

(2013) 11 RAJ CK 0149

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 4379 of 2012 and 15228 of 2013

Dewan Syed Aley Rasool Ali Khan

APPELLANT

Vs

Altaf Hussain and Others
 Abdul Kalam and Another Vs
District and Sessions Judge, Ajmer and Others

RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2014) 3 RLW 2042 : (2014) 3 WLN 225

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : Anil Mehta, in CMA No. 4379/2012, Mr. M.M. Ranjan assisted by Mr. Rajat Ranjan, in CWP No. 15275/2013, Mr. A.K. Sharma, in CWP No. 15228/2013, for the Appellant; Amit Gupta on behalf of Mr. B.L. Agarwal, J.C. Jain, learned Counsel for Respondent No. 21 in CMA No. 4379/2012, CWP No. 15228/2013 and CWP No. 15275/2013 and Mr. Anil Mehta for Respondent No. 2 in CWP No. 15228/2013 and CWP No. 15275/2013, for the Respondent

Final Decision : Partly Allowed

Judgement

Bela M. Trivedi, J.—All the three matters arise out of the same execution proceedings being No. 08/2010 (11/1991), pending in the Court of District and Sessions Judge, Ajmer (hereinafter referred to as "the Executing Court"), in respect of the decree dated 03/05/1933 (as amended on 29-01-1940) in Civil Suit No. 09/1929 passed by the Additional District Judge, Ajmer Merwara, Ajmer, and therefore, all the three matters were heard together and are being decided by this common judgment. The Civil Misc. Appeal being No. 4379 of 2012 has been preferred by the appellant/decreed holder under Order XLIII Rule 1(s) of Code of Civil Procedure, 1908 against the order dated 11/10/2012 passed by the Executing Court, whereby the application of the appellant/decreed holder filed u/s 51(d) read with Order XL Rule 1 of CPC for appointment of Receiver was dismissed by the Executing Court. The Civil Writ Petitions being No. 15228 of 2013 and 15275 of 2013 have been filed by the petitioners-judgment debtors under Article 227 of the Constitution of India challenging the order dated

20/07/2013 passed by the Executing Court allowing the application of the respondent No. 2-decree holder filed under Order XXI Rule 32(5) of CPC, and appointing the Durgah Committee as the Receiver to implement the decree in question, and further directing the Durgah Committee to suggest the ways and means as to how the Committee would discharge the function of distribution of offerings to the different stake holders as per the terms of the decree under execution.

2. At the outset, it is required to be stated that the execution proceedings being No. 8/2010(11/1991) were filed by the appellant of Civil Misc. Appeal No. 4379 of 2012, who is the respondent No. 2 in the other two Civil Writ Petitions (who shall be referred to as "the judgment creditor" hereinafter for the sake of convenience), for the execution of the decree dated 03/05/1933 (29/01/1940) passed in the Civil Suit No. 9/1929. The relevant part of the said decree is reproduced, as under:-

A. The rights of the Dewan in respect of offerings made at the Dargah are hereby declared to be as follows:-

(i) All offerings or presents made to the Dewan at the Dewan's Khankah or sitting place within the precincts of the Dargah are the exclusive property of the Dewan.

(ii) Offerings or presents of gold or silver vessels or implements or kabarposhes for the use of the Dargah are the property of the Dargah committee as trustees for the Dargah irrespective of the payment of tawan to the Khadims and irrespective of the spot at which they are presented.

(iii) Other offerings if made outside the dome of the shrine are the perquisites of the khadims with the exception that offerings of animals or such bulky articles as cannot conveniently be brought within the dome shall if made at the steps of the shrine be divided between the Dewan and the Khadims respectively in equal shares.

(iv) Other offerings if made within the dome of the shrine shall be divisible between the Dewan and Dewan and Khadim respectively in equal shares irrespective of the spot at which they are deposited within the dome provided that the following class of offerings shall be the perquisites of the Khadims exclusively:-

(a) "All coins not exceeding two annas in value irrespective of whether they are made of copper or any other metal" and cowries and gold or silver articles (other than coins) of a value less than 8 annas and cotton cloth inferior quality

(b) All offerings made between the hours of 4 A.M. and 4 P.M. on Qul day i.e. the last day of the Urs.

(v) Cash or other offerings sent by post be deemed to be offerings made at the shrine i.e. within the dome unless addressed specially to the Dargah committee,

the Dewan or the Khadims for their exclusive use.

(vi) In the case of the articles falling within the scope of clause (ii) the payment of tawan shall be deemed conclusive proof that an article is presented for the use of the Dargah and in cases in which no tawan is paid in respect of an article falling within the scope of clause (ii) the Dargah Committee shall be the authority to decide whether such articles is required or should be retained for the use of the Dargah.

B. All the members of the Khadims communities Sayedzadas and Sheikhzadas who as per order under Order 1 Rule 8 CPC are represented by defdts No. 1 to 20 by means of perpetual and permanent injunction are enjoined to refrain, restrain and prohibited from any interference with and obstruction to the enjoyment of plaintiffs rights as above declared.

3. In order to appreciate the adjudication of rights made in the aforestated decree, it would be beneficial to narrate the history of the holy shrine of Nasrat Khawaja Moin-ud-din Chishti, popularly known as the Durgah Khawaja Sahed situated at Ajmer, which is considered to be very pious and sacred place of pilgrimage for the Muslims of India. When the Durgah Khawaja Saheb Act, 1955 (hereinafter referred to as "the said Act"), enacted for the proper management and administration of the Durgah was declared ultra-vires by the High Court of judicature for Rajasthan at Jodhpur, the matter was taken up by the Durgah Committee before the Apex Court, and the Apex Court had an occasion to deal with the history of the said Durgah, in case of The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others, . In the said case, the order of the High Court was set aside and the appeal was allowed by the Apex Court upholding the vires of the said Act. The relevant part of the history narrated in the said judgment is reproduced hereunder:-

..... shrine of Nasrat Khawaja Moin-ud-din Chishti which is generally known as the Durgah Khawaja Saheb situated at Ajmer is one of the most important places of pilgrimage for the Muslims of India. Since persons following other religions also hold the saint in great veneration a large number of non-Muslims visit the tombe very year.

(3) Khwaja Saheb came to India sometime towards the end of the 12th Century A.D. and settled down in Ajmer. His saintly character and his teachings attracted a large number of devotees during his lifetime and these devotees honoured him as a great spiritual leader. Khawaja Saheb belonged to the Chishti Order of Soofies. He died at Ajmer in or about 1236 A.D., and naturally enough after his death his tomb became a place of pilgrimage.

(4)..... after his death the tomb under which the saint was interred was a kutcha structure and continued to be such for nearly 300 years thereafter. A pucca structure was built by the Khilji Sultans of Mandu and over the said pucca structure a tomb was constructed. Thereafter successive Muslim Rulers, particularly the Moghul Emperors, made endowments and added to the wealth

and splendour of the shrine.

(5) Khwaja Syed Fakhruddin and Sheikh Mohammad Yadgar, who originally accompanied the Khawaja Saheb to India, were his close and devoted followers. After the saint's death both of them looked after the grave and attended to the spiritual needs of the pilgrims. The descendants of these two disciples gradually came to be known as "Khadims".

4. As regards the duties and rights of Khadims, it is stated in para 27 of the said judgment that:-

....every day one Khadim in rotation opens the first gate of the dome containing the shrine at 4 a.m. after pronouncing the sacred call named the "Azan". Accompanied by a few others he then proceeds to open the second gate pronouncing certain sacred formulae in adulation of Khwaja Saheb. Then the Khadims remove the old flowers from the Nazar and put fresh flowers on it. This ceremony is called "Sej". The dome premises are then cleaned, "Loban" is burnt and the withered flowers are deposited in a sacred depository. This is followed by general prayer whereupon the Nazar is thrown open for the pilgrims. One Khadim remains on duty inside the dome while others guide the pilgrims. The Khadim, who is present inside the dome helps the pilgrims to kiss the Nazar and prays for them, after putting the Daman, that is to say, the cloth covering of the grave over the pilgrims' heads. At this stage the pilgrims offer Nazar. At 3 p.m. the dome gates are closed and the flowers are changed once again. At this time the dome is given a paint of sandal paste and the Kabrposh is also changed. The Khadim offers prayers for all the four silsilas of the Soofies and all other human beings, and this is followed by the opening of the Nazar again. At the sunset there is a beat of Nakkara which gathers the pilgrims at the dome. At this time the Khadims carry lamps inside the dome, and while so doing they touch the heads of devotees with their lamps and then the lamps are placed on lamp posts. Madha (song in praise of Khwaja Saheb) is recited followed by the recitation of Dua and all pilgrims join by saying Amin. The Nazar remains open in this way until 10 p.m. when three Khadims give a ceremonial sweep thrice inside the dome and lock it for the night. Besides these daily duties the Khadims perform a special ceremony during Urs and it is called Gusl. On the day of Basant Panchami Kavvals bring fresh green plants and flowers as presents to the Nazar and they are placed on the Nazar by the Khadims on duty. That in brief is the nature of the duties performed by the Khadims in the Durgah Khwaja Saheb.

5. It is also pertinent to note that the Apex Court, in para 28 of the said case had also taken into consideration the rights of the present judgment creditor and the judgment debtors flowing from the decree in question, and had also observed in para 38 inter-alia that the offerings made to the Durgah would be divisible between the Khadims and the Sajjadanashins as directed in the earlier litigation(that is the decree in question), and that the Khadim's right to receive offerings, which has been judicially recognized, would be in no manner affected or prejudiced by the provisions of the Act. Meaning thereby, the Apex Court in

the said case had also recognised the rights of the parties contained in the decree in question, while upholding the vires of the said Act.

6. In the backdrop of aforesaid, let us examine the issues involved in the present appeal and the petitions. The judgment creditor had initially filed the application u/s 51(d) read with Order XL Rule 1 and Section 151 of CPC before the Executing Court, seeking appointment of Receiver mainly on the ground that the decree holder was the Sajjadanashins and was not getting his share from the offerings and presents made at the Durgah pursuant to the decree in question. The said application was dismissed by the Executing Court vide the order dated 11/10/2012, against which the Civil Misc. Appeal being No. 4379 of 2012 was filed by the appellant-decree holder. It appears that pending the said appeal, the decree holder also filed an application under Order XXI Rule 32(5) for appointment of any person for the execution of the decree in question. The said application having been allowed by the Executing Court vide the order dated 20/07/2013, as stated hereinabove, two writ petitions have been filed by the judgment debtors-Khadims.

7. It has been sought to be submitted by the learned Senior Counsel Mr. M.M. Ranjan for the petitioners in writ petition No. 15275/2013 and Senior Counsel Mr. A.K. Sharma for the petitioners in writ petition No. 15228/2013 that the judgment creditor having filed the application under Order XXI Rule 32(5) of CPC, after rejection of his earlier application u/s 51(d) read with Order XL Rule 1, had indirectly acquiesced to the earlier order dated 11/10/2012 and, therefore, the Civil Misc. Appeal arising out of the said order had become infructuous. Assailing the impugned order dated 20/07/2013 passed by the Executing Court, the learned Senior Counsels had jointly submitted that the second application filed under Order XXI Rule 32(5) of CPC seeking same relief, as sought in the earlier application filed u/s 51(d) read with Order XL Rule 1, was barred by the principles of res-judicata. According to them, the provisions contained in Order XXI Rule 32 of CPC have to be read harmoniously and in absence of any allegation made by the judgment creditor in the application regarding the disobedience of the injunction granted by the Court in the decree, the provisions contained in Rule 32(5) could not be invoked. They also submitted that the Durgah Committee being one of the stake holders of the decree in question, the said committee could not have been appointed as the Receiver, as sought to be done by the Executing Court in the impugned order. They also submitted that there was no direction in the decree against the Khadims to go to the Dewan and hand over his share in the offerings and presents made by the visitors at Durgah, but it is the judgment creditor-the Dewan, who is shy of sitting within the dome of the shrine. They also submitted that the Executing Court had travelled beyond the scope of the decree and exceeded its jurisdiction by calling upon the Durgah Committee to suggest the ways and means to discharge their function of distribution of offerings to the different stake holders. The learned counsels also submitted that the Khadims have no objection, if any permanent and suitable arrangement is made by the Court for the purpose of implementing the decree in

question.

8. The learned counsel Mr. Anil Mehta for the decree holder, however, vehemently submitted that the Executing Court in earlier order dated 11/10/2012 had committed an error in not appointing the Receiver to execute the decree in question, though permissible as per Section 51(d) and Order XL Rule 1 of CPC. According to him, since the Executing Court in the earlier order dated 11/10/2012 had observed that the decree holder could avail of the remedy available under Order XXI Rule 32, the decree holder had filed separate application under the said provision, simultaneously challenging the said order dated 11/10/2012 by way of precautionary measure. Supporting the subsequent order dated 20th July, 2013 passed by the Executing Court, the learned counsel Mr. Mehta submitted that the said order having been passed in the interest of all the parties concerned and within the purview of Rule 32(5) of Order XXI, this Court exercising limited jurisdiction under Article 227 of the Constitution of India should not interfere with the same. Mr. Mehta has relied upon the decision of the Apex Court in cases of Kanwar Singh Saini Vs. High Court of Delhi, & Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil, to submit that the powers of superintendence under Article 227 of the Constitution of India should be exercised by the High Court very sparingly. Relying upon the latest decision of the Apex Court in case of Satyawati Vs. Rajinder Singh and Another, . Mr. Mehta submitted that the decree holder should not be deprived from getting the fruits of the decree and that the endeavours should be made by the Court to see that the decree is not frustrated. He also submitted that the Khadims have dominated the entire affairs within and outside the dome of Durgah, and are not permitting the judgment creditor or the members of the Committee to enter the dome of shrine for which some criminal cases were also filed, and that since they were not sharing the offerings made by the pilgrims, with the judgment creditor and the Committee as per the directions of the decree, it was necessary to appoint the Receiver.

9. Mr. J.C. Jain appearing for the Durgah committee - the respondent No. 21 supporting the contentions raised by the learned counsel Mr. Mehta, and also supporting the impugned order dated 20th July, 2013 passed by the Executing Court submitted that the said order being just and proper, no interference of this Court is called for. He also submitted that pursuant to the said order dated 20/07/2013, the Durgah Committee has also suggested the ways and means as to how the Committee shall discharge its function.

10. Now, so far as the jurisdiction of the High Court under Article 227 of the Constitution of India is concerned, the Apex Court, in case of Shalini Shyam Shetty & Anr. vs. Rajendra Shankar Patil (supra) has after considering many earlier decisions, laid down certain principles and observed inter-alia that the main object of Article 227 is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory, and that the power of interference under this Article is to be kept to the minimum to ensure

that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to the High Court. It has also been observed that the High Court can interfere in exercise of its powers of superintendence when there has been a patent perversity in the orders of the Courts subordinate to it or where there has been a gross and manifest failure of justice or where there is any jurisdictional error committed by the Courts subordinate to it.

11. In the instant case, as stated hereinabove, the judgment creditor had first filed the application u/s 51(d) read with Order XL Rule 1 of CPC seeking appointment of Receiver for the execution of the decree in question and the same having been rejected by the Executing Court vide order dated 11/10/2012, he had filed second application seeking similar relief, however, under Order XXI Rule 32(5) of CPC, simultaneously challenging the order dated 11.10.2012 before this Court by way of filing Civil Misc. Appeal. In this regard, it may be stated that the principles of res judicata do apply to the executing proceedings. It is axiomatic to say that the orders passed by the Executing Court at different stages in the same proceedings, unless set aside by the higher forum attain finality and would operate as res judicata at the subsequent stages. A very pertinent observations made by the Apex Court in case of Barkat Ali and Another Vs. Badri Narain (D) by LR., in this regard need to be reproduced hereunder:-

11.... It means that at the different stages of the execution, orders passed by the executing court have attained finality unless they are set aside by way of appeal before the higher forum. Otherwise they bind the parties at the subsequent stage of the execution proceedings so that the smooth progress of execution is not jeopardised and the stage which reached the finality by dint of various orders of Order 21, operates as res judicata for the subsequent stage of the proceedings.

12....

13. The principles of res judicata not only apply in respect of separate proceedings but the general principles also apply at the subsequent stage of the same proceedings also and the same court is precluded to go into that question again which has been decided or deemed to have been decided by it at an early stage.

12. In view of the aforestated legal position, the Court finds substance in the submission made by the learned counsels for the writ petitions-Khadims that the Executing Court having rejected the earlier application of the judgment creditor for the appointment of Receiver u/s 51(d) read with Order 40 Rule 1, the second application seeking same relief for appointment of Receiver under Order XXI, Rule 32 was barred by the principles of res judicata. As such from the bare reading of Order XXI Rule 32, it transpires that the Executing Court has no power to appoint Receiver under the said provision and hence the very application of

the judgment creditor to seek appointment of Receiver under the said provision was misconceived. It cannot be gainsaid that the powers of the Executing Court to appoint Receiver for the execution of the decree as contained in Section 51(d) read with Order XL are different from the powers of Court to direct the act required to be done as per the decree by appointing the decree holder or some other person, under Order XXI Rule 32(5). As rightly submitted by learned senior counsel Mr. A.K. Sharma for the judgment debtors i.e. the Khadims, there being neither any specific direction in the decree against the Khadims directing them to make payment of the share of the offerings or presents to the Dewan i.e. the judgment creditor, nor there being any allegations against the Khadims made by the judgment creditor in the applications filed by him regarding the disobedience of the injunction order granted in the decree in question, the provisions contained in Order XXI Rule 32(5) could not be invoked. The Court therefore is of the opinion that the subsequent impugned order dated 20/07/2013 passed by the Executing Court is dehors the provisions contained in Order XXI Rule 32(5) of CPC.

13. From the bare reading of Order XXI, Rule 32, it transpires that if the party against whom a decree for injunction has been passed, had the opportunity of obeying the decree and had willfully failed to obey it, such decree could be enforced by his detention in the civil prison or by the attachment of his property or by both as per sub-rule (1) of Rule 32 or otherwise when the decree for injunction has not been obeyed, the Court may direct the act required to be done as per the decree, through the decree-holder or some other person appointed by the Court at the cost of the judgment debtor, as per the sub-rule (5) of Rule 32. In the instant case, apart from the fact that there is no mandatory injunction granted in the decree requiring the Khadims to hand over the share in the offerings, presents etc. to the Dewan, there is also no averment or allegation made by the judgment creditor in the application filed under Order XXI Rule 32(5) that the decree of injunction has been disobeyed by the judgment debtors i.e. Khadims. What was prayed for in the said application and in the affidavit annexed thereto was to appoint the Receiver for the execution of the decree in question as regards the share of the judgment creditor in the offerings made at the Durgah. Under the circumstances, the Court is of the opinion that the subsequent application made by the judgment creditor under Order XXI, Rule 32 was not tenable at law, and the impugned order dated 20/07/2013 passed by the Executing Court allowing such application is also dehors the provisions contained in Order XXI, Rule 32 and therefore liable to be set aside.

14. At this juncture, it may be noted that there could not be any disagreement to the proposition of law that the Executing Court, if thinks just and convenient, could appoint the Receiver for the execution of the decree as contemplated u/s 51(d) read with Order XL Rule 1 of CPC, however, the question is, whether such appointment of Receiver in the facts and circumstances of the case is warranted. If the provisions contained in Order XL pertaining to the appointment of Receiver are closely read, it transpires that when it appears to the Court to be just and

convenient, Court may appoint the Receiver of any property, whether before or after decree, remove any person from any possession or custody of the property, commit the same to the possession, custody or management of the Receiver and confer upon receiver all such powers for the realization, management, protection, preservation and improvement of the property etc.. Hence, it appears that the Receiver could be appointed by the Court, by handing over the possession, custody and management of the property after removing any person from such possession and then to confer the powers upon the Receiver to manage and preserve the property in question. Such is not the case here. Here there is no question of removing any person from the possession of any property nor is the question of handing over possession of such property to the Receiver for its proper management or preservation.

15. At this juncture, it is required to be noted that in order to make provision for the proper administration of the Durgah and the endowment of the Durgah of Khawaja Moin-ud-din Chishti, the Act called the Durgah Khawaja Sahed Act, 1955 was enacted by the Parliament, repealing the Durgah Khawaja Saheb Act, 1936 and the Durgah Khawaja Saheb (Emergency Provisions) Act, 1950. The Durgah Committee constituted u/s 4 of the said Act, has also framed the bye-laws vide the notification dated 16th October, 1958, in exercise of its powers conferred by Section 20 of the said Act, to carry out the purposes of the Act. It is further required to be noted that as per Section 9 of the said Act, the Central Government is empowered to appoint a person to be the "Nazim" of Durgah, who is also the Secretary of the Committee, and as per Section 10 thereof, the Central Government is also empowered to constitute an Advisory Committee to advise the Nazim in the discharge of his functions under the said Act. The powers and duties of the Durgah committee have been enunciated in Section 11 of the said Act, whereas the functions and duties of Nazim have been enunciated in bye-law No. 13 of the said bye laws. The rights and duties of Khadims have also been specified in the bye-law No. 16 of the said bye-laws. The Court is informed by the learned counsel Mr. Jain for the Durgah Committee that persons of high repute from all over the country have been appointed by the Central Government as the Members of the Durgah Committee, who periodically meet, and that there is also an office of Nazim with regular set up within the precincts of the Durgah to enable him to discharge his functions under the Act. Of course, he and Mr. Mehta for the judgment creditor also submitted that the entire affairs of the offerings and presents etc. are being managed by the Khadims alone and that the Khadims do not allow the judgment creditor or his son or the members of the Committee to enter and sit within the shrine of the dome. However, the learned counsels for the petitioners-Khadims denying such allegations, would submit that the Dewan or his son is not ready to sit with the Khadims within the dome.

16. Be that as it may, it is undeniable fact that everyday large number of visitors/pilgrims all over the country and outside the country visit the Durgah and offer the donations in the form of cash, kabarposh, implements, animals etc. at the different places of Durgah, for different purposes. As stated hereinabove,

everyday certain rituals also have to be carried out by the Khadims within the shrine of the dome at the beginning, at the end and during the course of the day. Hence, it would be neither just nor convenient to appoint any outsider as the Receiver to implement or execute the directions given in the decree. Nonetheless as rightly submitted by the learned counsel Mr. Anil Mehta for the judgment creditor, the Court should make all endeavors to see that the decree holder gets the fruits of the decree and the decree in question does not remain merely a paper decree. The Privy Council as back as in 1925 had observed in case of AIR 1925 448 (Oudh) that "Courts in India have to be careful to see that process of the Civil Court and law of procedure are not abused by the judgment-debtors in such a way as to make Courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights". The Apex Court in case of Babu Lal Vs. Hazari Lal Kishori Lal and Others, has also observed that "Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree holder starts in getting the possession in pursuance of the decree obtained by him". It is very unfortunate that though the decree in question has been passed as back as in 1940, the execution proceedings are still pending and the stake holders of the decree i.e. the Khadims, the Dewan and the Durgah Committee are not in a position to get the real fruits of the decree in question. Hence, though the Court does not find any substance in the prayer made by the judgment creditor to appoint Receiver either under Order XL, Rule 1 or under Order XXI, Rule 32, the Court considering the nature of the decree and considering the provisions contained in the said Act and the bye-laws made thereunder, finds that it would be just, proper and convenient to direct the Nazim, who by virtue of his office is the Chief Executive Officer of the Durgah Administration and is also the Secretary of the Durgah Committee, which again is obliged to administer, control and manage the Durgah Endowment under the said Act, to see that the decree in question is implemented in the letter and the spirit.

17. Now, if the decree in question is looked into, it transpires that the said decree is in the nature of declaration and permanent injunction. The Court has passed the said decree adjudicating the rights and obligations of the Dewan, the Khadims and the Durgah Committee. So far as para A(i) of the decree is concerned, it has been declared that all offerings or presents made to the Dewan at the Dewan's Khankah or sitting place within the precincts of the Dargah are the exclusive property of the Dewan. There is no allegation nor any prayer made by the judgment creditor with regard to the said declaration and, therefore, no further action is required to be taken in this regard. So far as the adjudication made in para A(ii) is concerned, it has been stated that the offerings or presents of gold or silver vessels or implements or kabarposhes for the use of the Dargah are the properties of the Dargah committee as trustees for the Dargah, irrespective of the payment of tawan to the Khadims and irrespective of the spot at which they are presented. Meaning thereby, such properties like offerings or presents or gold or silver vessels or implements or kabarposhes for the use of the Durgah are to be treated as the property of Durgah Committee as the

trustees for the Durgah. As stated hereinabove, the Durgah Committee has ample powers under the said Act to administer and manage such properties. Of course, it was submitted by the learned counsel Mr. J.C. Jain for the Durgah Committee that the kabarposhes or chadars offered by the pilgrims or visitors for the use of Durgah are being collected by the Khadims only and are not being deposited by them with the Committee and, therefore, it is required to be directed that the Nazim shall see to it that the kabarposhes or chadars are deposited with the Committee only. As regards other offerings made outside the dome of the shrine, it has been adjudicated in para A(iii) of the decree that they would be the perquisites of the khadims with the exception that the offerings of animals or such bulky articles as cannot conveniently be brought within the dome shall, if made at the steps of the shrine be divided between the Dewan and the Khadims respectively in equal shares. As regards the other offerings made within the dome of the shrine, it has been adjudicated in para (iv) of the decree that such offerings shall be divisible between the Dewan and the Khadim respectively in equal shares, irrespective of the spot at which they are deposited within the dome, with the exception that all coins not exceeding two annas in value irrespective of whether they are made of copper or any other metal and cowries and gold or silver articles (other than coins) of a value less than 8 annas and cotton cloth inferior quality; and all offerings made between the hours of 4 A.M. and 4 P.M. on Qul day i.e. the last day of the Urs., shall be the perquisites of the khadims exclusively. It is also declared in para A (v) that the cash or other offerings sent by post shall be deemed to be the offerings made at the shrine i.e. within the dome, unless addressed specially to the Dargah committee, the Dewan or the Khadims for their exclusive use.

18. For the reasons stated above, and considering the totality of circumstances, the following directions are given:-

(i) As regards the adjudication of the rights contained in para A(ii), it is directed that the Nazim on behalf of Durgah Committee shall take the custody of the offerings or presents of gold or silver vessels or implements or kabarposhes that may be offered by the visitors/pilgrims for the use of Durgah. The Nazim or his representative shall remain present inside the dome of the shrine to collect such offerings and presents. In case, the Khadims/judgment debtors receive such offerings or presents from the visitors/pilgrims, they shall deposit the same in the office of the Nazim at the end of the day. It is needless to say that the office of the Nazim shall maintain regular accounts/records of such offerings/presents, and keep in safe custody till any decision is taken by the Durgah Committee for their disposal/use.

(ii) As regards the declaration of rights contained in para A(iii) and (iv), it is directed that there shall be kept iron boxes for donations big and sufficient in number, at different places inside and outside the dome of the shrine, more particularly at the pit near the grave inside the dome, to enable the visitors/pilgrims to put their cash/valuable offerings in such boxes. Such boxes shall have

the locks, and the keys thereof would be kept in the custody of the Nazim.

(iii) The Nazim shall hand over all the offerings deposited in such boxes kept outside the dome of the shrine to the Khadims as their perquisites. However, the offerings of animals or such bulky articles made at the steps of the shrine shall be divided by the Nazim between the Dewan and the Khadim respectively in equal shares, at the end of the day. The Nazim in consultation with the Durgah Committee shall make necessary arrangement for collection of such bulky articles at the gates/entrances of the shrine and Durgah.

(iv) So far as the offerings deposited in the donation boxes kept inside the dome of the shrine are concerned, the Nazim, at the end of the day, shall maintain accounts and divide such offerings between the Dewan and the Khadims respectively in equal shares, irrespective of the spot at which they were deposited within the dome. Nazim may distribute such offerings on daily/weekly/monthly basis after keeping proper accounts, in presence of the representatives of the Khadims and the Dewan. However, the Nazim shall hand over to the Khadims, the offerings of all coins not exceeding two annas in value irrespective of whether they are made of copper or any other metal and cowries and gold or silver articles (other than coins), of a value less than 8 annas and cotton cloth of inferior quality, and all offerings made between the hours of 4 A.M. and 4 P.M. on the last day of the Urs, as directed in the para A(iv) of the said decree;

(v) It is directed that the Nazim shall treat the cash or other offerings sent by post as the offerings made at the shrine i.e. within the dome, unless addressed specially to the Durgah Committee, the Dewan or the Khadims for their exclusive use, as directed in para A(v) of the said decree;

(vi) It is further directed that the Khadims, their agents or servants shall not cause any obstruction either to the Nazim or his representative, or the judgment creditor, the Dewan or his representative, or any Member of the Durgah Committee to enter and sit inside/outside the dome of the shrine or within the precincts of the Durgah, and shall cooperate the Nazim in implementing the directions given by this Court;

(vii) The Nazim shall display notice boards in Hindi, English and Urdu languages, at all gates of Durgah and at all visible and conspicuous places inside and outside the dome of the shrine, giving instructions to the visitors/pilgrims to put cash/valuable offerings in the donation boxes only and deposit their other offerings like kabarposhes, gold/silver articles, implements, animals at the office of Nazim only.

(viii) It is clarified that the Khadims-judgment debtors and the Dewan-the judgment creditor shall be at liberty to keep their duly authorized representatives, present on their behalf at the time when the donation boxes are opened, and their shares are divided by the Nazim. The Nazim also shall be at liberty to nominate any other person as his representative, with the consultation of the Members of the Durgah Committee for the purpose of carrying out these

directions, in case of his inability to remain present on any particular day.

(ix) The Nazim shall be at liberty to approach this Court in case of any difficulty found in implementing the above stated directions;

(x) The Nazim shall be also at liberty to take help of the staff members and in case of need, help of police.

19. Since the functions and duties of the Nazim and of the Durgah Committee are already enumerated in the said Act and the bye-laws framed thereunder, this Court is not inclined to much dwell into the same. Suffice is to say that the Nazim shall make all endeavors to implement the directions given by this Court in this order in the letter and the spirit. The Members of the Durgah Committee shall also see to it that a permanent set up with sufficient staff is created in the office of Nazim to enable him to carry out the directions given by the Court; and that a special suitable remuneration is paid to him for this purpose.

20. Before parting, it may be stated that the Durgah, which is the shrine of the great Saint Moin-ud-din Chishti is not only an International wakf but is a very holy place and the symbol of Chishti Order, which is known for its emphasis on love, tolerance and openness. The teachings and practices of the Saint Khawaja Saheb laid stress on renunciation of material goods, strict regime of self discipline and generosity to others. He is said to have preached, " Never seek any help, charity or favours from any body except the God. Never go to the Court of Kings, but never refuse to bless and help the needy and the poor, the widow and the orphan, if they come to your door". It is, therefore, expected that all the stake holders of the decree i.e. the Khadims, the Dewan and the Durgah Committee shall respect the teachings of the great Saint and allow the Nazim to carry out the directions given by the Court without any hurdles and obstacles.

21. In view of the above, the impugned orders dated 11/10/2012 and 20/7/2013 passed by the Executing Court are set aside. The Civil Misc. Appeal as well as the writ petitions stand partly allowed in view of the aforesaid directions. Registry is directed to place a copy of this order in each connected files, and send a copy to the Nazim, Durgah Sharif, Ajmer. The Nazim shall carry out the directions contained in para 19 of this order with immediate effect and approach this Court in case of difficulty.