

Notification - the operation of which was stayed."

24. The Apex Court in the aforesaid judgement has categorically held that after dismissal of the writ petition, the consumer is liable to pay interest even during period of interim order which entitle the consumer to withhold the amount.

25. The case in hand, the arbitral award dated 19.7.2017 was not stayed or any material was brought on record otherwise and ultimately the award dated 19.7.2017 has been affirmed by the Apex Court and no proceedings are pending thereafter. Thus, in view of the aforesaid facts, the contesting respondent no. 1 is entitled for mesne profits as the award dated 19.7.2017 was not complied with in its letter and spirit.

26. In view of the aforesaid discussions as well as law laid down by the Apex Court as referred herein above, no interference is called for by this Court in the impugned order.

27. The petition lacks merit and same is dismissed accordingly.

(2025) 3 ILRA 98

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 21.03.2025 &

26.03.2025

BEFORE

THE HON'BLE ROHIT RANJAN AGARWAL, J.

Matters Under Article 227 No. 10194 of 2024
(Civil)

Govind Ram Pandey & Anr. ...Petitioners
Versus

Nutan Prakash & Ors. ...Respondents

Counsel for the Petitioners:

Sri Ravi Shanker Pathak, Sri Siddharth Niranjana, Sri Yadvendra Pai Pandey, Sri Dharam Pal Singh (sr. Adv.)

Counsel for the Respondents:

Ms. Ananya Pandey, Sri Ashish Kumar Dubey, Sri Durlabh Kumar Pandey, Sri Badri Mani Triparthi, Sri Rahul Sahai, Sri Rakesh Kumar, Sri Yadvendra Rai Pandey, Ms. Nandani Sharma, Sri C.L. Pandey (Sr. Adv.), Sri H.N. Singh (Sr. Adv.)

Civil Law-The Constitution of India, 1950-Article 227 - The Code of Civil Procedure, 1908-Section 94 - Order 40 Rule 1-

Appointment of Receivers and controlling day to day functioning of Sri Thakur Baldeo Ji Maharaj Temple aka Dauji Mandir--- No person shall act as Receiver of the Temple in question and a Seven Member Management Committee be constituted in terms of Agreement dated 02.09.1904---Matter remitted with following directions to learned District Judge (1) Convene a meeting of 734 Pandas/Sevayats of Dauji Temple, who are divided in six Thoks, to be conducted by the senior most Additional District Judge within a month (2) A supplementary agreement would be executed by all 734 members only to the extent that their names are brought on record, without touching upon the terms and conditions laid out in the Agreement dated 02.09.1904 (3) members shall select a person from their respective Thoks to be sent to Committee of Management for managing the affairs of the Temple (4) Management Committee would be constituted in terms of Agreement dated 02.09.1904 and only the new members of 734 families would become part of the supplementary agreement (5) newly constituted Management Committee would look after day to day affairs of the Temple---The District Judge, Mathura, is hereby requested to get the complete inventory prepared of all movable and immovable properties of Dauji Temple, including cash, bank accounts, ornaments etc. immediately, within a period of two days from today. When the management is handed over to newly constituted Committee of Management, the inventory so prepared shall also be passed on. **(Para 61 to 65)** (E-15)

List of Cases cited:

1. Mulji Umershi Shah Vs Paradisia Builders Pvt. Ltd., AIR 1998 Bombay 87
2. S.B. Industries Vs United Bank of India, AIR 1978 189
3. Satyanarayan Banerji & anr. Vs Kalyani Prosad Singh Deo Bahadur & ors., AIR 1945 CAL 387
4. Ram Kumar Pandey Vs Narain Prasad Pandey, Matters under Article 227 No. 1637 of 2018, delivered on 31.08.2018
5. T. Krishnaswamy Chetty Vs C.Thangavelu Chetty & ors. AIR 1955 MAD 430

(Delivered by Hon'ble Rohit Ranjan
Agarwal, J.)

1. Holy city of Mathura is under grip of frivolous temple litigations. Most of them are for appointment of Receivers and controlling day to day functioning.

2. Present litigation hovers around famous Sri Thakur Baldeo Ji Maharaj Temple also known as Dauji Mandir. It is an old temple situated at Baldeo Mahawan, Mathura. History relates back to about 500 years, when it was built/established by one Parampujya Goswami Kalyan Devacharya Ji Maharaj. After his death, his successors managed the affairs of Temple and conducted seva, *puja*, *archana* etc. With passage of time, families of successors increased and by end of 1903, there were 145 families who were looking after the seva and *puja*.

3. Admittedly, on 02.09.1904, a Trustee Nama/Ikrar Nama (*hereinafter called as "Agreement"*) was executed which was registered on 13.09.1904 by family members of 145 families. According to the registered Agreement, 145 family

members were divided into six groups (Thoks). From them, Seven Member Management Committee was appointed which included following persons:-

(i) Nandan son of Chhittar (ii) Jayram son of Hardeo (iii) Jasrath son of Dhaniram (iv) Daniram son of Brajlal (v) Bhagwan son of Banshi (vi) Narayan son of Gordhan Lal and (vii) Ram Prasad son of Thakur Das

4. Paragraph 3 of the Agreement provided that each shareholder continued to perform *puja* and seva on his turn and Committee would only supervise such activities. Paragraph 5 provided that in case of death of any member, or in case he refuses to work, or fails to attend the meeting of the Committee for one year, then another member from his Thok was to be appointed. In case, for three months, no member was appointed then remaining member would appoint a member in his place. Further, in case of dispute between the existing members, a draw of lots would be done before the Deity and a person in whose name the chit is opened would be appointed as the member.

5. The Agreement which was executed on 02.09.1904 and registered on 13.09.1904 is extracted hereasunder for the better appreciation of the case:-

“ बही नं० 4 तरतीबी दस्तावेज 132 मालियत स्टाम्प 15

ट्रस्टीनामा/इकरारनामा

हम कि :-

1-नेतराम व 2- रेवती पिसरान सुखराम व 3- मोरध्वज बल्द रामशरन व 4- दीसा बल्द बट्टी व 5- लोचन बल्द बुद्धी व 6- लज्जा बल्द नारायन व 7-गंगाधर बल्द गोविन्दराम व 8- शिवरतन बल्द टैनी व 9- शंकर बल्द तेजा व 10- रघुवर बल्द जुगला व 11- घसीटा व 12- रामचन्द पिसरान जयराम व 13-

इन्दरजीत बल्द दामोदर व 14- टीकाधर बल्द जयदेव व 15- मोहनलाल व 16- मूली पिसरान धीरजलाल व 17- टोका बल्द जनादन व 18- रामप्रसाद व 19- चिरंजी पिसरान चतुर्भुज व 20- राधाचरन बल्द तोता व 21- बन्शीधर बल्द दयाकिशन व 22- दानीराम व 23- पेमानन्द पिसरान, ब्रिजलाल व 24-राधाचरन व 25- लक्खीराम पिसरान हरफूल व 26- पन्नी बल्द चेती व 27- जोहरी व 28- मूला व 29- खरमर पिसरान केशव व 30- श्रीधर रुल्द किशनलाल व 31 शिवलाल बल्द गोरधन लाल व 32 छीतो व 33- अर्जुन पिसरान बासुदेव व 34- घसीटा बल्द मूलीराम 35- रवलाल पलाल व 36- हरफूल व 37- दीपा व 38- इन्दर पिसरान कमला व 39- परमा व 40- लकूवी व 41- मूला पिसरान सुखदेव व 42- रामचन्द बल्द जैजीराम व 43- जशरथ बल्द धनीराम व 44- मिछल व 45- कुना व 46- चतुरा पिसरान सुखदेव व 47-नन्दन बल्द छीतर व 48- रोशनलाल व 49- टीकाधर पिसरान रामरतन द 50- जसरथ बल्द जयदेव व 51 जयराम बल्द हरदेव व 52 तोता व 53-बंशी व 54--कुण्डा व 55- दुरगा व 56- मैजी पिसरान चुन्नी लाल व 57-रेवती बल्द मुरली व 58- गनपति व 59- शंकर पिसरान तोताराम व 60- मुन्शी व 61- हरचरन व 62- द्वारिका पिसरान धरनीधर व 63 इन्दर व 64 नत्थी पिसरान गंगाधर व 65- बाबू बल्द बंशीराम व 66 छीतो व 57 भद्री व 68-रघुवर पिसरान ठाकुरदास व 69 भिक्को बल्द नत्थी व 70- रामलाल बल्द दूला व 71- मूला बल्द चरंजी व 72- नारायन बल्द राधे व 73- नत्थो बल्द मथुरा व 74 रणछोर बल्द मनमोहन व 75- रोशन लाल व 76- इन्दर व 77- चुन्नीलाल पिसरान चतुर्भुज व 78-नाथूराम व 79- ब्रजबल्लभ पिसरान परसादीलाल व 80- जयदेव व 81-कुन्जबिहारी व 82 श्यामलाल पिसरान जयराम व 83- रामप्रसाद बल्द ठाकुरदास व 84- बंशी व 85- जम्मन पिसरान केवलराम व 86- भगवान बल्द बाबू मुकन्द व 87 गिरधर बल्द रामरतन व 88- मिट्ठी वल्द तीरथा व 89- फूली व 90- ब्रजमोहन पिसरान रनछोर व 91- जयकिशोर व 92- नारायन व 93 धीरजलाल पिसरान गोर्धन लाल व 94-- नन्दन बल्द गोकुलचन्द व 95- नौनिद्धि बल्द इन्द्रजीत व 96- मंगी व 97- केसरी पिसरान रामलाल व 98 गंगाधर व 99- दीपचन्द पिसरान नेतराम व 100 शिवलाल व 101- धूजी पिसरान रघुवर व 102 धनीराम व 103-जीवन व 104- शंकर पिसरान परसादी लाल 105- सावलिया बल्द टीकम व 106- हरचरन बल्द रनछार व 107- भगवान व 108- द्वारिका व 109-ब्रजलाल पिसरान वंशी व 110- डालचन्द बल्द रनछोर व 111- चिरंजीलाल बल्द

हरनाम व 112- मूलो बल्द मोहनीराम व 113- गंगाधर बल्द जसरथ व 114- द्वारिका व 115- छिददा लाल व 116- श्रीदामा पिसरान केदार व 117-कमला बल्द किशनलाल व 118- धीरज लाल बल्द धनी व 119- मूला बल्द मक्खन व 120- खूबी बल्द हरिराम व 121- भोला बल्द मूली व 122- मेवाराम व 123- टीकम व 124- नेकराम पिसरान हरबल्लभ व 125- सोहन बल्द बालमुकुन्द व 126- चिरंजी व 127- गिरवर पिसरान नन्दन व 128- फूली बल्द दामोदर व 129- धूजी बल्द केशवदेव व 130- शिवलाल व 131- वासुदेव पिसरान नन्दन व 132- चिरंजी व 133- राधाचरन पिसरान इन्दर व 134-नाथूराम बल्द वजवंत व 135- काशीराम बल्द हन्डू व 136- धीरज लाल व 137- धनीराम पिसरान भवानी शंकर व 138- नत्थू बल्द नन्दकिशोर व 139-चुन्नी बल्द चतुरी व 140- जयकिशोर व 141- चिरंजी बुल्द बलदेवदास व 142- टीकम पिसरान सेवाराम व 143- विद्याधर बल्द खुशालीराम व 144- रामप्रसाद बल्द गंगाराम व 145- तोता बल्द नन्दन अकवास ब्राह्मण अहिवासी साकिनान कस्बा बलदेव पण्डगान व पुजारीयान श्री ठाकुर बलदेव जी महाराज कस्बा बलदेव परगना महावन जिला मथुरा के हैं। जोकि जुमलाइन्तजाम व महतमाम मन्दिर बलदेव जी उर्फ दाऊजी महाराज बाके दलदेव परगना महावन जिला मथुरा हमेशा से हम और हमारे मुरिस करते रहे हैं और सिवाय हमारे और किसी का दखल व तसर्फ उसमें कभी कुछ नहीं रहा और यह इन्तजाम इस तौर होता आया कि हम पण्डे अपनी तरफ से चन्दअसखास को मुहतमित मुर्कर कर देते हैं व सब कार्यवाही मन्दिर व जायदाद मुताल्लिक मन्दिर की किया करते हैं अब चन्द साल से वाहम हम पण्डगान की नइस्तफाकी रहती है और मोहतमिनान साबिका में से अक्सर फौत हो गये और इस वजह से काम में अवतरी वाके होती है। देहात मुआफी मुताल्लिका मन्दिर का रूपया हमेशा से गोलक मन्दिर में दाखिल हुआ करता था उसकी अदखाल की नौहबत कई साल से आज तक नहीं पहुंची और नजर भेट की आमदनी पेशतर आती थी। वह भी पूरे तौर पर दाखिल मन्दिर ठाकुर जी महाराज नहीं हुई इसमें भी अक्सर दस्तअन्दाजी होती है और बाज बाज किताआत जमीन उफतादा व बंजर जो मिनजुमला आराजी मुआफी की है और एक बाग तखमीनन 27 बीघा ठाकुर जी महाराज है। बाज बाज मकानात व कुन्जाई व वगैराह मुताल्लिका मन्दिर हैं उन पर खिलाफ दस्तूर व रिवाज कदीमाना बेडोल बेतसर्फ जाती अपना कर रखा है और नेज दीगर उमूर मुताल्लिका मन्दिर में सिवाय सेवा पूजा राम भोग के सूत बेइन्तजामीबरपा है लिहाजा हम मिनमुकरान जो बुजुर्ग और कारकुन सरगर्दा अपने अपने खानदान के हैं एक कमेटी इतजामी जिसमें 7 पण्डे मैम्बर होंगे मुर्कार करते है और जिस तरीके से इन्तखाब मैम्बरान का हुआ है वह तरीका यह है कि

नम्बर 1- कि फिलहाल दो थोक आठ आठ आने

के हैं और एक आठ आना में तीन थोक छटे छटे हिस्से के हैं और दूसरे आठ आना में एक चार आना का और दो थोक दो दो आने के हैं इन छः थोक से एक एक मैम्बर मुन्तखिब किया गया है और इसी तरह आयिन्दा भी मुन्तखिब होगा एक सातवां मैम्बर एक थोक चार आना से जैसा कि अब हुआ है कि मुन्तखिब होगा मगर दूसरी साल आठ आना के थोक में से जिसमें तीन छटे छटे हिस्से के थोक शामिल हैं मुन्तखिब किया जायेगा।

नम्बर 2- इस वक्त इस कमेटी के मैम्बर असखास जैल हैं नन्दन बल्द छीतर, जयराम बल्द हरदेव, जसरथ बल्द धनीराम, दानीराम बल्द ब्रजलाल, भगवान बल्द वंशी, नारायन बल्द गोरधन लाल, रामप्रसाद बल्द ठाकुरदास ।

नम्बर 3- सबकाम मन्दिर मसलन इन्तजाम आमदनी जायदाद मुतालिल्का मन्दिर व जायदाद चढ़ावा हर किस्म व नजर भेट व तर्कर व मौकूफी मुलाजमान व मरम्मत बगैराह मकानाते व करने नालिशात व जबावदेही का इख्तयार कमेटी का होगा मगर अमलदरामद सेवा पूजा व राग भोग ठाकुर जी महाराज जैसा कि आयिन्दा से है बदस्तूर कायम रहेगा और हम लोगों का हिस्सा बदस्तूर कदीम तकसीम है। जाया करेगा वाद खत्म होने साल के माह पूस या माघ जो रूपया मसारिफ राग भोग सेवा पूजा व खैरात व दीगर अखराजात मन्दिर से बचेगा वो वाद वजह करने जर व फण्ड के जिसका जिक्र दफा 12 में है पण्डगान में माफिक दस्तुर के तकसीम हो जाया करेगा और सेवा पूजा भी हस्व अमरदरामद साबिका बदस्तूर से होगी कि हर हिस्सेदार अपनी अपनी बारी से सेवा पूजा इन्तजाम व राग भोग करता रहेगा कमेटी सिर्फ सेवा पूजा की निगराह रहेगी।

नम्बर 4- कमेटी इन्तजामी को लाजिम होगा कि इन्तजाम काम मन्दिर व इमलाफ मन्दिर के वास्ते कबायद मनजब्ता करे और उसकी एक नकल जिस पर दस्तखत जुमला मैम्बरान के होंगे मंजरे आम मन्दिर में उतरान रखें और एक नकल बजरिये हाकिम परगना खिदमत में जनाव साहब कलेक्टर बहादुर भेजें और कबायद मनजब्ता कमेटी के सब मैम्बरान पाबन्द रहेंगे !

नम्बर 5- जब कोई मैम्बर मर जावे या काम करने से इन्कार या गफलत करे या वजह जईफी बगैराह नाकाबिल काम के हो जावे या कोई फेल बददियानती करे या अरकान जरायम संगीन सजायाब हो जावे या अपने मजहब को तरक कर दे या एक साल तक मुताबातिर कमेटी से गैर हाजिर रहे तो वह अपने अहोदे से अलहदा कर दिया जावेगा और उसके बजाय पण्डे वसलाह वाहमी दूसरा शाख्स उसी थोक से नामजद कर दें अगर तीन महीना तक पण्डे नामजद न करें तो वावहू बाकी मैम्बर एक दूसरा मैम्बर कसरतराये से मुर्कर कर देंगे। अगर ताहम मैम्बरान में इत्तफाक न हो या पण्डों ने एक से ज्यादा को नामजद किया हो तो मैम्बरान कमेटी ठाकुर जी महाराज के सामने मजमा आम में चिट्ठी डालकर जिसके नाम की चिट्ठी निकले उसको मुर्कर कर दें।

नम्बर 6- दरसूरत बददियानती या तरक करने मजहब के एक दरखास्त जिस पर सौ पण्डों के दस्तखत होंगे सबूत काफी वास्ते वरखास्तगी के मैम्बर के होगा।

नम्बर 7- मैम्बरान कमेटी मिनजुमला मैम्बरान के एक मैम्बर को मैम्बर मजलिस वास्ते एक साल के मुर्कर करेंगे। जब तक दूसरा मैम्बर मजलिस किसी साल के वास्ते मुर्कर न किया जावे तो मैम्बर मजलिस साबिक मैम्बर मजलिस कमेटी मुतसब्बिर होगा इस साल जसरथ पण्डा मैम्बर मुर्कर हुआ।

नम्बर 8- मामूली तौर पर कमेटी सहमायी हुआ करेगी मगर शर्त जरूरत मैम्बरान कमेटी खास कमेटी भी कर सकती है कार्यवाही कमेटी एक रजिस्टर में तहरीर की जावेगी।

नम्बर 9- इत्तला तारीख कमेटी की मैम्बरान को अमूमन तीन योम पेशतर हो जाया करेगी और कम अज कम तीन मैम्बर जब जमा हो जावे तो काम कमेटी किया जावेगा।

नम्बर 10- अगर किसी अमर की निस्बत मैम्बरान कमेटी के इख्तलाफ होगा तो फैसला कसरत राये से होगा अगर मैम्बरान कमेटी मसावी हो तो मैम्बर मजलिस की राय बराबर दो राये के समझी जावेगी।

नम्बर 11- अगर किसी कमेटी से मैम्बर मजलिस गैर हाजिर हो तो दीगर मैम्बरान हाजिर उस वक्त में से किसी को मैम्बर मजलिस उस कमेटी का मुन्तखिब करेंगे।

नम्बर 12- मैम्बरान कमेटी हिसाब आमदनी व इखराजात का रखेंगे और साल तमाम पर वाद तय होने मसारूफ व इखराजात के नगद रूपया पण्डगान में तकसीम किया जावेगा उसमें अव्वलन यह कार्यवाही होगी कि तीन सौ रूपया कबल तकसीम हमेशा निकाला जावेगा और वह रूपया जमा रहेगा उस रूपयों में से इखराजात गैर मामूली मन्दिर के अगर कोई हो तो किये जावेंगे वरना वह रूपया ऐसी जगह काम में लगाया जावेगा कि जिससे आयिन्दा तरक्को व कबायद मन्दिर मुतसब्बिर हो और उसका हिसाब पूरी तौर पर अलहदा मैम्बरान कमेटी मुतसब्बिर करते रहेंगे।

नम्बर 13- ट्रस्टीनामा हाजा का नफाद तारीख रजिस्ट्री से मुतसब्बिर होगा और शरायत मुदरजा ट्रस्टीनामा हाजा और कबायद माखूजा व मुनकिता की पायबन्दी हम और हमारे बुरसा व कायम मुकामान व जानसीनान पर नसलन बाद नसलन लाजिम होगी किसी को किसी वक्त में इतराफ न होगा लिहाजा चन्द कलमा वतरीक ट्रस्टीनामा लिख दिये कि सनद रहे तहरीर तारीख दोयम (2) सितम्बर 1904 ई० वकलम श्यामलाल चौधरी

(दस्तखत) दः तोता (145) दः श्योरतन (8) दः मोरद्वज (3) दः राधाचरन (20) दः रनछोर (74) दः लकीराम (40) दः जैराम (51) दः छीती (66) दः मिंकु (49) दः नन्दन (94) दः धीरजा (136) दः मूला (71) दः बाबूराम (65) दः रघुवर (68) दः रामलाल (70) दः हरचरन (61) दः चुन्नी

(139) द: गोरधनलाल (7) निशानी हरफूल (37) द: इन्दर (36) द: रेवतीशरण (2) द: टीकाधर (49) द: धीरजलाल (118) द: मोहनलाल (15) द: रामचन्द (12) द: नेकसे (14) द: ब्रजबल्लभ (79) द: रोशलाल (75) द: श्यामलाल (82) द: चिरंजी (141) द: कुन्दा (54) द: चिरंजी (111) द: दुर्गा (55) द: गिरवर (127) द: कुन्जबिहारी (21) द: मूलचन्द (41) वासुदेव द: मूला (28) द: नत्थी (62) द: खरमर (29) गवाह डालचन्द बल्लद सुखदेव गवाह गोरधन लाल रामरतन कौम पण्डा साकिन बलदेव गवाह गोरधन लाल गवाह केशवदेव बल्लद नारायण दास कौम बनीया साकिन बलदेव बरवत सराफी

तस्दीक की जाती है कि दस्तावेज हाजा में मुसवा साताक्रेता और मुताल्लिका हैं केदारनाथ सबरजिस्ट्रार नम्बर 132 पर आज तारीख 13 सितम्बर 1904 ई० रजिस्ट्री की गयी

“केदारनाथ सबरजिस्ट्रार”

6. After the execution of the above document, 145 families who were rendering *puja* and *seva* continued for a decade or so, but sometimes in the year 1923, dispute arose in regard to functioning of the Committee of Management. On 17.06.1923, a meeting of 200 Pandas (Sevayats) of Dauji Temple was held and a resolution was passed for removing the Seven Member Management Committee who were not the original appointees of 1904 and they had claimed to be the legal heirs of them. On the same day, Seven Member Committee was nominated by 200 Pandas which included Shivcharan Lal, Shankar Lal, Parshottam Lal, Gopal, Gokul Chandra, Kanhaiya and Devaki Nandan. On 31.10.1923, these seven members filed Original Suit No. 94 of 1923 before Sub Judge, Bahadur, Mathura, District-Agra against Sohan son of Dashrath, Babu son of Bholi, Harnath son of Daniram, Shri Damo son of Ramcharan, Hanslal son of Govardhan Lal, Dhujji son of Bhagwan and Shivcharan son of Nandlal. In the plaint, it was alleged that that as per the registered agreement dated 02.09.1904, Seven Member Committee was constituted which

included Dashrath, Daniram, Nandan, Jairam, Narayan, Bhagwan and Ram Prasad. After the death of members of original Management Committee, no new members were inducted as per the agreement, but their legal heirs and near relatives formed a Committee of Management. In the said suit, relief of declaration for managing the affairs of temple along with relief of permanent injunction restraining the defendants from interfering in peaceful working was sought. The entire plaint of Suit No. 94 of 1923 is extracted hereasunder:-

“बअदालत सब जज बहादुर मथुरा जिला आगरा

मुकदमा दीवानी नम्बर 94/1923

शिवचरन लाल बल्लद नाथूराम व शंकर लाल बल्लद परसादी लाल व परषोत्तम लाल बल्लद टीकम दास, गोपाल बल्लद नेतराम व गोकुल चन्द बल्लद धूजीराम व कन्हैया लाल बल्लद सुखदेव व देवकी नन्दन बल्लद रन्छोर अकवाम ब्राह्मन पण्डा साकिनान कस्बा बलदेव, परगना महावन, जिला मथुरा

मुददईयान

बनाम्

सोहन बल्लद दशरथ व बाबू बल्लद भोली व हरनाथ बल्लद दानीराम व श्री दामो बल्लद रामचरन व हंसलाल बल्लद गोरधन लाल व धूजी बल्लद भगवान व शिवचरन बल्लद नन्दलाल अकवाम ब्राह्मन पण्डा साकिनान कस्बा बलदेव, परगना महावन, जिला मथुरा

मुद्दालय

मुदईयान मजकूर हस्व जैल अर्ज करते हैं :-

1. यह कि बमुकाम कस्या बलदेव, परगना महावन, जिला मथुरा एक नशहूर मन्दिर श्री दाऊजी महाराज का वाकै है और कसीर जायदाद मंकूला व गैर मंकूला और जंर आमदनी मन्दिर की है।

2. यह कि पण्डमान साकिनान कस्बा बलदेव मौरूसी ट्रस्टियान मन्दिर मजकूर के हैं और हमेशा से मन्दिर व जायदाद मुताल्लिका मन्दिर का इन्तजाम करते रहे हैं।

3. यह कि बगरज सहूलियत इन्तजाम त रफे निदा बाहमी सरगर्दा पण्डों की बजरीये इकरानामा मौरखा 2 सितम्बर 1904 एक कमेटी सात अशखास की हस्व शरायत मुन्दरजा इकरानामा 'मजकूर मुकररि की और अब्बल मेम्बरान कमेटी हस्व

जल करार दी गई। 1. दशरथ, 2. दानीराम, 3. नन्दन, 4. जैराम, 5. नारायण, 6. भगवान, 7. रामपरसाद

4. यह कि मिनजुमला मेम्बरान मुकर्रर शुदा के जो मरता गया उसके बजाय कोई मेम्बर हस्व जाब्ता मुन्दरजी इकरारनामा मजकूर जदीद नेम्बर मुकर्रर नहीं किया गया बल्कि चार बाकी मांदा मेम्बरान के वारिस या सगे सम्बन्धी मेम्बर कर लिया गया। आखिर मेम्बर नन्दन फौत हुआ इस तौर से मुद्दालय नम्बरानी से सात मेम्बरान कमेटी और मुन्तजिम मन्दिर नाजायज तौर से बन बैठे और अब मन्दिर का इंतजाम कर रहे हैं।

5. यह कि मुद्दालय मजकूर और उनके मनकदली इकरारनामा 2 सितम्बर 1904 की शरायत के खिलाफ अमलदरामद करते रहे और मन्दिर का काम मुनासिब और सही तौर पर नहीं चलाया और उन्होंने सदाबरात बन्द कर दिया और मुकर्रिम तादाद गोआन की नहीं रखते न सालाना हिसाब समझाया न पण्डों में रूपया तकसीम किया और कोई बाजाब्ता हिसाब लिखा और व कार्यवाही सही तरह से की गई और इन्तजाम जायदाद मुतालिका मन्दिर का ईमानदारी से नहीं किया और जायदाद मरम्मत तलब की मरम्मत ... करायी और न पूरा रूपया गोलक में जमा किया और अकसर कार्यवाहियाँ ऐसी है जिसमें मन्दिर का रूपया फिजूल खर्च हुआ और जायदाद मन्दिर को नुकसान पहुंचा और दीगर तौर पर मुरतकिब बदनीयती और बद एमालियों की हुई।

6. यह कि बवजह बद इन्तजामी व बददयानती तजेकरा बाला के एक नालिश नम्बर 1/1912 बअदालत साहब जज बहादुर आगरा में हस्थ दफा 92 जाब्ता दीवानी दायर की गयी लेकिन अदालत हाईकोर्ट ने ये तजवीज हुआ कि नालिश मजकूर मिस्ल मामूली नालिश बाहमी मालिक दरमैण्ट की अदालत सब जजी में होना चाहिए।

7. यह कि मुद्दालय और इनके पेशतरों की बद इंतजामी व बद ऐमाली व तजल्लुब से तंग आकर पण्डगान दाऊजी ने बतारीख 17 जून सन् 1923 को एक जलसा मुनककद किया जिसमें करीब दो सौ पण्डगान की राय से मुद्दालय इन्तजाम मन्दिर से बरतरफ व बर्खास्त किये गये और मुद्दईयान मेम्बरान कमेटी मुन्तखिब की गया चुनाचे मुद्दईयान मुस्तहक इन्तजाम मन्दिर है।

8. यह कि मुद्दालय से कहा गया कि वो इन्तजाम मन्दिर से बाहर हो और मुददईयान के इन्तजाम मन्दिर में फराहम है लेकिन मुद्दालय परवाह नहीं करते चुनाचे हिजामहत दावा हाजा बतारीख 17 जून 1923 ई० बमुकाम कस्बा बलदेव, परगना महावन, जिला मथुरा अन्दर इलाका अदालत हाजा के पैदा हुआ।

9. यह कि हक दावा बगरज समाअत अदालत हाजा का है और कोर्ट फीस मुबलिंग 5 रूपया इस्तकरार और मुबलिंग 6 रूपया 2 आना बिना पर हुकम इम्ताई मुबलिंग अदा किया गया मेम्बरान मुद्दईयान दाद ख्वाह है।

(अलिफ) इस्तकरार इस अग्र का अदालत से सादिर फरमाया जावे कि मुद्दईयान मुस्तहक इंतजाम मन्दिर व जायदाद मुतालिका मन्दिर के है और मुद्दालय को कोई हक मन्सब व इस्तहकाक इन्तजाम मन्दिर जायदाद मुतालिका मन्दिर का नहीं है।

(बे) हुकम इन्तआई दवामी बनान् मुद्दालय जारी फरमाया जावे कि वह मुद्दईयान के इंतजाम मन्दिर व जायदाद मुतालिका मन्दिर में फराहम न हो।

(लीम) खर्चा मुकदमा मुद्दालय से दिलाया जावे।

मद नं 1 व 2, 3, 4, 5, 6, 7,

बइल्म जाती है और मद 9 को

हस्व मशवरा कानूनी राय के

हुआ इकरार करता हूँ बमुकाम

मथुरा तारीख 31 अक्टूबर सन् 1923”

7. The defendants of Suit No. 94 of 1923 contested the same and filed their written statement on 03.10.1924. In para 3 of written statement, para 3 of plaint was admitted. Para 4 of the plaint was admitted in para 4 of written statement by defendants to the extent that members of Management Committee had died and they were managing the affairs of the temple. The written statement filed by defendants of Suit No. 94 of 1923 is extracted hereasunder:-

“बअदालत सब जजी मथुरा

नम्बर मुकदमा 94सन् 1923

शिवचरन लाल वगैरह बनाम्..... मुददईयान

सोहन वगैरह मुद्दालय

ब्यान तहरीरी मिनजानिव मुद्दालय हस्व

जैल है :-

1. मद: 1 अर्जी दावा तस्लीम है।

2. मद 2 में वे अग्र गलत है. कि हमेशा से जुमला पण्डमान इन्तजाम करते रहे हैं बकाया मजमून तस्लीम है।

3. मद 3 तस्लीम है।

4. मद 4 में साबिक मेम्बरान कमेटी का फौत होना और मुद्दालय का इन्तजाम करना तस्लीम है बाकी मजमून से इंकार है।

5. मद 5 सरासर गलत है:

6. मद 6 में अल्फाज बदइंतजामी व बददयानती गलत व वेजा दर्ज है।

7. मदात 7, 8 9 तस्लीम नहीं है।

उजरात मजीद

8. यह कि माबैन फरीकेन व दीगर पण्डमान मुकदमा नम्बरी 51 सन् 1918 ई० वास्ते दादरसी मुन्दरजा अर्जी दावा व दीगर दावर से दायर हुआ था जो अदालत हाजा से खारिज हुआ और अब बकईया अपील अदालत आलिया हाईकोर्ट में दायर है हस्व दफा 10 जाब्ता दीवानी नालिश होने के तजबीज व समात नहीं हो सकती।

9. यह कि मुद्दालय काबिज मन्दिर व जायदाद मुतालिका भन्दिर है नालिश इस्तकरार व हुकम इन्साती काबिज कायम रहने के नहीं है और जरूरी असखास फरीक मुकदमा नहीं किये गये है।

10. यह कि दावे में दफा 42 कानूनन दादरसी खास गलत है।

11. तईयुन नालिश कम किया गया है और कोर्ट फीस नाकाफी अदा किया गया है।

12. नालिश हाजा में तमादी गलत है।

13. यह कि मुद्दईयान व जुमला पण्डमान अपनी तरजे अमल से मुद्दालय को मैम्बरान तस्लीम करते रहे हैं और अपना हिस्सा तकसीम गोलक से लेते रहे हैं अब उनको मन्सब दारी हांसिल नहीं है।

14. यह कि पेशतर नालिश नम्बरी 101 सन् 1910 ई० खारिज हो चुकी है दावे में दफा 11 जाब्ता दीवानी गलत है।

15. यह कि मुद्दालय बहैसियत अपने-अपने पेशतकन हक के फौत होने पर हस्व शरायत इकरारनामा 2 सितम्बर 1904 बाकायदा मुकर्रर की गयी है। यह ब्यान मुद्दईयान कि मुद्दालय नाजायज तौर से मेम्बरान कमेटी व मुन्तजिम बन बैठे है गलत है।

16. यह कि कोई कमेटी जुमला पण्डमान तजकरा मद 7 अर्जी नालिश नहीं हुई न मुद्दईयान बाजाब्ता मेम्बरान कमेटी मुकर्रर की गई न बमौजूदगी मुद्दालय के मुद्दईयान या और कोई शख्स मेम्बरान कमेटी मुकर्रर हो सकता है।

17. यह कि मुद्दईयान व उनके मिस्त मद्यून ने अगर पोशीदा तौर पर मुद्दईयान गैर हाजिरी कसीर तादाद पण्डमान जो परदेस गये हुये थे अगर कोईहै तो ऐसे जलसे में न मुददईयान मुन्तखिव हो सकते हैं। न उनको हक इन्तजार या नालिश पैदा होता है।

18. यह कि मुद्दालय जमीअत ने खल्फ दरानी शरायत इकरारनामा 2 सितम्बर 1904 ई0 की न बदइंतजामी

बददयानती की, इल्जामात मुन्दरजा मद 5 अर्जी दावा अदावतन गलत लिखायी गयी है।

खास खास इल्जामात का जबाव दिया जाता है

(अलिफ) सदाबरत कभी बन्द नहीं हुआ

(बे) कोई तादाद गट्टों की मुकर्रर नहीं है न मन्दिर के वास्ते गठदू खरीदें जाते हैं।

(जीम) रूपया का हिसाब बराबर समझाया गया और रूपया तकसीम किया गया।

(द) हस्व कायदा कदीम हिसाब रखा जाता है और कार्यवाही कमेटी की जाती है।

(हे) मरम्मत जरूरी करायी जाती है अलावा तरीब हमेशा से ये कायदा रहा है कि मरम्मत के सर्फ के वास्ते जात्रियान से इस्तदुआ की जावे चुनाचे भण्डार मन्दिर से मरम्मत ने कराना और जात्रियान के अतीया की कोशिश करना फेल बदइंतजामी नहीं है।

(वाव) कोई कार्यवाही फिजूल खर्ची या मन्दिर को नुकसान पहुंचाने की नहीं की न अब तक बदऐमाली व बदनीयती हुई।

19. जिन पण्डमान का नाम हिस्सा मन्दिर में उन्होंने असें से ये तरीका इख्तयार कर लिया है कि जात्रियान को मन्दिर में गलत बयानी करके उन पण्डगान को भीक देने पर आमादा करते थे और जो रूपया जात्रियान मन्दिर में चढ़ाव को लाते थे उनसे खुद लेते थे। जो रूपया मालगुजारी याफतनी श्री दाऊजी महाराज उनके हिस्से निकलता था उसको अदा नहीं करते थे। इन्हीं खरावियों को रोकने के वास्ते इकरारनामा मौरखा 2 सितम्बर 1904 ई० तहरीर हुआ।

20. यह कि मुद्दालय बहैसियत व पेशतरून हक मुद्दालय इन खराबियों को दफीया के वास्ते और दाऊजी महाराज के नफे के वास्ते कोशिश करते रहे है कि जो मुद्दईयान व दीगर साथी मुद्दईयान अपना जाती नुकसान समझ कर मुद्दालय को तरह तरह की तकलीफ देने व मुकदमे बाजी करते रहे है, इस वजह से ये मुकदमा दायर किया है।

21. यह कि मुद्दईयान जो खैरख्वाह मन्दिर नहीं है और जिनकी कुल कार्यवाही खुदगर्जी के वास्ते है मुनासिब अशाखास मैम्बरान कमेटी नहीं है।

22. यह कि मुद्दालय साथ मेहनत जानफशाई व दयानत खोरी के इन्तजाम मन्दिर कर रहे है मुस्ताजिब अलैहदगी है बाकायदा अलैहदगी की गई है।

23. यह कि दावा हाजा बराहे नेक नीयती बगरज नफा मन्दिर नहीं किया गया है काबिले डिसमिस है।

24. यह कि मुद्दईयान पैदा नहीं हुये न मुस्तहक दावे के है।

तस्दीक की जाती है कि मदात 1, 2, 3, 4, 5

6, 7 व मद 8 में नासमझी जुज व आखिर मद 13, 9, 11, 22 हक अब्बल व मद 15 व मद 17. 18, 19, 20, 21, 22, 23 का इल्म जाती है और जिस पर मद 8 का चन्द हिस्सा व मद 10, 12. 14 का हक उल खबर व मद 24 का इल्म मशवरा कानूनी के है जिसका सही होना ठकरार करता हूँ सब जजी दस्तावेज की तस्दीक बमुकाम कस्बा बलदेव बतातीख 3 अक्टूबर 24 की गई।"

8. Parties to the suit filed a compromise application on 14.10.1924 wherein Clause 10 provided for one Babu Baldeo Bihari Lal to be the Receiver of the temple and he will be submitting the accounts of the temple in the court. On the basis of the said compromise application, suit was decreed on 15.10.1924. Copy of the compromise application along with order passed therein are extracted hereasunder:-

“असल पर स्टाम्प 8 आना व 8 आना
बअदालत सब जजी मथुरा।
नं० मु० 94 सन् 1923 ई०
शिवचरन वगैरा ----- मुद्दईयान
बनाम
सोहनलाल वगैरा -----
मुद्दालायहम
जनाब आली,
वाहम फरीकेन तसफिया हस्ब जैल हो गया उसके
मुआफिक डिग्री सादिर फरमायी जावे।

1- जुमला इन्तजाम मन्दिर सुपुर्द बाबू बलदेव बिहारी लाल वकील जो अब तक बतौर सुपरवाईजर काम कर रहे हैं कर दिया जावे और मुद्दालायहम व मुद्दईयान इन्तजाम मन्दिर से दस्तबरदार होते हैं।

2- बाबू बलदेव बिहारी लाल का फर्ज होगा कि मन्दिर के अन्दर जात्रियों से खैरात किसी तौर पर कोई सख्स न तलब करे और न ही दिखावे और न उनके साथ आवे और न उनसे दान ले और न सेवकी मन्दिर में मांगी जावे और न मिश्री निकाली जावे।

3- हर फरीक को इख्तियार होगा कि दरसूत न पाबंदी होने शरायत मजकूरा वाला के वजरीये इजराय डिग्री अदालत हाजा से तामील करा ली जावे।

4- अगर किसी वजह से बाबू बलदेव बिहारी लाल इन्तजाम मन्दिर से सुबुकदोष हो या नाकाबिल इन्तजाम हो जाये तो अदालत को इख्तियार होगा कि उनके बजाय व मशवराह फरीकेन या उनके कायम मुकामान दूसरा मुनासिब सख्स मुकर्रर सीया इजराय में कर दें। मगर अगर फरीकेन आपस में किसी एक खास सख्स की बावत रजामन्द न हो या मशवराह देना न चाहे तो अदालत को इख्तियार होगा कि सख्स मुनासिब को उनके बजाय मुकर्रर कर दें।

5- अगर किसी वजह से इन्तजाम बाबू बलदेव बिहारी लाल साकित हो जावे या कायम न रहे तो अदालत को इख्तियार होगा कि एहकाम मुनासिब बावत इन्तजाम मन्दिर मजकूर किसी फरीक की दरखास्त पर व सीया इजराय सादिर फरमाये।

6- हर फरीक को बाबू बलदेव बिहारी लाल या उनके कायम मुकाम के इन्तजाम के मुताल्लिक शिकायत करने का हक हासिल होगा और अदालत उसके मुताल्लिक जो कुछ इन्तजाम मुनासिब ख्याल फरमावे अमल में लावें।

7- बाबू बलदेव बिहारी लाल की फीस 2000/- दो हजार रूपया सालाना आमदनी मन्दिर से दी जायेगी और उनको अख्तियार होगा कि हर सहमाही पर मु० 500/- पाँच सौ रूपया वसूल कर ले अलावा सफर खर्ची

8- खरचा फरीकेन जिम्मे फरीकेन रहे।

9- जो अपील व अदालत अल आलिया हाईकोर्ट मिनजानिब मुद्दईयान व दीगर असखास दीगर है वह मुकईयान का फर्ज होगा व जहां तक कि उनका ताल्लुक अपील से है वापिस ले ले और अगर वापिस न ले तो दावी मुद्दईयान मय खर्चा डिसमिस होगा और मुद्दालायहम अपना खर्चा मुद्दयान से पावेंगे।

10- बाबू बलदेव बिहारी लाल की हैसियत बतौर रिसीवर के होगी और वह अपना हिसाब हर सहमाही पर अदालत में पेश करेंगे।

11- हद्द मन्दिर वह ही मुततब्बिर होगी जो इस मुकदमा में बयान व वुकलाय फरीकेन में बतलायी गयी है।

फकत तारीख 14 अक्टूबर सन् 1924 ई०

द० अंग्रेजी अपठित 14-10-24

आज इस तसफिया को बाबू टिकनरायन सीनियर वकील मुद्दई व बाबू बसतलाल वकील मुद्दालायहम ने रूबरू अदालत पेश करके और हरूफ बहरूफ सुनकर व समझकर तस्दीक किया 14 अक्टूबर सन् 1924 ई०

In the court of the Sub Judge of Mathura
Present- Pandit Shambhu Nath Dube, M.A.,
LL.B.

Sub Judge

Civil suit No. 94 of 1923

Shiv Charan and others, Plffs
Versus Sohan and other Defdts.

Judgment

This suit, which is one of the several cases fought within the last 12 years or more regarding the temple of Sri Baldeo ji Maharaj situate at the town of Baldeo, is for a declaration that the defdts are not entitle to manage the temple. A perpetual injunction is also prayed for.

The suit was keenly contested in the beginning, but ultimately parties have entered into a compromise which sets at rest the long drawn competition for the management of the temple at least for a considerable time. The compromise does credit to the parties and their legal advisors.

Order

Suit decree in parties of the compromise which shall be entered in the decree costs parties. A copy of the compromise be sent to B. Baldeo Bihari Lal for information and necessary action.

Sd/-

S.N. Dube

Sub Judge 15.10.1924”

9. Since the suit was decreed in terms of compromise on 15.10.1924, Receiver continued to look after the temple of Dauji. After the first Receiver left, the Civil Court at Mathura had been appointing Receivers and the matter on several occasions had travelled to this Court. The sole dispute which was under consideration in various rounds of litigation before the courts was as to who shall continue as the Receiver of Dauji Temple.

10. On 20.02.2019, one Ram Kator Pandey (respondent no. 13) was appointed as Receiver by Additional District Judge, Court No. 5, Mathura in Misc. Case No. 34 of 2014 arising out of Original Suit No. 94 of 1923 for a period of 20.02.2019 to

31.03.2020. The appointment of Ram Kator Pandey had continued since 2019 till complaint was made against him for making embezzlement of the temple property. By order impugned dated 20.07.2024, respondent no. 13 was suspended from receivership and one Kuwar Pal Singh Tomar was appointed as officiating Receiver.

11. Present petition has been filed by two petitioners claiming to be the trustees of Dauji Temple and have arrayed respondent nos. 1 to 12 who are also claiming to be the trustees of the trust in question. While respondent no. 13 is the Receiver appointed in the year 2019, while respondent nos. 14 to 16 are the Sevayats and are neither trustees nor parties in the suit.

12. Both petitioners and respondent nos. 1 to 12 are on the same page and are litigating tooth and nail against the order passed by court below suspending and taking away the power of respondent no. 13, Ram Kator Pandey as Receiver.

13. The entire premise of the case of petitioners and so called trustees are that they are the legal heirs of original plaintiffs and defendants of Suit No. 94 of 1923 and, thus, have continued to manage the affairs of temple and it is them who will nominate a person as a Receiver.

14. Sri Dharam Pal Singh, learned Senior Counsel appearing for petitioners submitted that Dauji Temple is not a registered trust within the meaning of The Indian Trusts Act, 1882. It is a private temple managed by Pandas/Sevayats for a long period and are bound by Trust Nama/Ikrar Nama executed in the year 1904. According to him, after the

compromise decree was passed on 15.10.1924, the Receiver was appointed and as per the terms of compromise, the Receiver will take care of the temple from time to time and submit the details of the accounts in the court. There is no complaint against respondent no. 13, Ram Kator Pandey and he has been wrongly dragged in the present litigation by some of the Savayats who want his ouster. Further, there are about 700 Sevayats of Mandir belonging to six Thoks and each of them are performing seva and *puja* according to their turn. He also contended that compromise decree was challenged in F.A.F.O. No. 92 of 1954 and F.A.F.O. No. 100 of 1954 by some of Sevayats which were rejected and in pursuance of the compromise decree, the management of temple had remained with 14 parties of the suit since 1924.

15. Defending appointment of Ram Kator Pandey, he submitted that it has always been appointed by court taking in view the majority opinion of 14 parties to the suit. According to him, lot of improvement has been done by Receiver and hence he should continue with his appointment.

16. Sri C.L. Pandey, learned Senior Counsel appearing for respondent no. 1, 2, 4, 5, 6, 7, 8, 11 and 12 endorsed the argument of petitioners' counsel. He further contends that there is unanimity between all the 14 trustees and Ram Kator Pandey should continue as Receiver of the temple.

17. Ms. Nandani Sharma, learned counsel has appeared for respondent no. 9 and supported the argument made by petitioners' counsel and defended the action of Ram Kator Pandey and submitted

that order passed by court below was not correct in suspending the power of Receiver.

18. Sri Badri Mani Tripathi, learned counsel has put in appearance on behalf of respondent no. 10 and submitted that pursuant to consent decree dated 15.10.1924, Babu Baldeo Bihari Lal was appointed as the first Receiver. According to him, the terms of compromise provided that in case the Receiver did not continue, then it is the court who has to appoint Receiver and the consent decree is to continue in eternity. He contended that representatives of 14 parties to the suit were to continue and would succeed as a party to the suit. He has tried to explain that it is the legal heirs of seven plaintiffs and defendants who have been successively brought as a party in the litigation which is going on since 1924 till date and the present 14 claimed trustees by the petitioners are the legal representatives of those original seven plaintiffs and defendants.

19. Sri H.N. Singh, learned Senior Counsel appearing for respondent nos. 14, 15, 16 and two intervenors, Dauji Dayal and Balram Pandey submitted that for last 100 years the parties are litigating on the basis of compromise decree of 1924 without adhering to the agreement executed on 02.09.1904 which is the basic document dividing the 145 families in six Thoks and appointing Seven Member Management Committee.

20. There was no concept of legal representative in the Management Committee. Once any member of the managing Committee representing his Thok died or was unable to perform, another member was appointed from the

same Thok, or in case of failure to appoint so, the remaining members appointed a member to the Management Committee. According to him, the concept of legal representative in the Management Committee is alien to the initial agreement which is binding upon all the Pandas/Sevayats of Dauji Temple.

21. There are about 734 families of Pandas and Sevayats of Dauji Temple and Management Committee has to be appointed from these 734 families which has grown from initial 145 families. The compromise which was entered in 1924 is not binding on the Pandas/Sevayats as the suit was filed by Committee of Management which was elected in the year 1923 and had claimed relief against those persons who were not members of the Management Committee and were acting in violation of the agreement dated 02.09.1904. There is no provision for succession in the compromise decree/compromise application and court can appoint Receiver only in case of failure of appointment of Management Committee of Sevayats in terms of Trust Nama/Agreement of the year 1904.

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

23. This is a classic case of misuse of judicial process to usurp and manage the temple property of Dauji. Basically, 145 families of Pandas/Sevayats had entered into an Agreement on 02.09.1904 which was registered on 13.09.1904. The agreement clearly spells out that Seven Member Management Committee would be constituted from six Thoks (groups).

24. The members of first Committee of Management were appointed

when the agreement was executed and paragraph 2 details the names of members. Paragraph 3 of the agreement encapsulates the work to be performed by Committee of Management. Paragraph 7 is of great relevance as it does not provide for line of succession of any member of Committee of Management, in fact, it details that in case any member dies or refuses to work or fails to attend the meeting of Committee of Management for one year, he shall be replaced by a member from his Thok (group). In case of failure on the part of the Thok to appoint a member within three months, rest of the members can appoint a member from his Thok. In case of a tie or a dispute between the existing members, chit will be placed before the Deity for appointing the member.

25. The concept of successorship to the members of Management Committee is alien to the registered agreement executed between the 145 families of Pandas on 13.09.1904. The aforesaid agreement is the genesis of governance and management of the temple by families of Pandas/Sevayats of Dauji Temple who are divided in six Thoks (groups) nominating seven members for managing day to day affairs. The document executed on 02.09.1904 and registered on 13.09.1904 governs the entire action of the parties to the litigation.

26. In the suit instituted in the year 1923 by seven plaintiffs who were appointed the members of Management Committee by Sevayats/Pandas in the meeting held on 17.06.1923 had specifically claimed relief of declaration as well also sought relief of permanent injunction against seven defendants of the suit for permitting them to manage the affairs of the temple in pursuance of resolution dated 17.06.1923 and defendants

be injuncted from interfering in their peaceful working.

27. The entire premise of Suit No. 94 of 1923 was on the basis that agreement executed on 02.09.1904 governs the field of management of temple, and initially a Seven Member Committee was appointed and those members have expired and their legal heirs and family members have unscrupulously constituted a Committee of Management and were looking after the affairs of the temple.

28. In the plaint, it was specifically averred that defendants cannot function as Committee of Management which was against the agreement dated 02.09.1904. The defendants of the said suit in their written statement had admitted the execution of Agreement dated 02.09.1904. They had also admitted that initial seven members had died and it is they who are managing the affairs of the temple.

29. No plea in the written statement was taken as to how they were performing the work of Committee of Management or stepped into the shoes of the earlier Committee of Management. There was no reliance upon any resolution in their favour appointing them as the members of Committee of Management from their respective Thoks (group).

30. The member can only be appointed in the Management Committee from his Thok. One has to demonstrate his continuance as a member, having been sent from his Thok. In the written statement, there was no such averment by contesting defendants of that suit.

31. In the compromise application which was filed on 14.10.1924, the parties

to the suit had not accepted that their continuance had been on the basis of law of inheritance/succession. The alleged compromise was entered so as to resolve the dispute for managing the affairs of the temple and one Babu Baldeo Bihari Lal, Advocate was appointed as the Receiver. The intention of the compromise entered does not reveal that Receiver would continue to operate in the temple for eternity.

32. The argument of respondent counsel that decree has bound the parties in eternity is absolutely vague and against the material on record. The agreement executed on 02.09.1904 binds the entire Pandas/Sevayats of Dauji Temple who now number 734 families. The agreement never provided for succession to operate in the appointment of members to the Management Committee. It was the respective Thok which was to send one member to the Management Committee.

33. It was only in a case of deadlock that a Receiver was appointed pursuant to compromise arrived in the year 1924.

34. Once Babu Baldeo Bihari Lal left as Receiver of Dauji Temple, it appears that successive applications were filed by the parties for appointment of Receiver which continued for last 100 years. No court considered the agreement executed between the Pandas/Sevayats on 02.09.1904, registered on 13.09.1904 that the legal heirs/representatives of members of Management Committee would not succeed.

35. What transpires from the present case is that parties to the litigation claiming on the basis of law of

inheritance/succession have been appointing their persons as Receiver of the temple and they are inducting themselves to be the people in-charge of the affairs of Committee of Management and treating them to be trustees of the trust. The description of the parties to the writ petition clearly reveals that both petitioners claim themselves to be the trustees of Dauji Temple along with respondent nos. 1 to 12. While petitioners' counsel had vehemently argued that it was not a trust registered under The Indian Trusts Act, 1882 nor it is governed by The Charitable and Religious Trusts Act, 1920.

36. It is in the garb of this fact that petitioners and respondents are claiming themselves to be the successors/legal heirs and representatives of the seven plaintiffs and defendants of Suit No. 94 of 1923 and litigating since then and managing the affairs of the temple ousting all the Sevayats and Pandas from the judicial arena.

37. The argument of Sri Tripathi, also rests on this premise that present petitioners and respondent nos. 1 to 12 are descendants of plaintiffs and defendants of Suit No. 94 of 1923 and they are entitled to carry on the litigation and only with their consent any person can be appointed as a Receiver. The argument is totally vague and alien to the concept of succession in view of agreement dated 02.09.1904.

38. All the parties to the present litigation have admitted the execution and registration of document dated 02/13.09.1904. Once such is the position, then the entire action will be governed by the terms and conditions laid down in the said agreement. It is for the first time that intervenor counsel has brought the

agreement executed between 145 families of Pandas/Sevayats of Dauji Temple, registered on 13.09.1904, which details the name of members of 145 families which was divided in six Thoks. The entire process for appointment and functioning of Committee of Management has been clearly spelt out in the Agreement of the year 1904. It is the binding force between all the Pandas and Sevayats of the Temple.

39. No judgment or order can be passed excluding the agreement or which is against the provision of the agreement.

40. The entire premise of argument of petitioners and respondents counsel especially respondent nos. 1 to 12, rests on the compromise decree of the year 1924 leaving aside the agreement executed in the year 1904. The agreement is the genesis of the entire dispute which has stemmed from 1923 onwards. The plaint of Suit No. 94 of 1923, at the outset, mentions the execution of Agreement on 02.09.1904. The plaintiffs therein had solely and entirely relied upon the agreement of 1904 and had claimed their relief relying upon it.

41. With the passage of time, families of Pandas and Sevayats have grown from 145 to 734 at present. It is only these families who are divided in six Thoks will send seven members to Management Committee who will look after the affairs of the Temple. The role of Receiver will come into play only in case no unanimity is arrived at or the Committee of Management is not constituted. Litigation after compromise decree does not reveal that any effort was made in last 100 years to constitute Committee of Management whose basic job was to look after the affairs of Temple. Receiver is only appointed when all the measures fail and to

protect the property the court is left with no option but to appoint a person.

42. Order XL Rule 1 CPC provides for appointment of Receiver 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 the 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 realization, 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 those powers as the Court thinks fit.

43. 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.

44. 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.”

45. 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.

46. In **Mulji Umershi Shah Vs. Paradise Builders Private Limited**, AIR 1998 Bombay 87, Bombay High Court held that appointment of Receiver can be made on the application of either parties to

the litigation as well as *suo moto* and therefore, absence of application shall not preclude the Court from passing such orders if it is just and convenient.

47. In **S.B. Industries Vs. United Bank of India**, AIR 1978 189, Division Bench of this Court while considering the appointment of Receiver held that in order to justify the appointment of Receiver, the plaintiff must establish a reasonable possibility that the plaintiff will ultimately succeed in obtaining the relief claimed in the suit. The requirement, thus, is that he must establish a *good prima facie* case. The Court further held that appointment of a Receiver is, as a general rule, discretionary, and not a matter of right. The Court also observed that a Receiver has no power except such as are conferred upon him by the orders by which he is appointed.

48. 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.

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

50. Pleading of the parties and the argument advanced from both sides reveal that they are only interested in the appointment and continuance of a Receiver. There is no whisper in the petition or the argument led by counsel for the parties that any effort was made to constitute Committee of Management in last 100 years. Once, it is an admitted case that there are more than 700 families of Pandas and Sevayats who are divided in six Thoks, their wishes needs to be taken into consideration for appointment of Seven Member Committee.

51. The present proceedings which continued before court below in form of Misc. Case No. 165 of 2020 cannot continue as the compromise decree did not

mandate that Receiver was to continue in infinity. The appointment of Receiver is a stop gap arrangement. The compromise decree in 1924 was entered only because of the dispute between two groups claiming to be in-charge of affairs of the Temple. The agreement governs the field of appointment of Committee of Management. In the garb of misc. proceedings in Original Suit No. 94 of 1923, proceedings had been going on for last 100 years.

52. This Court is shocked to note that no effort was made by courts below to look into the agreement of 1904 and make effort for constituting Committee of Management in pursuance of the agreement entered between all the Pandas and Sevayats of the Temple.

53. The instant petition, filed by the alleged two trustees, appears to be a proxy petition on behalf of respondent no. 13 who was appointed Receiver by court below in the year 2019. Respondent nos. 1 to 12 who also claim to be the trustees of Dauji Temple had supported the stand taken by petitioners and have prayed for continuance of respondent no. 13 as Receiver.

54. It is a fraud being played on the judicial system by these alleged trustees who have clearly failed to demonstrate as to how they are calling themselves to be trustees of Dauji Temple or a person in-charge for the management of the Temple. The original agreement of 1904 does not provide for any succession to the Seven Member Committee of Management. It only provides for replacement of member from his respective Thok and law of inheritance or succession is not applicable.

55. Continuance of judicial proceedings for several decades in the garb

of compromise decree of 1924 is a fraud which has been played upon the court. The concept of appointment of Receiver is only to protect, preserve and manage the property during the pendency of a suit. The suit instituted in the year 1923 was compromised between the parties which had led to appointment of Receiver in 1924 by the court. The decree does not provide for continuance of Receiver in eternity.

56. At present, there is no such suit pending between any of the parties. Out of 734 Pandas/Sevayats, none have instituted any suit nor parties before the Court have brought any material to demonstrate that any suit is pending consideration. Through a misc. proceeding, a frivolous case has been carved out for appointment of Receiver, wherein there is no litigation pending between any party and the suit property needs to be protected.

57. The interest of Pandas/Sevayats of Dauji Temple needs to be protected, and according to the agreement arrived between 145 families of Pandas/Sevayats in the year 1904, the Committee of Management is to be constituted. After 13.09.1904, neither the agreement was rescinded or altered. It still holds the field and binds the families of Pandas and Sevayats. The entire *seva/puja* and the management of affairs of Temple has to be seen from the terms laid down in the agreement of 1904.

58. Through artificial litigation which has been created after the compromise decree was made in the year 1924, Receivers have been appointed successively to manage the affairs of Dauji Temple. It was never brought to the notice of the court that any agreement was executed in 1904 between 145 families of Pandas/Sevayats.

59. Reliance placed upon the decision of co-ordinate Bench rendered in case of **Ram Kumar Pandey vs. Narain Prasad Pandey, Matters under Article 227 No. 1637 of 2018**, delivered on 31.08.2018, clearly reveals that agreement of 1904 was not brought to the notice of the Court. The entire case brought before the Court was from the stage, when the compromise decree was passed. Parties litigating in the matter for last few decades have never referred to the agreement of 1904 and solely relying upon the compromise decree of 1924 had proceeded further in the matter.

60. The entire genesis of the litigation of 1923 was the defiance of agreement of 1904 by the parties. Agreement entered between 145 families of Sevayats is the basic document upon which any litigation in regard to Dauji Temple would rest.

61. Without discussion and consideration of the said Agreement, no dispute can be resolved. It is in garb of the consent decree that petitioners have created an illusionary litigation and claiming to be the successors of parties to the suit of 1923 and are trying to control the temple in question.

62. The management of temple rests with Seven Member Committee to be constituted from six Thoks of 145 families of Pandas and Sevayats. Apart from this, no one can claim right to manage affairs of the Dauji Temple.

63. Considering the facts and circumstances of the case, I find that no misc. proceedings can be carried on in Original Suit No. 94 of 1923 for appointment of Receiver. Thus, entire proceedings of Misc. Case No.

165 of 2020 are hereby set aside. No person shall act as Receiver of the Temple in question and a Seven Member Management Committee be constituted in terms of Agreement dated 02.09.1904. The matter is remitted to District Judge, Mathura, with a request to:-

(i) Convene a meeting of 734 Pandas/Sevayats of Dauji Temple, who are divided in six Thoks, to be conducted by the senior most Additional District Judge, within a month.

(ii) A supplementary agreement would be executed by all 734 members only to the extent that their names are brought on record, without touching upon the terms and conditions laid out in the Agreement dated 02.09.1904, registered on 13.09.1904.

(iii) The members shall select a person from their respective Thoks to be sent to Committee of Management for managing the affairs of the Temple.

(iv) The Management Committee would be constituted in terms of Agreement dated 02.09.1904 and only the new members of 734 families would become part of the supplementary agreement.

(v) The newly constituted Management Committee would look after day to day affairs of the Temple.

64. In view of the fact that entire misc. proceedings initiated by the parties for appointment of Receiver has been set aside and direction has been issued for constituting fresh Committee of Management to look after the affairs of the Temple in pursuance of the Agreement dated 02.09.1904, the present writ petition stands disposed of.

*In Re: Civil Misc.
Correction/Modification Application No.
13 of 2025*

1. This correction/modification application has been moved on behalf of respondent nos. 14, 15 and 16 seeking correction/modification of judgment and order dated 21.03.2025 to the extent that District Judge, Mathura, shall get an inventory of all movable and immovable properties including cash, bank accounts, ornaments etc. prepared immediately and a report is submitted by officiating Receiver, Kunwar Pal Singh Tomar before Committee of Management is constituted.

2. In view of said fact, judgment and order dated 21.03.2025 is modified to the extent that after Paragraph No. 64, following paragraphs are added:-

"65. The District Judge, Mathura, is hereby requested to get the complete inventory prepared of all movable and immovable properties of Dauji Temple, including cash, bank accounts, ornaments etc. immediately, within a period of two days from today. When the management is handed over to newly constituted Committee of Management, the inventory so prepared shall also be passed on.

66. Further, Registrar (Compliance) is hereby directed to communicate this order along with earlier judgment and order dated 21.03.2025 to District Judge, Mathura, within 24 hours, for necessary compliance."

3. The correction/modification application stands disposed of.

(2025) 3 ILRA 116

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 11.03.2025

BEFORE

THE HON'BLE ROHIT RANJAN AGARWAL, J.

Matters Under Article 227 No. 11807 of 2024

Smt. Santosh Awasthi ...Petitioner
Versus
Smt. Urmila Jain ...Respondent

Counsel for the Petitioner:
Rama Goel Bansal, Shalini Goel

Counsel for the Respondent:
Arvind Srivastava

Civil Law-The Constitution of India,1950-Article 227 - The Code of Civil Procedure, 1908-Section 115, Order 21 Rule 97,102 - The Transfer of Property Act-1882-Section 52- Revisional court had exceeded its jurisdiction by dismissing the application filed under Order XXI Rule 97 by the petitioner before the executing court while exercising revisional jurisdiction under Section 115 CPC--- The executing court has also failed in its endeavour to decide the execution case pending before it since the year 2014, and after framing the issue of res judicata had postponed the matter to be decided at the final stage--- Where it is an admitted fact that the property was transferred during pendency of the suit and petitioner is a transferee pendente lite and hit by provisions of Section 52 of the Transfer of Property Act, the executing court should have, at the very outset, proceeded to pass the order in pursuance of Rule 102--- Matter is remanded to the executing court to pass necessary orders on the application moved under Order XXI Rule 97 CPC in accordance with law within a period of one month. **(Para 34, 35 & 37)**

Petition disposed of. (E-15)

List of Cases cited:

1. Siddamsetty Infra Projects Pvt. Ltd. Vs Katta Sujatha Reddy & ors., 2024 SCC OnLine SC 3214
2. Shingara Singh Vs Daljit Singh & anr., 2024 SCC OnLine SC 2823
3. Usha Sinha Vs Dina Ram 2008 (7) SCC 144