

(2011) 08 RAJ CK 0087

In the Rajasthan High Court

Case No : Civil Miscellaneous Stay Application No. 9529 of 2011 in Civil Writ
Petition No. 10342 of 2011

Manoj Kumar Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 08 RAJ CK 0087

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narendra Kumar Jain, J.—Heard the learned Counsel for Petitioner.

2. Petitioner has preferred this writ petition under Article 226 of the Constitution of India to issue a writ of mandamus to Respondents by directing them to permit the Petitioner to perform "Seva-Pooja" etc. in the temple of Shree Mahadev Ji and Shree Hanuman Ji, situated at Nala Garden, Naya Ghat, Jaipur.

3. Learned Counsel for Petitioner submitted that the temple is situated in Army Area and his father filed a civil suit for the same relief in the Civil Court, which was dismissed, thereafter first appeal was also dismissed and he has preferred S.B. Civil Second Appeal No. 510/2010, wherein record of both the Courts below have been summoned, but no interim order has been granted in the second appeal, therefore, the present writ petition has been filed by Petitioner. He, therefore, submitted that looking to the nature and urgency of the case, Respondents may be directed to allow the Petitioner to perform his "Seva-Pooja" in the aforesaid temple.

4. I have considered the submissions of the learned Counsel for Petitioner and also examined the documents annexed with the writ petition.

5. Admittedly, disputed temple is situated in Army Area. Learned Counsel for

Petitioner admitted that he has not served a notice of demand of justice upon the Respondents before filing the writ petition, therefore, no reply has been received from Respondents so as to know the reasons for not allowing the Petitioner to perform "Seva-Pooja" in the disputed temple, situated in Army Area. More so, Petitioner's father has already availed the alternative remedy for the same relief, as admitted by the learned Counsel for Petitioner, by filing a civil suit, which has been dismissed and thereafter first appeal has also been dismissed and now as per the submission of the learned Counsel for Petitioner, S.B. Civil Second Appeal No. 510/2010 is pending, but without waiting for decision of the second appeal, Petitioner has filed the present writ petition. The Petitioner has given reference of civil proceedings in the same matter in para 6 of the writ petition, which reads as under:

That earlier the father of Petitioner approached before the Learned Court the way of filing a Suit which is dismissed and the second appeal is pending before the Hon"ble High Court in that matter.

6. Even otherwise, learned Counsel for Petitioner is fair enough in admitting this fact that for the same relief, a civil suit was filed, which was dismissed and second appeal is pending before this Court. Petitioner's father has already availed the alternative remedy by way of filing civil suit and second appeal in the same matter is pending and further that no notice of demand of justice has been served upon the Respondents before filing the present writ petition.

7. Therefore, I am not inclined to admit this writ petition and the same is, accordingly, dismissed in limine.

8. As prayed by the learned Counsel for Petitioner, it is observed that it will be open for the Petitioner to file an urgent application to list the above referred second appeal at an early date.

ORDER

9. Since the writ petition itself has been dismissed, therefore, this stay application does not survive and the same also stands dismissed.