

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.209 OF 2017

SYED GULZAR HUSSAIN & ORS.

...Appellant(s)

Vs.

DEWAN SYED ALE RASUL ALI KHAN & ORS.

...Respondent(s)

WITH

CIVIL APPEAL NOS. 212/2017, 213/2017, 214-216/2017,
217-219/2017 and 220-221/2017

O R D E R

IA No.162795/2023 for impleadment is allowed.

2. Heard the learned counsel appearing for the parties.

3. Firstly, we are dealing with Civil Appeal Nos. 220-221 of 2017. With a view to appreciate the controversy in these appeals, reference to few facts will be necessary. Execution proceedings being Execution Petition No.8 of 2010 (11/2019) (the Execution Application) was pending before the learned District Judge, Ajmer (the Executing Court) for the execution of the Decree dated 3rd May, 1933 (as amended on 29th January, 1940) in Civil Suit No.9 of 1929 passed by the Additional District Judge, Ajmer. There were orders passed in the said execution proceedings. The orders were passed

on 11th October, 2012 and 20th July, 2013. The order dated 11th October, 2012 passed by the Executing Court was challenged before the High Court of Rajasthan by way of Civil Miscellaneous Appeal No.4379 of 2012 (the Civil Miscellaneous Appeal) which was an appeal under Rule 1(s) of Order XLIII of the Code of Civil Procedure, 1908. The order dated 20th July, 2013 passed by the Executing Court was challenged by filing Civil Writ Petition Nos.15228/2013 and 15275/2013 (the Writ Petitions). These three proceedings were disposed of by a common judgment dated 13th November, 2013. This common judgment is the subject matter of challenge in Civil Appeal Nos.209/2017, 212/2017, 213/2017 and 214/2017.

4. So far as Civil Appeal Nos.220-221 of 2017 is concerned, these appeals arise out of a *suo motu* cognizance taken by the learned Single Judge of the High Court on the basis of a newspaper report published on 6th September, 2014. The newspaper report recorded that the Execution Application was disposed of by the Executing Court in terms of the compromise. In the first impugned order dated 11th September, 2014, the learned Single Judge of the High Court refers to the said newspaper report. The said order directs that notice be issued to the certain parties. Thereafter, the second impugned order dated 17th September, 2014 was passed by the learned Single Judge by which implementation of the

order dated 5th September, 2014 passed by the Executing Court was stayed till further orders.

5. At this stage, we may note that in Civil Appeal Nos. 217 and 219 of 2017, the orders dated 4th July, 2014, 12th August, 2014 and 19th August, 2024 passed by the learned Single Judge have been challenged. We may note here that the impugned orders subject matter of challenge in Civil Appeal Nos.220-221, 217-219 of 2017 were passed in the disposed of Miscellaneous Civil Appeal.

6. Our attention is invited to the compromise filed on record in Civil Appeal Nos.220-221 of 2017. The parties to the compromise are Shekul Mashiekh Dewan (through Syed Zainu Abeedeen Ali Khan Nabeera and Sajjada Nashin Khwaja Saheb), Anjuman of Syedzadgan and Anjuman of Shaikzadgan. It appears that the said compromise was placed before the Executing Court and by an order dated 5th September, 2014, the application dated 4th September, 2014 filed by the decree holder for withdrawal of the Execution Application was allowed. The order records that the decree holder does not want to pursue the Execution Application. Therefore, the Execution Application was dismissed and was consigned to record. The order refers to the compromise which we have made a reference earlier.

7. We may note here that from the title of the order dated 5th September, 2014, we find that the appellants in Civil Appeal No.209 of 2017 as well as the Dewan were the parties to the Execution Application. In some of the Appeals filed before this Court, Dargah Committee is a party. The order dated 5th September, 2014 records that the Dargah Committee raised an objection to the disposal of the Execution Application. The said objection was not entertained by the Executing Court.

8. We may also note here that in Civil Appeal No.209 of 2017, while issuing notice, an order of *status quo* was passed by this Court on 5th December, 2013 and thereafter, an interim order was passed by this Court on 20th February, 2014 which makes the interim arrangement pending the disposal of the appeals. The interim arrangement in brief was that boxes were kept to receive offerings. One box was kept inside the dome and other boxes were kept outside the dome. Pursuant to the order dated 15th December, 2016, two bank accounts were opened in the State Bank of India, Ajmer Branch, Rajasthan and the money collected in these boxes is being deposited in two accounts.

9. Thus, when the order dated 11th February, 2014 was passed by the learned Single Judge, this Court was already seized of the appeals arising out of final order passed in

Civil Miscellaneous Appeal. In fact, the Civil Miscellaneous Appeal was disposed of by the order dated 13th November, 2013 and appeals against that order were pending in this Court in which interim orders were passed on 5th December, 2013 and 20th February, 2014. Therefore, there was no occasion for the learned Single Judge to pass any further order in the disposed of Civil Miscellaneous Appeal. Interim orders, if any, could have been passed only by this Court. On this narrow ground, we set aside the orders impugned in Civil Appeal Nos. 220-221 and 217-219 of 2017.

10. Now, coming to the rest of the appeals, these appeals arise out of the interim orders passed during the pendency of the Execution Application. Therefore, these appeal will not survive as the interim orders passed in the Execution Application do not survive as a result of the disposal of the Execution Application by the order dated 5th September, 2014. Only on that ground, the impugned order dated 13th September, 2013 in these appeals will have to be set aside and the same is accordingly set aside.

11. Consequent to disposal of these appeals, now the question which arises is what is to happen to the money lying in the boxes kept inside and outside the dome and the bank accounts in the State Bank of India. Except the learned counsel appearing for the Dargah Committee, the learned counsel appearing for the parties agree that the

amounts kept deposited in the State Bank of India and the amounts lying in the boxes kept inside and outside the Dome will have to be distributed in terms of the compromise referred above. The learned counsel appearing for the Dargah Committee states that the Dargah Committee needs money to manage the affairs of Dargah. He, however, stated that as of today, there are no proceedings filed by the Dargah Committee making any claim over the offerings.

12. We, therefore, direct the learned Principal District Judge, Ajmer, Rajasthan (the Executing Court) to appoint an officer of the Court or an advocate as the Court Commissioner to visit the Dargah and open all the boxes and count money found therein after giving advance notice to the parties to the proceedings. After drawing a panchnama, the Court Commissioner shall deposit the amount recovered from the box in the dome in the account in the State Bank of India in which amounts recovered from the box kept in the dome are being deposited. Rest of the amount shall be deposited by him in the other State Bank of India account.

13. Thereafter, the Executing Court will pass order of distribution of the amounts lying in the bank accounts in terms of the Compromise which is referred in the order dated 5th September, 2014 passed by the Executing Court. The State Bank of India, Ajmer Branch, Rajasthan will be bound by the orders which may be passed by the Executing Court regarding

payment/disbursement of the amounts lying in the two accounts. After the boxes are opened as mentioned aforesaid and the money is deposited in the bank, it is obvious that the issue of receiving and distributing offerings will be governed by the decree which is operating.

14. So far as Dargah Committee is concerned, we make it clear that we have not made any adjudication on the alleged rights claimed by the Dargah Committee and it is for the Committee to adopt appropriate proceedings in accordance with law.

15. The appeals and all pending applications are accordingly disposed of in the above terms.

.....J.
(ABHAY S.OKA)

.....J.
(PANKAJ MITHAL)

NEW DELHI;
November 02, 2023.

ITEM NO.107

COURT NO.9

SECTION XV

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). 209/2017

SYED GULZAR HUSSAIN & ORS.

Appellant(s)

VERSUS

DEWAN SYED ALE RASUL ALI KHAN & ORS.

Respondent(s)

(IA No. 25058/2023 - APPROPRIATE ORDERS/DIRECTIONS)

WITH C.A. Nos.212/2017, 213/2017, 214-216/2017, 217-219/2017 and
220-221/2017

Date : 02-11-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Appellant(s)

Mr. Puneet Jain, Adv.
Ms. Christi Jain, Adv.
Mr. Syed Asghar Mohammed Chisty, Adv.
Mr. Syed Ali, Adv.
Mr. Izhar Chishty, Adv.
Mr. Harsh Jain, Adv.
Mr. Yogit Kamat, Adv.
Mr. Mann Arora, Adv.
Ms. Akriti Sharma, Adv.
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Ms. Pratibha Jain, AOR

Mr. Syed Ahmed Saud, Adv.
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Mr. Uzmi Jameel Husain, Adv.
Mr. Aqib Baig, Adv.
Mr. Mohd. Shahib, Adv.
For M/S. Shakil Ahmad Syed, AOR

For Respondent(s)

Mr. G.N.Farooqui, Adv.
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Mr. Irshad Ahmad, AOR
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Mr. Ajit Kumar Sinha, Sr. Adv.
Mr. Govind Jee, AOR
Mr. Asad Kazmi, Adv.
Mr. Omanakuttan K K, Adv.
Mr. Kartikeya Khanna, Adv.
Mr. Shivendu Prakash, Adv.

Ms. Vidushi Garg , AOR

Mr. Satya Mitra, AOR

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

The appeals are disposed of in terms of the signed
order.

Pending applications also stand disposed of.

(ANITA MALHOTRA)
AR-CUM-PS

(AVGV RAMU)
COURT MASTER

(Signed order is placed on the file.)