

Order below *Exh. 99*
in R.C.S. No. 240 / 1988

1. Perused application and say of defendant. Gone through the record. Heard plaintiff in person and counsel for defendant at length.

2. Considering the application, documents on record as well as argument advanced following points arise for my determination for which I have discussed them with reasons to follow as under -

<i>Sr.No.</i>	<i>Points</i>	<i>Findings</i>
1	Whether plaintiff proves prima facie case ?	: In the negative.
2	Whether balance of convenience is in favour of plaintiff ?	: In the negative.
3	Whether plaintiff will suffer irreparable loss, if application rejected ?	: In the negative.
4	What order	: As per order

REASONS

3. Point no. 1 to 3 are interlinked hence discussed together for brevity and convenience.

It is settled that, while deciding temporary injunction application, the documents filed on record can be considered without formal proof.

While deciding temporary injunction application prima facie case, balance of convenience and irreparable loss are well known concurrent conditions.

As to Point No. 1 to 3 :-

4. To prove this application plaintiff contended that, the matter will take time to decide on merits. It is contention of the application that, the IInd Appeal bearing no. 46/85 has been decided on 15/01/2014 and in the circumstances, the Temple Act 1973 has been abolished however the defendants are acting as if it is in existence.

5. It is contention of the application that, in R.C.S. no. 562/80 the rights of plaintiff has been declared and till date they are in existence/unchanged. The contention of plaintiff that, after the judgment of Hon'ble Apex Court dtd. 15/01/2014 plaintiff required to execute his decreed rights. The contention of the application that, since 16/01/2014 defendants have restrained plaintiff to offer their services without

consideration also. That, the contention of the application is that, defendant may restrain plaintiff to execute their decreed rights. Accordingly, plaintiff contended that, defendants may be restrained temporarily from not to obstruct plaintiff through themselves or any other person on their behalf to execute his decreed right.

6. Alongwith this application plaintiff, Bhimacharya filed affidavit at Exh. 100 and almost affianted all the contains of the application.

7. That, the application has been strongly opposed by defendants by filing say at Exh. 104. The say of defendants that, the application is preferred after 25 years after the institution of this suit, hence it is liable for rejection. The contention of defendants that, the Hon'ble Apex Court has disposed IInd Appeal bearing no. 994/07 dtd. 15/01/2014 and thereafter the defendants are functioning as per directions of Government. The contention of defendants that, a committee has been formed & appointed by the Government and it is functioning as per directions of Government. It is contention of defendants that, the suit is automatically abated hence, the application being not tenable liable for rejection.

8. In support of their contention defendants have filed notification dtd. 28 February, 2014 alongwith list of documents Exh. 111 by which it is seen that, a temporary committee is appointed by the Government for the management of the Temple. The plaintiff has also not disputed that,

after the judgment of the Hon'ble Appex Court the Government has appointed temporary committee for the management of temple wherein the names of Badve and Utpat are excluded.

9. On examination of record it appears that, the suit is for negative declaration and perpetual injunction that, the defendants have no right as contended in the plaint and defendants be perpetually restrained from levying charges from the devotees.

10. Though it is admitted that, the rights of plaintiff are decreed, however, the prayer of plaintiff in this application is not in accordance with the prayer in plaint.

11. That, the record shows that, the State Government has appointed temporary committee for the management of Temple which functions as per directions of Government. As per contention of plaintiff since the order of the Hon'ble Appex Court dtd. 15/01/2014 defendants have restrained plaintiff to offer his services without consideration also. Hence, defendants may be restrained from executing plaintiff the rights which are declared. On examination of record as mentioned above the prayer of plaintiff in the suit and in this application are totally different. Hence, no balance of convenience lies in favour of plaintiff.

12. Even if it is admitted that, the rights of plaintiff are decreed rights, then also considering the pleading of plaint and this

application no relief can be granted to plaintiff. In the circumstances no prima facie case lies in favour of plaintiff.

13. Even if as per objection raised by plaintiff that, the Manager of defendant has no right to file say (Exh. 104) however, the prayer of plaintiff in the plaint and in this application are totally different, no relief can be granted to plaintiff. Accordingly, I answer point no. 1 to 3 'in the negative' and pass the following order.

- : O R D E R : -

1. Application rejected.
2. Cost in cause.
3. Dictated and pronounced in the open Court.

Date : 26 / 03 / 2014

Sd/-
(Mrs. M. S. Kakade)
Jt. Civil Judge, J.D., Pandharpur.
