

ITEM NO.102

COURT NO.9

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).5060/2008

MANIKCHAND AND ORS.

Appellant(s)

VERSUS

SAKARCHAND S/O PREMCHAND GUJRATHI AND ORS.

Respondent(s)

IA No.2/2007 - APP FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS
 IA No.45940/2018 - I/A TO TAKE ON RECORD DOCUMENTS FILED WITH ADDL.
 AFFIDAVIT DATED 21.03.18 BY THE APPELLANTS
 IA No.110298/2019 - INTERVENTION APPLICATION
 IA No.94164/2018 - PERMISSION TO FILE ADDITIONAL
 DOCUMENTS/FACTS/ANNEXURES

Date : 22-02-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURYA KANT
 HON'BLE MR. JUSTICE ARAVIND KUMAR

For Appellant(s) Mr. Mahavir Singh, Sr.Adv.
 Mr. Shuvodeep Roy, AOR

For Respondent(s) Mr. Paramjit Singh Patwalia, Sr.Adv.
 Mr. S.Nagamuthu, Sr.Adv.
 Mr. Harsh V. Surana, AOR
 Ms. Deepali Surana, Adv.
 Mr. Rudresh Kumar, Adv.

For Intervenor(s) Mr. Parag P. Tripathi, Sr. Adv.
 Mr. Narender Hooda, Sr. Adv.
 Mr. Sunil Kumar Jain, AOR
 Mr. Abhinav Jain, Adv.
 Mr. Anubhav Kumar, Adv.

Mr. D.N. Ray, Adv.
 Mr. Dillip Kumar Nayak, Adv.
 Ms. Disha Ray, Adv.
 Mrs. Sumita Ray, AOR

Mr. Arvind S. Avhad, AOR

Ms. Rashmi Singhania, AOR

Mr. Sachin Pahwa, Adv.
 Mr. Arvind S.Avhad, Adv.

Ms. Swati Jain, Adv.
Ms. Sundri, Adv.
Mr. Manish Dhingra, Adv.
Ms. Shaloni Sharan, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. The instant Civil Appeal is of the year 2008. It has arisen out of a judgment dated 08.03.2007 passed by the High Court of Judicature at Bombay, Bench at Nagpur, Nagpur. The appellants are the plaintiffs. Their suit for declaration to set aside the previous judgment and decree passed in Privy Council proceedings arising out of Civil Suit No.4 of 1910, was dismissed by the Civil Court on merits on 30.11.1994. They preferred an appeal and during the pendency of the said appeal, the respondent - defendants moved an application under Section 4(2) of the Places of Worship (Special Provisions) Act, 1991 (hereinafter referred to as 'the 1991 Act'), *inter alia* claiming that the jurisdiction of the Civil Court was barred from entertaining the suit and the suit stood abated in view of the fact that the subject idol was in existence and was being worshiped before 15th day of August, 1947. The First Appellate Court accepted the application on 15.12.1997 and dismissed the appeal, holding that the suit itself stood abated under the 1991 Act. The judgment of the First Appellate Court was then challenged by the appellants in a Civil Revision before the High Court which was also dismissed vide impugned judgment dated 08.03.2007, affirming the reasoning assigned by the First Appellate Court that the suit filed by the present appellants stood abated in view of Section 4 of the 1991 Act.

2. After the dismissal of their Civil Revision, the appellants made a prayer before the High Court to allow the interim order to operate for some time as they intended to approach this Court. It was on this prayer that the High Court passed the following order on 12.03.2007:

"Heard the learned counsel for the applicant and the non-applicants.
The Petitioner intends to move the Supreme Court

against the order passed by this Court whereby the Revision Application has been dismissed. The dispute relates to the nature of the Idols, i.e., whether it is Digambari and Shwetambari Idol. Since the Petitioners desire to approach the Supreme Court, it is directed that neither party shall change the nature of the Idol as it stand today. The order shall be in force for four weeks only."

3. When the Special Leave Petition came up for hearing on 05.04.2007, this Court passed the following interim order:

"List the petition on the date notified, i.e., 16th April, 2007.

Till that date, the interim order passed by the High Court shall continue to operate."

4. The above-stated interim order is operating till date. The instant appeal has come up for final hearing as per its own turn. As soon as it was taken up for hearing, learned Senior Counsel for the appellants as well as learned Senior Counsel for the intervenor (whose application is yet to be decided) have pointed out that the constitutional validity of the Places of Worship (Special Provisions) Act, 1991 is under challenge in Writ Petition (C) No.1246 of 2020 and the matter is listed before a three-Judge Bench of this Court. It is pointed out that vide Order dated 12.10.2022, 11 questions for adjudication have been formulated by the three-Judge Bench and since some of the questions pertain to the constitutionality of Section 4(2) of the 1991 Act as to whether it violates Article 14, 21, 25, 26 and 29(2) of the Constitution, the decision of the three-Judge Bench will have a direct bearing on the merits of the instant appeal for the reason that the First Appellate Court as well as the High Court have not gone into the merits of the controversy and have dismissed the first appeal and the Civil Revision respectively, only on the strength of Section 4(2) of the 1991 Act.

5. We have heard learned Senior Counsel from both the sides and perused the record.

6. The controversy pertains to an idol of God Shri

Antariksha Parshwanath 23rd Jain Tirthankar, which is installed in a temple at village Shirpur in Washim Taluke of Akola District, Maharashtra. The idol is in existence since time immemorial. It appears that Polkars took over the management of the temple as a result of which the devotees belonging to Digambari and Shwetambari sects came together in the year 1901 to oust the Polkars. In the year 1905, a meeting of the two sects was held and it was decided that both the sects shall worship the idol of God Antariksha Parshwanath according to the time table as settled between them. This arrangement continued till the year 1908. Thereafter, there arose a dispute between the two sects namely, Digambari and Shwetambari, of which it is not necessary to make a detailed reference.

7. It is sufficient to mention that the Shwetambari sect filed Civil Suit No.4 of 1910 praying that the idol and the temple be declared as belonging to the Shwetambaris only. The said Civil Suit was partly decreed declaring that the management was co-shared with the Digambari and Shwetambari and the idol was Shwetambari. In the first appeal, the judgment of the trial court was modified and exclusive management of the temple was held to be with the Shwetambaris. The matter then went to the Privy Council and vide judgment dated 09.07.1929, the appeal was dismissed and the judgment passed by the First Appellate Court in favour of Shwetambaris was upheld and the idol as well as the administration of the temple was declared to have vested with Shwetambaris. Both sects were allowed to worship the idol.

8. In view of the judgment by the highest Court, the controversy came to rest till the year 1959. However, it is alleged that in 1959, the existing plaster (lep) on the idol was removed and it was found that in fact the idol was a Digambari idol, and not a Shwetambari idol. On this basis, a second round of litigation started between the parties as the Digambari sect filed a Civil Suit seeking declaration that the earlier judgments of the Civil Courts in the first round were obtained by fraud.

9. As noticed in the beginning of this Order, the second

Suit was dismissed by the Civil Court on merits but the first appeal as well as the civil revision have been dismissed by the First Appellate Court and the High Court, respectively on the strength of Section 4(2) of the 1991 Act.

10. In this factual backdrop, we deem it appropriate to adjourn this appeal to await the final decision in Writ Petition (C) No.1246 of 2020. However, we are satisfied that the interim order made by the High Court for a period of four weeks on 12.03.2007, which has been allowed to continue by this Court on 05.04.2007, deserves to be suitably modified. Consequently, the interim order dated 05.04.2007, passed by this Court, is modified in the following terms:

- (i) The management of the temple and the idol shall be that of the Shwetambari sect, subject to the final outcome of this appeal;
- (ii) The Digambari sect will be allowed to worship the idol as per the agreement entered into between the parties in 1905 but without changing the character of the idol; and
- (iii) The Shwetambari sect will be at liberty to carry out necessary plaster (*lep*) on the idol to prevent any wear and tear of the idol and for the purpose of maintenance and proper upkeep of the same.

11. List the instant appeal immediately after the decision in W.P.(C) No.1246 of 2020.

(SATISH KUMAR YADAV)
DEPUTY REGISTRAR

(PREETHI T.C.)
COURT MASTER (NSH)