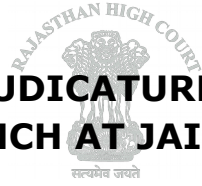




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 5610/2024

1. Bhanu Prakash Sharma son of Shri Gyanprakash Sharma, resident of Gyan Jyoti Vidhyapeeth, Khunteta Ka Rasta, Near Bhadbhuje, Third Crossing, Kishanpole Bazar, Jaipur (Raj.)
2. Bhagwan Das Gattani @ Prakash Narain Gattani, whole life trustee Shree Shiv Satsang Bhawan Trust Museum Road, Ramniwas Bag, Jaipur.

-----Petitioners

Versus

1. Moorti Mandir Thakurji, Moorti Shree Shiv Pariwar, Shree Ram Darbar, Shree Geeta Gopal, Shree Radha Krishan Ki Moorti and Guruji Akhand Brahand Nayak Swami Ji Shree Krishanand Ji K Shree Vighraha through Pujari and Next Friend Sanjay Parasar son of late Shri Sitaram Parasar, resident of Shree Shiv Satsang Mandir Bhawan, Jayacharya Marg, Ramniwas Bag, Museum Road, Jaipur.
2. Bhagwan Das Remani son of late Shri Janki Nath Temani, resident of Plot No.703, Abhishekh Vihar, Lalpura Road, Gandhi Path, Jaipur at present resident of Shri Shree Shiv Satsang Mandir Bhawan, Jayacharya Marg, Ramniwas Bag, Museum Road, Jaipur (Raj.)

-----Respondents

For Petitioner(s) : Mr. M.M. Ranjan, Sr. Adv. assisted by
Mr. Rohan Agarwal
For Respondent(s) : Mr. R.P. Garg

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

RESERVED ON : 06/05/2024
PRONOUNCED ON 10/05/2024
REPORTABLE

Order

1. By way of filing of this writ petition, the defendants-petitioners (hereinafter referred to as "the defendants") have



assailed the impugned order dated 12.03.2024 passed by the Additional District Judge No. 4, Jaipur Metropolitan-I in Civil Misc.Appeal filed by the plaintiffs-respondents (hereinafter referred to as "the plaintiffs") by which they were restrained not to cause any damage to the idols of various Gods and pictures of Shri Krishnanadji (hereinafter referred to as "Swami Ji") and not to cause any hindrance in the process of worship in the temple, till disposal of the suit.

2. The plaintiff Moorti Mandir Thakurji through its priest and next friend filed a suit for permanent injunction against the defendants before the Court of Additional Civil Judge No. 1, Jaipur Metropolitan-I (hereinafter referred to as "the Trial Court") stating therein that various idols of several Gods including pictures of Swami Ji are situated in the temple. It was alleged that the defendants are destroying the photos-sculptures of late Swami Ji by applying sandal and writing different names on his photo and are causing obstruction in the process of worship in the temple.

3. Along with the suit, a temporary injunction application under Order 39 Rule 1 & 2 CPC was also submitted seeking injunction against the defendants, till final disposal of the suit. The defendants submitted separate replies and denied the averments made in the plaint and the fact that any damage was caused by them to the idols of God and pictures in the temple was also denied.

4. After hearing the arguments of both the sides, the learned Trial Court rejected the application filed under Order 39 Rule 1 & 2 CPC by the plaintiff vide order dated 05.12.2023.



5. Feeling aggrieved and dissatisfied by the order dated 05.12.2023, the plaintiff submitted a Civil Misc. Appeal before the Court of the Additional District Judge No. 4, Jaipur Metropolitan-I (hereinafter shall be referred to as "the Appellate Court") and the same was partly allowed vide impugned order dated 12.03.2024 whereby the defendants were restrained from causing any damage to the idols of the God and pictures and sculptures of Swami Ji and not to cause any hindrance in the process of worship in the temple, till final disposal of suit.

6. Aggrieved by the impugned order dated 12.03.2024 passed by the Appellate Court, the defendants have approached this Court by way of filing this petition under Article 227 of the Constitution of India.

7. Learned Senior Counsel for the defendants submits that the defendants and thousands of followers of Swami Ji are doing "Sewa-Pooja" in this temple for last more than 25 years and they are applying Sandal on the picture of Swami Ji on the forehead, hands, etc. and are writing different spiritual names on the picture and such religious act is not causing any damage to the photo-sculpture of Swami Ji.

8. Counsel submits that under the garb of the impugned order dated 12.03.2024, the defendants are not permitted by the plaintiffs to perform "Sewa-Pooja" (worship) in the old customary style by affixing sandal and writing different spiritual names on the photo of Swami Ji. Counsel submits that such act of plaintiffs is hurting the religious and spiritual sentiments of the defendants. Hence, interference of this Court is warranted.



9. Per contra, counsel for the plaintiffs opposed the arguments raised by counsel for the defendants and submitted that in the garb of religious and spiritual sentiments, the defendants are damaging the photo-sculpture of Swami Ji. Counsel submits that the defendants have never been stopped from performing worship in the temple. Hence, no interference of this Court is warranted.

10. Heard and considered the submissions made by counsel for the parties and perused the material available on record.

11. Article 51A(f) of the Constitution of India stipulates that it shall be the duty of every citizen to value and preserve the rich heritage of our composite culture. A responsibility and special duty has been casted upon everyone for preservation of the heritage and culture and no one can be allowed to cause any damage to the idols and sculpture, etc.

12. There is a constitutional obligation to preserve the religious practices of all religions, culture and there is also a corresponding duty to act in that direction. The Hon'ble Apex Court in the case of **Sarika Vs. Administrator, Shri Mahakaleshwar Mandir Committee, Ujjain (Madhya Pradesh) and Ors.**, reported in **(2018) 17 SCC 112** has held that it is not within the jurisdiction of the Court to dictate or to prescribe or restrain the religious practices and pujas to be performed in temples. They are required to be performed in accordance with the ancient rituals and practices but, at the same time, it has to be ensured that no damage is caused to the idols. Puja has to be performed in such a manner which should be befitting to the deity and not to cause erosion itself of the idols for which so much infrastructure exists.



The idols cannot be permitted to be destructed or exploited in a manner they are destroyed.

It has been further held that, by pouring the adulterated milk, ghee, kumkum, gulal, abir containing chemicals due to adulteration is improper and cannot be permitted to be a part of the rituals. The idols cannot be permitted to be destroyed by chemical reactions of impure materials or by pouring of the dirty water such acts of offerings cannot be allowed and as are done innocently by the people unaware of ill effect on the idol. Had the devotees been aware of all these adverse effects of their puja on the idols of their God itself, of which they are performing puja for the spiritual or other gains, they would not have even dreamt of doing it.

13. Looking to the controversy involved in the matter, the Appellate Court has passed a discretionary order directing the defendants not to cause any damage to the idols of the God and photo-sculpture of Swami Ji and not to cause any hindrance in the process of worship in the temple, till final disposal of the suit.

14. In the opinion of this Court, the issues raised by counsel for the petitioner before this Court either disputing the factual issues or the legal issues, are amenable to be adjudicated by the Trial Court during course of trial of suit, at an appropriate stage and it is not permissible in law to usurp the jurisdiction of the Trial Court by this Court, while exercising its supervisory jurisdiction against the order granting temporary injunction by the Appellate Court. It is needless to reiterate that all these factual and legal issues are open to be considered by the Trial Court during the course of trial





and after recording evidence of the parties. In the given facts of the present case, it cannot be said that the Appellate Court has exercised its discretion and equitable jurisdiction in an arbitrary and whimsical manner. The order impugned cannot be said to be a perverse one or suffers from grave illegality or jurisdictional error. Moreover, the view taken by the Trial Court is not an impossible view.



15. The principles of law, governing application under Order 39 Rules 1 & 2 CPC is no more *res integra* and this issue has been settled in catena of judgments, that if the Trial Court or the Appellate Court have exercised their discretion in granting injunction, then jurisdiction of the Supervisory Court to interfere with the order of subordinate Court is very limited. The interference in the temporary injunction order passed by the Trial Court or the Appellate Court can be made only in a situation where the Supervisory Court is satisfied that the Trial Court or the Appellate Court has acted arbitrarily or contrary to law or the findings of the Trial Court or the Appellate Court are perverse or capricious, palpably incorrect and are wholly untenable. If, view taken by Appellate Court is a possible view, then the same is not required to be interfered with by the Supervisory Court.

16. The Hon'ble Supreme Court, in the case of **Maharwal Khewaji Trust (Regd.) Faridkot Vs. Baldev Dass** reported in **(2004) 8 SCC 488** has propounded a principle of law in relation to grant of temporary injunction under Order 39 Rules 1 & 2 CPC that unless and until a case of irreparable loss or damage is made out by a party to the suit, the Court should not permit the nature



of the property being changed which also includes alienation or transfer of the property, which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. The said principle has further been followed in the case of **Dev Prakash & Anr. Vs. Indra & Ors.** reported in **(2018) 14 SCC 292** wherein the Hon'ble Supreme Court observed that the very essence of the concept of temporary injunction and receivership, during pendency of a civil litigation, involving any property, is to prevent its threatened wastage, damage and alienation by any party thereto, to the immeasurable prejudice to the other side or to render the situation irreversible not only to impact upon the ultimate decision but also to render the relief granted, illusory. The Hon'ble Supreme Court observed that the judicial discretion has to be disciplined by jurisprudential ethics and can by no means conduct itself as an unruly horse.

17. A discretionary order has been passed by the Appellate Court to protect the idols and photo-sculpture from any damage caused by the defendants or other persons. The defendants cannot be allowed to paint the photo-sculpture of Swami Ji by applying sandal and writing any kind of names etc., in the garb of religious or spiritual sentiments. But, at the same time, the defendants also have an equal right to perform worship and attend the religious functions and activities in the petitioner-Temple. They cannot be restrained from doing "Sewa-Pooja" in the temple in the garb of the impugned order dated 12.03.2024.



18. At the same time, the plaintiffs cannot be allowed to restrain the defendants from offering prayers and worshipping in the petitioner-Temple. The religious and spiritual sentiments of anyone cannot be allowed to be hurt. The defendants can put the flowers or garlands in front of the idols and photo-sculpture of Swami Ji and participate in the religious and spiritual functions and activities without causing any damage to the idols and photo-sculptures.

19. With the aforesaid observations and directions, the impugned order dated 12.03.2024 stands modified and accordingly, the writ petition stands disposed of with the following directions and conditions, and its compliance:-

- a) Both the plaintiffs and the defendants would plant 25 trees each of indigenous varieties in the vicinity and campus of the temple premises. The plantation process shall be carried out within a period of four weeks;
- b) Both the plaintiffs and the defendants would look after these trees till disposal of the suit.
- c) The plaintiffs and the defendants shall file the compliance/status report of these planted trees every year by the first week of July, till disposal of the suit along with photographs. Their such act would certainly increase their faith in the God and the nature, created by the almighty God.

20. Stay application and all other applications (pending if any) also stands disposed of.



21. Before parting with this order, it is made clear that the Trial Court would decide the suit and the controversy involved in the litigation on its merits, after appreciating the evidence led by both the parties, without being influenced by any of the observations made herein by this Court.

22. List on 01.08.2024 to check compliance.

(ANOOP KUMAR DHAND),J

GARIMA, JrPA