

(2014) 06 UK CK 0020

In the Uttarakhand High Court

Case No : Review Application (CLMA) No. 5970 of 2014 in Civil Revision No. 119 of 2013

Sultan Ahmed

APPELLANT

Vs

Akbar Ali

RESPONDENT

Date of Decision : 16-06-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 40, 114

Citation : (2014) 06 UK CK 0020

Hon'ble Judges : Umesh Chandra Dhyani, J

Bench : Single Bench

Advocate : Siddharth Singh, Advocate for the Appellant; Sharad Sharma, Senior Advocate Assisted by Ms. Indu Sharma, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Umesh Chandra Dhyani, J.—This Court passed three orders on different occasions and they are being reproduced herein below for convenience, one by one.

Order dated 18.11.2013

...Meanwhile, any donation or charawa received shall be opened in the presence of S.D.M. Laksar and shall not be released in favour of either of the parties and learned S.D.M. Laksar shall keep the same with any nationalized bank.

Order dated 25.03.2014

...There are claims as well as counter claims as to who is the Mutwalli of the Waqf which is a Dargah in Laksar, District Haridwar.

Since by an interim order, the S.D.M., Laksar, Haridwar was appointed as receiver of the Dargah, it will be befitting and appropriate that till the pendency of the revision, he shall also look after the day-to-day affairs of the Dargah....

Order dated 25.03.2014

...Stay Application (CLMA No. 4052 of 2014) is disposed of by making it clear that no receiver has been appointed over the Dargah; instead, the donations or charawas received or to be received by the Dargah have been directed to remain in the custody of SDM, Laksar.

2. A perusal of order dated 18.11.2013 will reveal that the S.D.M. Laksar was not appointed as a receiver. It was only directed that any donation or charawa received, shall be opened in the presence of S.D.M., who shall keep the same with any nationalized bank. The donation or charawa shall not be released in favour of either of the parties.

3. This Court vide order dated 25.03.2014, did not issue any direction regarding the appointment of receiver. It simply interpreted what was directed by another learned Single Judge of this Court on 18.11.2013. Learned Judge while passing the order on 25.03.2014 proceeded on the premise that the S.D.M. was appointed as receiver of the Dargah. Learned Judge, therefore, enlarged the jurisdiction of the S.D.M. directing that he shall also look after the day-today affairs of Dargah.

4. When stay application No. 4052 of 2014 was filed on behalf of respondent No. 1, the then Hon"ble Chief Justice of this Court passed an appropriate order clarifying the order passed by learned Single Judge of this Court on 18.11.2013 by saying that no receiver has been appointed over Dargah. Instead, the donation or charawas received or to be received by Dargah have been directed to remain in the custody of S.D.M. Laksar.

5. The then Hon"ble Chief Justice of this Court, while passing the order on 19.05.2014, only clarified the order dated 18.11.2013 passed by learned Single Judge of this Court.

6. It cannot, therefore, be said that the order dated 25.03.2014, passed by another learned Single Judge of this Court was modified by the then Hon"ble Chief Justice of this Court while passing the order on 19.05.2014.

7. The question, therefore, is of the interpretation of order dated 18.11.2013. Can be it said that a receiver was appointed while passing order on 18.11.2013? The reply is in the negative. It cannot be said that the S.D.M. was appointed as receiver, for the powers of receiver under Order 40 of the CPC are very wide, which include bringing and defending suit and for the realization, management, protection, preservation and improvement of the property, the collection of rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself etc. The Court while passing the order on 18.11.2013 restricted the powers of S.D.M. to the extent only that any donation or charawa received, shall be opened in his presence and such donation or charawa shall be kept by him with any nationalized bank.

8. This Court is, therefore, of the opinion that the order dated 19.05.2014 should

not be reviewed u/s 114 of the Code, as prayed for by learned counsel for the review-applicant. Review Application lacks merit and is, therefore, dismissed.