

(2017) 07 RAJ CK 0076
In the Rajasthan High Court
Case No : 1235 of 2013

Rameshwar Dayal Sharma S/o Late Shri Champa Lal Sharma	APPELLANT
Vs	
The Assistant Commissioner, Devasthan Department, Jaipur.	RESPONDENT

Date of Decision : 05-07-2017

Acts Referred:

[Limitation Act, 1963](#), [Section 5](#) -
Extension of prescribed period in certain cases

Citation : (2017) 07 RAJ CK 0076

Hon'ble Judges : K.S. Jhaveri, Inderjeet Singh

Bench : DIVISION BENCH

Advocate : Neeraj K Tiwari

Final Decision : Dismissed

Judgement

1. Delay in filing the appeal is condoned. Application under Section 5 of the Limitation Act is allowed.
2. By way of this appeal, appellant has challenged the order of the learned Single Judge dated 01.11.2012 passed in S.B. Civil Misc. Writ Petition No.3382/2007. The appeal has been preferred only against S.B. Civil Writ Petition No.3382/2007 and no appeal has been preferred against S.B. Civil Writ Petition No.835/1996. There is gross delay of 282 days in filing the appeal which was filed in the year 2013.
3. The matter was listed before this Court on 24.03.2017 and the following order was passed:-

"Prima Facie" the order passed by the learned Single Judge is just and proper.

However, learned counsel for the appellant is not ready with the matter. The matter could have been dismissed in default but in the interest of justice, as a last chance, list on 7th April, 2017. Meanwhile, defects be removed.

4. Subsequently, on various dates the case was adjourned and today it has come before us for hearing.

5. We have heard learned counsel for the appellant.

6. The learned Single Judge has observed as under:-

"Upon hearing learned counsel for the parties and perusing the impugned-order, I find that contention of the petitioners that trust in question should be treated as hereditary trust, cannot be accepted because in the scheme that was prepared under directions of the learned Additional District Judge dated 4.10.1995, trust in question was ordered to be declared to be a public trust. The trust was not recognized as hereditary trust. In para 7 of the impugned-order, Champalal, who was pujari, has also been not accepted as hereditary trust, on the contrary, it is stated that he himself admits that this was a public trust and not a private trust and champalal was recognized as pujari by respondent No.3 committee. It was Champalal, who filed application for registration of the trust. The scheme that was prepared pursuant to the aforesaid order, also does not make any stipulation to the effect that it was hereditary trust nor it is came to be recognized as a hereditary trust. Champalal in the capacity of a pujari was given a right to nominate one trustee, who should not be more than 65 years in age. If any one including present petitioners - Rameshwar Dayal and Rameshwar Dayal Sharma, is nominated as a trustee having age lesser than 50 years and more than 65 years, the Assistant Commissioner Devasthan shall not recognized either of them or

any one else as a trustee. Contention that petitioners can accept gifts/nazars/offerings by virtue of Section 65 of the Act because they are hereditary trust, also liable to be rejected because the trust in question has been held to be not a private trust and therefore direction of the Assistant Commissioner Devasthan Department, Jaipur dated 29/11/2006 (Ann.7) requiring Brij Mohan Khendewal and Om Prakash Khendewal - respondents No.2 and 3, respectively to approach the civil court under Section 40 of the Act, cannot be faulted. Section 38 of the Act provides, as under:- (1) If the Assistant Commissioner, on the application of any person having interest in a public trust or otherwise, is satisfied after making such inquiry as he thinks necessary that- (a) the original object of the public trust has failed; (b) the trust property is not being properly managed or administered; or (c) the direction of the court is necessary for the administration of the public trust; he may, after giving the working trustee an opportunity of being heard, direct such working trustee or any other trustee or person having interest, in the trust to apply to the court for directions within such time not exceeding thirty days as may be specified by the Assistant Commissioner. It would be clear from Section 38 supra that any person can

move before the court under section 40 as has been rightly directed by the commissioner in the impugned-order. I therefore do not find any infirmity in the impugned-order dated 29/11/2006 (Ann.7). However, applicant-respondents Brijmohan Khendewal and Om Prakash Khendewal shall now be required to make an application under Section 40 of the Act as per the aforesaid order before the court concerned within forty five days from the date of receipt of copy of this order. With that direction, both the writ petitions are disposed of."

7. We are in complete agreement with the view taken by the learned Single Judge. No case for interference in the order of the learned Single Judge is made out. It cannot be said that merely because the petitioner was a Pujari, the trust has become hereditary and once it has been registered as public trust, as shown by the learned counsel for the appellant, as per scheme dated 30.08.1996 as it is clearly established that the Murti Mandir Shri Ram Laxmanji Maharaj is not a private trust once it is registered as public charitable trust.

8. Therefore, the view taken by the learned Single Judge is just and proper and the appeal being devoid of any merit deserves to be dismissed and the same is dismissed.