Abtiakallah,’ AIR 1918 Cal 882 (Z7); — ‘Tirath Singh v. Shromani Gurudvvara Prabandhak Committee,’ AIR 1931 Lah 688 (Z8); — ‘Ghanasham v. Moraba,’ 18 Bom 474 (Z9); — ‘Jagat Tarini Dasi v. Nabagopal Chaki,’ 34 Cal 305 (Z10); — ‘Sivaji Raja Sahib v. Aiswariyanandaji,’ AIR 1915 Mad 926 (Z11); — ‘Prasanno Moyi Devi v. Beni Madhab Rai,’ 5 All 556 (Z12); — ‘Sidheswari Dabi v. Abhayeswari Dabi,’ 15 Cal 818 (Z13); — ‘Shromani Gurudwara Prabandhak Committee, Amritsar v. Dharam Das,’ AIR 1925 Lah 349 (Z14); — ‘Bhupendra Nath v. Manohar Mukerjee,’ AIR 1924 Cal 456 (Z15).

(2) *The Court should not appoint a receiver except upon proof by the plaintiff that prima facie he has very excellent chance of succeeding in the S. suit. — ‘Dhumi v. Nawab Sajjad Ali Khan’, AIR 1923 Lah 623 (Z16); — ‘Firm of Raghbir Singh Jaswant v. Narinjan Singh’, AIR 1923 Lah 48 (Z17); — ‘Siaram Das v. Mohabir Das’, 27 Cal 279 (Z18); — ‘Muhammad Kasim v. Nagaraja Moopnar’, AIR 1928 Mad 813 (Z19); — ‘Banwarilal Chowdhury v. Motilal’, AIR 1922 Pat 493 (Z20).*

(3) *Not only must the plaintiff show a case of adverse and conflicting claims to property, but, he must show some emergency or danger or loss demanding immediate action and of his own right he must be reasonably clear and free from doubt. The element of danger is an important consideration. A Court will not act on possible danger only; the danger must be great and imminent demanding immediate relief. It has been truly said that a Court will never appoint a receiver merely on the ground that it will do no harm. — ‘Manghanmal Tarachand v. Mikanbai’, AIR 1933 Sind 231 (Z21); — ‘Bidurramji v. Keshoramji’, AIR 1939 Oudh 61 (Z22); — ‘Sheoambar Ban v. Mohan Ban’, AIR 1941 Oudh 328 (Z23).*

(4) *An order appointing a receiver will not be made where it has the effect of depriving a defendant of a ‘de facto’ possession since that might cause irreparable wrong. If the dispute is as to title only, the Court very reluctantly disturbs possession by receiver, but if the property is exposed to danger and loss and the person in possession has obtained it through fraud or force the Court will interpose by receiver for the security of the property. It would be different where the property is shown to be ‘in medio’, that is to say, in the enjoyment of no one, as the Court can hardly do wrong in taking possession: it will then be the common interest of all the parties that the Court should prevent a scramble as no one seems to be in actual lawful enjoyment of the property and no harm can be done to anyone by taking it and preserving it for the benefit of the legitimate who may prove successful. Therefore, even if there is no allegation of waste and mismanagement the fact that the property is more or less ‘in medio’ is sufficient to vest a Court with jurisdiction to appoint a receiver. — ‘Nilambar Das v. Mabal Behari’, AIR 1927 Pat 220 (Z24); — ‘Alkama Bibi v. Syed Istak Hussain’, AIR 1925 Cal 970 (Z25); — ‘Mathuria Debya v. Shibdayal Singh’, 14 Cal WN 252 (Z26); — ‘Bhubaneswar Prasad v. Rajeshwar Prasad’, AIR 1948 Pat 195 (Z27). Otherwise a receiver should not be appointed in supersession of a bone fide possessor of property in controversy and bona fides have to be presumed until the contrary is established or can be indubitably inferred.*

(5) *The Court, on the application of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame. He must come to Court*

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with clean hands and should not have disintitiled himself to the equitable relief by laches, delay, acquiescence etc.”

22. The discretion given to the Court has to be exercised with great care and caution. It cannot in a routine manner appoint Receiver and continue the management of the temple/trust through such appointments. Every endeavour should be there to get the dispute decided at the earliest without prolonging it and running the entire show through the Receivers.

23. The present case is an example where the original suit was filed in the year 1999 claiming relief of permanent injunction restraining defendants from interfering in management and running of the temple. The suit is pending for last 25 years, and report of District Judge reveals that only plaintiff evidence has taken place. No effort has been made by court concerned to expedite the matter and decide it. Only application for appointment of Receiver has been considered on number of occasions and the temple trust is being run through Receivers. The entire dispute hinges around the appointment of Receiver. Earlier this Court in the year 2021 had set aside the order of court below appointing an advocate as Receiver and remanded back the matter for consideration afresh.

24. The officer against whom contempt has been alleged has now proceeded to appoint a Seven Member Committee of Receivers which includes three advocates. The order dated 28.03.2023 frustrates the provision of Order XL Rule 1 C.P.C.

25. In the garb of provisions of Order XL Rule 1 C.P.C., the Courts cannot prolong litigation and run a temple/trust or manage any suit property through Receiver without making any effort to decide the *lis*. 25 long years have elapsed and only plaintiff evidence has taken place. Successive litigations have come to this Court only questioning the very legality of appointment of Receiver. The suit is proceeding at snail pace. There is no effort either on the part of the court below or the Receiver who has been appointed to get the suit decided. Rule 1(d) of Order XL

clearly provides that all powers, such as, bringing and defending suits and for realisation, management, protection, preservation and improvement of the property, collection of rents and profits thereto, the application and disposal of such rents and profits and the execution of documents are all conferred upon the Receiver.

26. It appears that the Receiver appointed by the Court made no effort to get the suit decided. His only interest is to continue as a Receiver and control the entire administration of the temple. The instant contempt application at the behest of Devendra Kumar Sharma clearly reveals that he has only moved an impleadment application in the suit of 1999 to be impleaded as a party and has applied to be appointed as a Receiver which has not been considered by court below.

27. The averment made in the contempt application by the applicant and submission of his counsel reveals his intention to become a Receiver. It is not only the interest of the applicant but also of other persons to continue as a Receiver in the temples of District-Mathura without there being any adjudication to the civil litigation.

28. The list of eight temples placed by District Judge demonstrates that Radha Vallabh Mandir, Vrindavan; Dauji Maharaj Mandir, Baldeo; Nandkila Nand Bhawan Mandir, Gokul; Mukharbind, Goverdhan; Danghati, Goverdhan; Anant Shri Bhibhushit, Vrindavan and Mandir Shree Ladli Ji Maharaj, Barsana are all under the grip of Receivers and most of them are managed by practising advocates of Mathura.

29. Now, time has come when all these temples should be freed from the clutches of practising advocates of Mathura Court and Courts should make every endeavour to appoint, if necessary, a Receiver who is connected with the management of a temple and has some religious leaning towards the deity. He should also be well versed with the Vedas and Shastras. Advocates and people from district administration should be

kept away from the management and control of these ancient temples. Effort should be made for disposing of the suit, involving temple disputes at the earliest and matter should not be lingered for decades.

30. From perusal of list of pending cases provided by District Judge, Mathura, it appears that oldest of the suit being Original Suit No. 94 of 1923 of Dauji Maharaj Mandir was decided by a compromise decree on 15.10.1924. However, on a regular misc. application filed before court below, a Receiver has been appointed and the matter is being continued and the temple is being managed by a Receiver. The court below should make every endeavour to decide the misc. application which is pending therein and not run the temple through a Receiver.

31. The present case which was filed on 10.05.1999 till date has not been decided despite 25 years having elapsed. The court below is requested to expedite the matter and proceed to decide the same without wasting any time in appointment of Receiver and continuing the management through them. The order dated 28.03.2023 passed by Civil Judge (Senior Division), Mathura appointing a Seven Member Committee is liable to be set aside as it is not based on any sound principle of law. The court below is expected to comply the order passed by writ Court on 23.11.2021 in Matters under Article 227 No. 4468 of 2021 and decide the application for Receiver in consonance with provisions of Order XL Rule 1 making every effort keeping away the advocates from the said responsibility.

32. Considering the facts and circumstances of the case, this Court requests the District Judge, Mathura to take personal pain and inform his officers about this order and also make every endeavour to conclude the civil disputes regarding temples and trusts of District-Mathura as expeditiously as possible.

33. Prolonging the litigation is only creating further disputes in the

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temples and leading to indirect involvement of practising advocates and district administration in the temples, which is not in the interest of the people having faith in Hindu religion.

34. People will loose faith if the temples and religious trusts are not managed and run by persons belonging to religious fraternity but by outsiders. Such actions should be prevented at the very beginning.

35. In view of above going discussions, the order dated 28.03.2023 passed by Civil Judge (Senior Division), Mathura is hereby set aside and the matter is remitted back for consideration of the application afresh in the light of the directions of the writ Court dated 23.11.2021, within two weeks.

36. As the applicant is not a party in the suit, his application for Receiver cannot be considered. In view of aforesaid directions, the contempt application stands disposed of.

Order Date :- 27.8.2024
V.S.Singh