

Court No. - 3

Case :- MATTERS UNDER ARTICLE 227 No. - 2963 of 2024

Petitioner :- Syed Shoib Ashraf And Another

Respondent :- District And Sessions Judge, Ambedkar Nagar And 7 Others

Counsel for Petitioner :- Vikas Vikram Singh, Rajat Gangwar

Counsel for Respondent :- Syed Ahmad Jamal

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioners and Mr. Syed Ahmad Jamal and Mr. Ajay Kishore Pandey, learned counsel for opposite party no.2 while power on behalf of opposite parties 3 to 8 has been filed by Mr. S.M. Rehman Faizy, Advocate.
2. Applications for impleadment has been filed by Mr. Adnan Ahmad, learned counsel appearing on behalf of Syed Haseen Ashraf and Syed Moinuddin Ashraf Anwar Ashraf. The applications are taken on record and Mr. Adnan Ahmad has been heard in terms of Chapter XXII Rule 5A of the Rules of this Court.
3. Supplementary affidavit filed on behalf of petitioners is taken on record.
4. Petition has been filed challenging order dated 31.05.2024 passed in Miscellaneous Civil appeal No.11 of 2024 preferred by plaintiff against order dated 17.05.2024 whereby directions have been issued for management to be conducted by the defendants exclusively of the Shrine and the proceeds thereof.
5. Learned counsel for petitioners submits that aforesaid Suit No.82 of 2019 had been filed seeking permanent injunction and vide order dated 17.05.2024, Application for temporary injunction has been decided with a direction that since the property under dispute is jointly controlled by all the members of the family, there was no occasion to grant any temporary injunction and therefore only looking to the safety of the Shrine

and the proceeds thereof, petitioners being defendants and the Committee of Management have been directed to look after the same.

6. The aforesaid order dated 17.05.2024 was thereafter assailed by the plaintiffs in aforesaid Misc. Civil Appeal and by means of impugned order dated 31.05.2024, the said order dated 17.05.2024 has been stayed.

7. It has been submitted that order dated 17.05.2024 is a detailed and reasoned order which has been interfered with by the Appellate Court without indicating any prima facie satisfaction or even recording any cogent reasons. It is also submitted that the next date fixed in the appellate court is 09.07.2024 for hearing on the Application 15Ga2. It is submitted that in case the appellate court had come to a prima facie conclusion that the temporary arrangement made by the trial court was not in consonance with law, it was incumbent upon it to have adverted to the pleas taken by the parties and such course of action having not been taken, renders the order vitiated.

8. Learned counsel appearing on behalf of opposite party no.2 have refuted submissions advanced by learned counsel for petitioners with submission that order dated 17.05.2024 has been passed against the material on record inasmuch as there is no sanctity of any Committee of Management and therefore there was no occasion for the trial court to have vested powers in such a Committee of Management which does not have any sanctity of law. It is submitted that the Application for temporary injunction filed along with the Appeal is pending consideration as Paper 15Ga2 and is directed to be listed on 09.07.2024 although no objection to the Application has been filed till date.

9. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, the narration of facts as indicated herein above are admitted as is fact that the next date fixed in the Appellate Court is 09.07.2024 for hearing on Application 15Ga2.

10. From a perusal of impugned order dated 31.05.2024, it does appear that no cogent reasons have been indicated by the appellate court for interfering with order dated 17.05.2024. In case the appellate court had reached a prima facie satisfaction that temporary injunction granted by trial court was not in accordance with law, some reasoning was required to be indicated in the impugned order. Such a course of action having not been followed by appellate court, renders the impugned order vitiated.

11. In the considered opinion of this Court, since the Application for grant of interim relief is pending consideration before the appellate court and is due to be listed on 09.07.2024, it would be appropriate that the appellate court decide the same on merits.

12. In view of submissions advanced and the urgency indicated by learned counsel for the parties, it is directed that pending Application 15Ga2 shall be decided by the appellate court on 05.07.2024 after considering objections by the respondents. Copies of the objections shall be provided prior to the date fixed, to Appellants.

13. This order is being passed in view of the fact that defendants in whose favour the interim injunction had been granted by the trial court have already put in appearance in the Appeal as well as in the present writ petition and the said defendant no.5 and legal heir of defendant no.3, arrayed as respondents 3 and 7 are the only parties affected by grant of

temporary injunction by the trial court.

14. In view of aforesaid, impugned order dated 31.05.2024 passed in Miscellaneous Civil appeal No.11 of 2024 is hereby set aside as per the directions issued herein above.

15. Consequently, the writ petition succeeds and is allowed at the admission stage itself.

Order Date :- 28.6.2024

kvg/-