

(2001) 12 BOM CK 0060

In the Bombay High Court

Case No : Civil Revision No"s. 1083, 1084 and 1085 of 2001

Wasudeo Anandrao Deshmukh and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 21-12-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, 115, 151

Citation : (2002) 3 ALLMR 198 : (2002) 5 BomCR 284

Hon'ble Judges : P.S. Brahme, J

Bench : Single Bench

Advocate : S.S. Voditel, for the Appellant; M.P. Lala, for respondent Nos. 2 to 11 and D.B. Patel, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

P.S. Brahme, J.—Rule returnable early. Heard finally with consent of the Counsel for the parties.

2. All these revision applications are heard together since they are arising out of common controversy of ownership and possession of temple premises on Sheet No. 10, City Survey No. 11/1991 situated within the municipal limits of Tahsil Katol, District : Nagpur. As such these revision applications are being disposed of by this common judgment.

3. In order to understand the controversy involved in this matter, it is necessary to state first the factual position that emerges from the pleadings of the parties in Special Civil Suit No. 511/2000 pending on the file of Civil Judge, Senior Division, Nagpur. Applicants claim to be the owners of the temple premises in which their family deity is installed. Admittedly, this temple is known to the residents of Katol and also registered in the Revenue Records and in the Maharashtra State Gazetteer and Central Provinces District Gazetteer as "Chandika Devi Temple". It is also admitted that this temple is of "Hemadpanthi Style" and believed to have been built during the regime of one king

"Chandrahansa", who is supposed to have ruled over this territory in the dined and distant past and that the entry of this temple is found in the first edition of this Government gazetteer which came to be published in the year 1908. However, the applicants claimed their ownership and occupation of the temple on the basis of the averments and contentions in their pleadings that the construction of this temple in the year 1916 was made by their forefathers.

4. Applicants' forefathers were the Malguzar of Katol city. They have constructed the said temple in the year 1916 and since then they are in possession. According to the applicants by virtue of section 5 of the M.P. Abolition of Proprietary Rights (Estate, Mahals, Alienated Lands) Act which came into force in 1950 the property on which the temple is constructed vests in them, though there is no settlement in their name by the State Government, However, in an inquiry held by the city survey officer in the year 1970 in the record of right, this temple is shown as "Sarvajanik". Applicants therefore, have challenged this entry by filing Revenue Appeal No. 20/1997 and the Superintendent of Land Records by his order dated 29-11-1997 ordered remand inquiry into the matter.

5. Respondents No. 2 to 11 taking advantage of this revenue entry "Sarvajanik" in respect of the said temple have preferred various proceedings claiming the temple premises to be a public property. They have filed the proceedings bearing Inquiry No. 88/97 before the Deputy Charity Commissioner, Nagpur for registration of trust i.e. "Shri Kshetra Kuntalapur Chandika Devasthan Katol, District Nagpur". In the said proceedings they have sought the relief that the property of temple be treated as property of the trust.

6. According to applicants the supervision and custody of the temple and its premises is exclusively of the applicants under their lock and key. Respondents are not entitled to interfere and disturb the applicant's exclusive possession of the temple premises. However, in the year 1998 on the basis of the permission for collection of funds, for celebrating Navratri Festival at the temple, respondents tried to create disturbance and interference in exclusive possession of applicants over the temple premises. So, applicants lodged complaint to the Police Station, Katol against respondents No. 2 to 11 complaining of disturbance and interference with applicants' peaceful possession of the temple. Police Station Officer, Katol after making inquiry into the complaint forwarded Istegasha No. 3/1998 u/s 145 of the Criminal Procedure Code, 1973 to the Sub-Divisional Magistrate, Katol for inquiry and orders accordingly. That the notices have been issued and the Sub-Divisional Magistrate, Katol initiated proceedings u/s 145 of Criminal Procedure Code against applicants and non applicants bearing Misc. Criminal Case No. 4/1998. The Sub Divisional Magistrate decided the Miscellaneous Criminal Case No. 4/1998 by his order dated 17-9-1998 and attached the disputed property i.e. temple of "Chandikadevi" and further was pleased to appoint Receiver over the suit temple. He was of the view that he was unable to give decision as to who is in actual possession of the temple in question and therefore, passed an order attaching the property and also

appointing Receiver. This order passed by the Sub-Divisional Magistrate was challenged by the parties before the 3rd Additional Sessions Judge, Nagpur by preferring Criminal Revision Application No. 798/1998 and the Criminal Revision Application No. 1051/1998. Learned Additional Sessions Judge by his order dt. 31-8-2000 disposed of both the revision applications and the case was remanded back to the Sub-Divisional Magistrate, Katol to decide the case afresh. The applicants challenged this order of 3rd Additional Sessions Judge dated 29-8-2000 by preferring Criminal Application No. 149/2000 in this Court. This Court by order dated 29-9-2000 confirmed the order passed by the Additional Sessions Judge and disposed of the criminal application with a direction to the Sub-Divisional Magistrate to make a fresh inquiry as to who was in possession of the property on the relevant date, when the dispute was raised and if according to him the applicants were in actual possession of the property, they shall be retained in possession subject to the decision of the rights of the parties by the Civil Court or the Charity Commissioner. This Court also observed that if he finds that the applicants had taken possession forcibly from the non applicants, as per the proviso to sub-section (4) to section 145, he shall order the restoration of possession to the non applicants.

7. Applicants challenged this order passed by the High Court by preferring Special Leave to Appeal (Criminal) No. 3751/2000 in the Supreme Court. The Apex Court by its order dated 13-7-2001 disposed of the Criminal Appeal No. 698/2001 (arising out of SLP 3751/2000) quashing the proceedings u/s 145 of Cri.P.C. pending before the Sub-Divisional Magistrate. The Apex Court observed :

"The question therefore, arises for our consideration at this stage and in the circumstances it would be appropriate to sustain the order of the District Judge remanding the matter to the Magistrate and directing the Magistrate to reconsider the matter on the basis of the materials already produced before him. Since admittedly, the dispute is pending before the Civil Court in Civil Suit, the appropriate Court or forum for interim directions for the protection of the property is the Civil Court and, therefore, it would not be at all be advisable to ask Magistrate of in proceeding u/s 145 of Cri.P.C. to examine the affidavits by the parties and come to conclusion about the possession of any party on the date of preliminary order or two months prior thereto. In the aforesaid circumstances we quash the proceeding u/s 145 Cri.P.C. and direct the Civil Court to dispose of the Civil Suit as expeditiously as possible. Any aggrieved person may approach the Civil Court for any interim directions in accordance with law."

8. When the proceedings u/s 115 of Cri.P.C. was disposed of by the S.D.M. by ordering attachment of the temple property and appointment of Receiver, by order dated 17-9-1998, the applicants filed Regular Civil Suit No. 27/1998 in the Court of Civil Judge, Junior Division, Katol against the non-applicants No. 2 to 11 for declaration of their ownership over the temple and for permanent injunction restraining the defendants from interfering with their possession of the temple. In that suit the applicants filed application Exhibit 5 claiming temporary

injunction. The learned Civil Judge after hearing both the sides decided the application on 8-1-1999 and granted temporary injunction against non-applicants from obstructing peaceful possession and ownership of the applicants over the temple. This order dated 8-1-1999 passed by the learned Civil Judge, granting temporary injunction was subject matter of challenge before the 7th Additional District Judge, Nagpur in Misc. Civil Appeal No. 161/1999. The Additional District Judge by his order dated 16-10-1999 allowed the appeal and set aside the order passed on application Exhibit 5 in R.C.S. No. 27/1998 and rejected the application Exhibit 5. It is very pertinent to note here the observations of the learned Additional Sessions Judge that the applicants/plaintiffs have failed even prima facie to establish their title and possession over the suit temple. The learned Judge has observed that the applicants have not been able to establish even by semblance their right of ownership over the temple. He has negated the contentions of the applicants that the temple in question was constructed by their forefathers in the year 1916. He has observed that the temple was ancient one. He found on the basis of the documents produced by the respondents that the disputed "Chandikadevi Mandir" is believed to have been built during the regime of Kind Chandrahas who is supposed to have ruled over this territory in the deemed and distant past. The construction of the temple is in the Hemadpanthi Style situated in the old Basti as shown in the Government Gazette. The disputed temple was found to be so old and ancient as it has lost its origin in antiquity. These facts and circumstances therefore, in the opinion of the learned Additional District Judge belied the claim of the applicants that the temple in dispute was constructed by their forefathers and was of their ownership. This order passed by the 7th Additional District Judge in Misc. Civil Appeal No. 161/199 has attained finality in as much as applicants have not challenged the same by preferring civil revision application in the High Court. It is also very material to note that when the matter was before the Apex Court, the Regular Civil Suit No. 27/98 was pending before the Civil Judge, Junior Division Katol, came to be dismissed in default on 6-7-2001. As such on 13-7-2001 when the Apex Court disposed of the Criminal Appeal No. 698/2000, the only suit that was pending between the parties was Special Civil Suit No. 511/2000 on the file of Civil Judge, Senior Division, Nagpur. It is a matter of record that initially the applicants filed this Special Civil Suit No. 511/2000 against respondent No. 1 i.e. the State of Maharashtra, seeking the same relief of declaration and injunction as sought in Regular Civil Suit No. 27./1998 filed against the respondent No. 2 to 11 in the Court of the Civil Judge Junior Division, Katol. In that Special Civil Suit No. 514/2000, the applicants sought temporary injunction against respondent No. 1. It is needless to say that the applicants could get temporary ex parte injunction as against respondent No. 1. The applicants have not made present respondents No. 2 to 11 as defendant in Special Civil Suit No. 514/2000. As the 7th Additional District Judge set aside the order granting temporary injunction in Misc. Civil Appeal No. 161/1999 by allowing the appeal on 16-10-1999 and applicants obtained ex parte temporary injunction in S.C.S. No. 514/2000 without joining respondent Nos. 2 to 11 as

party defendants, respondents No. 2 to 11 filed application exhibit 15 in Special Civil Suit No. 514/2000 under Order 1, Rule 10 of C.P.C. for impleading them as party defendants. This application was opposed initially by the applicants. In the meantime the applicants preferred Misc. Civil Application No. 113/2001 on 5-2-2001 before the Extra Joint District Judge, Nagpur for consolidation and joint trial of two suits i.e. R.C.S. No. 27/1998 and Special Civil Suit 514/2000. It is pertinent to note, in this application for consolidation respondent No. 1 was not made party. Non-applicants No. 2 to 11 resisted this application for consolidation on the ground that the applicants have opposed their application Exhibit 15 in Special Civil Suit No. 514/2000. It is in this context that the applicants gave no objection for joining non-applicants No. 2 to 11 as party defendants in S.C.S. 514/2000 in terms of the pursis filed before the Joint District Judge.

9. Before the 3rd Joint Civil Judge, Senior Division, Nagpur, when non applicants No. 2 to 11 insisted for disposing of application Exhibit 5 in which ex parte injunction has been granted, applicants did not press for application Exhibit 5. Then the applicants filed an application Exhibit 43 in Special Civil Suit No. 514/2000 under Order 1, Rule 20(2) of C.P.C. for deleting the names of non-applicants No. 2 to 11 contending that these non-applicants were not necessary party and they were impleaded as party defendants on their own motion by application Exhibit 15, to which the applicants have given consent only to surmount the hurdle created by them in resisting applicants' Application No. 113/2001 before the Joint District Judge for consolidation of the suits. Learned Civil Judge, Senior Division, Nagpur by his order dated 24-10-2001 rejected the application Exhibit 43. In Civil Revision Application No. 1083/2001 subject matter of challenge is that order passed on application Exhibit 43 by the Civil Judge, Senior Division, Nagpur.

10. In Special Civil Suit No. 514/2000 non applicants No. 2 and 11 after they were impleaded as party defendants preferred application Exhibit 49 u/s 151 C.P.C. and under Order 40(1), Rule 1 C.P.C. for appointment of Receiver in respect of the suit property, that is the temple in dispute. On the basis of the observations of the Apex Court in criminal appeal giving liberty to the party aggrieved to approach the Civil Court for interim direction for protection of the property in dispute. This application was resisted by the applicants tooth and nail, on the assumption that the applicants are in exclusive possession of the temple in their right of ownership vested for which they have already sought declaration in the suit and the courts have also accepted their exclusive possession over the property. The learned Judge however, by his order dated 24-10-2001 allowed the application and appointed the Receiver Acting Chief Officer of Katol Municipal Council as Court Receiver for the management, protection, preservation and improvement of the suit temple i.e. "Chandikadevi Devasthan" situated at Katol. Applicants taking exception to this order have preferred C.R.A. 1085/2001.

11. We have heard Shri Voditel, learned Counsel for the applicants at length. We

have also heard Shri Patel, learned A.G.P. for respondent No. 1 and the learned Counsel Shri Lala, for respondents No. 2 to 11.

12. We wish first to decide the C.R.A. 1084/2001 wherein challenge is to the order dated 18-10-2001 passed in Misc. Civil Application No. 672/2001. Shri Voditel, learned Counsel for the applicant vehemently submitted that this order is void ab initio as notice to respondent No. 1 was not issued. To substantiate his submissions, reliance has been placed on decision reported in *Vivekananda Nidhi v. Asheema Goswami*, (2000) 10 SCC 23 . It is observed by the Apex Court that "when an order is passed suo motu u/s 21 of C.P.C., there is no question of issuing notice to the other side. Section 24 C.P.C. itself provides that either on application of any of the parties and after notice to the parties and after hearing such of them, they desired to be heard or of its own motion without such notice, the High Court or the District Court can at any stage pass appropriate orders u/s 24 of C.P.C. if the conditions provided for are satisfied. Now on the facts of the present case, it is difficult to appreciate how the order of the learned District Judge can be considered to be suo motu order when was moved by an application by respondents and on that application District Judge thought it fit to invoke his jurisdiction and passed order u/s 24 of C.P.C. Therefore, invoking of the power u/s 24 of C.P.C. was not suo motu, but only on the basis of above said application. Once that conclusion is reached, the statutory provisions of section 24 operating and whatever can be ultimate nature of the order, the notice ought to go to the other side". Apex Court therefore, held that the High Court erred in upholding the order of the District Court allowing the application u/s 24 C.P.C. filed by respondent seeking transfer of the suit as the application was allowed by the District Court without issuing notice to the appellant-defendant.

13. Learned Counsel for the applicant pointed out that in the case before hand, the Joint District Judge passed order transferring of the suit in Misc. Civil Application No. 672/2001 without issuing notice to respondent No. 1 who was contesting party. Therefore, the order passed by the Joint District Judge is vitiated and secondly the transferee Court did not get jurisdiction to decide the matter, more particularly, application Exhibits 43 and 49. It is very difficult to accept this submission of the learned Counsel for the applicants. In the first place the applicants are making grievance about the legality of the order passed by the Joint District Judge, after the transferee Court has decided the applications Exhibits 43 and 49 against the applicants. Secondly, the Extra Joint District Judge has passed order for transfer at the behest of the applicants and on the basis of the move by the applicants. Learned Joint District Judge in his order has made reference to the contentions of the respondents No. 2 to 11 that they had no objection for transfer of the suit as sought for by the applicants. Learned Extra Joint District Judge in his order while referring to the submissions made by Shri Voditel, learned Counsel appearing for the applicants stated that despite injunction granted against State, no one appeared in the lower Court. Only present respondents No. 2 to 11 are contesting the matter against whom no injunction was issued. Therefore, he further observed that thereby it is seen that

no notice of this transfer petition is required to be given to the State. The State Government may appear before the 3rd Joint Civil Judge, Senior Division and take part in the proceedings. If really, the Counsel for the applicants was of the view that the order of transfer without issuing notice to respondent No. 1 was bad in law, he would have insisted the Court for issuing notice of the application to respondent No. 1, but that did not happen. The least that could be said and which is apparent from the events that has taken place and in particular passing of the order by the concerned Civil Judge, Senior Division, to whom the suit was transferred, having passed orders against the applicants, that has led applicants to challenge the legality of the order.

14. The proposition laid down by the Apex Court in the case relied upon by the Counsel for the applicants holding the order of transfer bad in law for want of notice to the other side cannot be disputed. But then it has no application so far as the case before hand is concerned, the reason being that in the case decided by the Apex Court the grievance against order of transfer by District Judge was by the party-defendant to whom the notice was not issued. In the case before hand, respondent No. 1 State has no grievance against the order of transfer passed by the Extra Joint District Judge. Therefore, there is no merit in the claim of the applicants in challenging the order of transfer. As stated earlier, the challenge by the applicants to the order of transfer is avidly with oblique motive in as much as the transferee Court did not pass the order favourable to the applicants. Apart from this, we do not find that the learned Extra Joint District Judge has committed any material irregularity or illegality in passing the order impugned. Therefore, no interference is called for. As such the Civil Revision Application No. 1084/2001 has to be dismissed.

15. While challenging the order of transfer it is contended by the applicants that there is no provision contemplated under the Act for issuing notices afresh in the suit after its transfer and therefore to the limited extent, transfer is vitiated. It is also stated by the applicants that they have challenged the said order so as not to be deprived of the fruits of their decree which is likely to be challenged on this technical ground in future. While confirming the order of transfer passed by the Extra Joint Civil Judge we make it clear that the order is not vitiated for want of notice to respondent No. 1 as learned A.G.P. Mr. Patel appearing for respondent No. 1 has not raised any objection to the order and we have ascertained from him that the respondent No. 1 is not challenging the order of transfer on the ground that no notice was issued to the respondent No. 1.

16. We now consider Civil Revision Application No. 1083 of 2001 which is filed by the applicants for challenging legality and propriety of order passed on Application Exhibit 43 in Special Civil Suit No. 514 of 2000 whereby their application under Order 1, Rule 10(2) of C.P.C. for deleting the names of respondents No. 2 to 11 came to be rejected. The learned Counsel for the applicant submitted that the non applicants No. 2 to 11 came to be impleaded in the suit on their own motion, in pursuance of no objection by the applicants to

their application Exhibit 15. That the applicants given no objection as the non applicants have opposed the transfer and consolidation of the two suits as sought by the applicants in Misc. Civil Application No. 113 of 2001 before the Extra Joint District Judge. But the purpose of consolidated trial did not materialize in as much as R.C.S. 27/1998 came to be dismissed in default on 6-7-2001. The learned Counsel further submitted that no relief has been claimed against the non applicants No. 2 to 11 in Special Civil Suit No. 514/2000 and their participation in the suit against the desire of the applicants/plaintiffs can at the best be to the extent of restoration of possession after obtaining permission of the trial Court in the light of the proceedings u/s 145 of Cri.P.C. having ended abruptly before the Apex Court, they are necessary and proper parties to the suit. They have not asserted any right of restoration of possession to them. Therefore, they are not required to be continued in the suit as defendants. The learned Counsel placed reliance on decisions reported in M/s. Aliji Monoji and Co. Vs. Lalji Mavji and others, and The Municipal Council, Amravati Vs. Govind Vishnu Sarnaik and Others, .

17. Shri Lala, learned Counsel appearing for non applicants No. 2 to 11 submitted that the trial Court has committed no error or illegality in rejecting the application Exhibit 43 in as much as these non applicants are the really contesting defendants in the suit and the applicants/plaintiffs have deliberately brought the suit without impleading these non applicants as party defendants, though in earlier suit i.e. R.C.S. 27/98 these non applicants were defendants against whom the applicants sought relief of declaration and injunction and they have challenged the order of injunction granted by the trial Court by preferring Misc. Civil Appeal No. 161/1999 before the 7th Joint District Judge, Nagpur who allowed the appeal by his order dated 16-10-1999. He submitted that merely because these non applicants got themselves impleaded in the suit, at their own motion and also on account of no objection by the application, there is no justification on the part of the applicants to seek the deletion of these respondents.

18. Taking into consideration the submissions of the Counsel for the parties I am of the view that there is no substance and merit in the challenge to the order passed on Exhibit 43. It goes without saying that the non applicants are necessary parties to the proceedings initiated by the applicants, that is how even the applicants have made them party defendants in the first proceedings i.e. R.C.S. 27/98 filed in the Court of Civil Judge, Junior Division, Katol seeking relief of declaration and injunction against them as plaintiffs apprehended interference and threat to their possession of temple premises. That apart, it were the respondents who have initiated the proceedings before the Assistant Charity Commissioner in respect of the disputed temple premises. That matter is pending and the Assistant Charity Commissioner is yet to adjudicate the claim of the non applicants, whether the temple in dispute is a public trust. In the background of this after the applicants lost before the 7th District Judge, Nagpur in Misc. Civil Appeal No. 161/1999, they filed Special Civil Suit No. 514/2000 against

respondent No. 1 only and that is to say deliberately omitted to implead the present respondents. Therefore, non-applicants were perfectly within their rights in getting themselves impleaded as party defendants in the later suit and as such they have rightly opposed the temporary injunction granted ex parte by the Court against respondent No. 1. It is pertinent to note that when these non applicants insisted for hearing of application Exhibit 5, the applicants abruptly stated before the trial Court that the application Exhibit 5 is not pressed by them. It is in this background that the applicants have filed Application Exhibit 43 for deleting the respondents No. 2 to 11. In these circumstances when the respondents/non applicants are contesting defendants, they are found to be necessary parties to the suit and their implication in the suit is required to have effectual adjudication of the controversy involved in the suit. Therefore, there is no justification for applicants to delete their names. The trial Court committed no error in rejecting application Exhibit 43. Principles laid down in the decision relied upon by the Counsel for the applicants cannot be disputed, but having regards to the facts and circumstances appearing in the case, we have to say that these decisions have no application to the case before hand. That apart the application of defendants Exhibit 15 for impleading them as defendants was not objected by the applicants. It is also not a case that respondents No. 2 to 11 have appeared in the suit in representative capacity as contemplated under Order 1, Rule 8 of C.P.C. Therefore, there is no question of compliance of the conditions laid down under Order 1, Rule 8 of C.P.C. This Revision Application No. 1083 is therefore liable to be dismissed.

19. This takes us to consider the third Civil Revision Application No. 1085 of 2001. Shri Voditel, submitted that the trial Court has committed material illegality and irregularity while allowing Exhibit 49 in as much as the non applicants No. 2 to 11 sought for appointment of Receiver by invoking the provisions u/s 151 of C.P.C. when under Order 40, Rule 1 of C.P.C. there is express provision empowering the Civil Court to appoint Receiver. It is submitted that the respondents No. 2 to 11 have no locus to give application Exhibit 19 seeking order of the Court for appointment of the Receiver as no relief was sought against the respondents in that suit. It was beyond the scope of the suit filed by the applicants to make appointment of the Receiver at the behest of the respondents who are totally strangers to the property in dispute committing rank trespass and causing obstruction, interference and disturbance to exclusive possession of the applicants in respect of temple premises. The learned Counsel further submitted that there was no material before the Court to hold that temple premises is public property. It is submitted that the applicants have produced sufficient material to show that the temple and the property appertaining to it vested in the applicants and has been in exclusive possession of the applicants in terms of the settlement as outgoing proprietors and the temple in question has been constructed in 1916 by the forefathers of the applicants. Therefore, mere entry in the record of right showing that the temple as "Sarvajani" does not divest the applicants of the title and possession.

Therefore, there was no justification for the trial Court to appoint Receiver in respect of the temple which has been in continuous exclusive possession and use of the applicants. He further submitted that the trial Court has committed error and illegality in interpreting the judgment of the Apex Court in holding that the non-applicants 2 to 11 were the right persons aggrieved and were permitted to approach the Civil Court for any interim direction in accordance with law for the protection of the property in dispute. Learned Counsel submitted that such interpretation of the judgment of the Apex Court amounts to criminal contempt. It is submitted that in the suit there was interim injunction operating against respondent No. 1 vis-a-vis the suit property. In the earlier Suit bearing No. R.C.S. 27/1998 injunction has been granted against respondents No. 2 to 11. Even in the proceedings before the Sub-Divisional Magistrate, exclusive possession of the applicants has been accepted and the order of appointment of Receiver as suggested by the Sub Divisional Magistrate was stayed. This position continued till the matter was decided by the Apex Court wherein ultimately the proceedings u/s 145 of Cri.P.C. pending before the Sub-Divisional Magistrate came to be quashed. That the entry in the record of right in respect of property Survey No. 326/1 in respect of the temple premises shows that the property has already vested in the applicants by virtue of the provisions of section 5 of the Act. Therefore, mere entry in the year 1970 that the temple is "Sarvajanik" does not create any right in respect of the temple much less ownership right vis-a-vis the respondents. It is submitted that the trial Court exceeded its jurisdiction in appointing Receiver in respect of the property i.e. the temple which is in exclusive possession of the applicants. It is submitted that the civil Court is not empowered to appoint Receiver invoking the provisions under Order 40, Rule 1 so as to dispossess the person of the property. Learned Counsel submitted that the applicants be permitted to adduce additional affidavit in the present revision as for the reasons stated by the applicants in their application before the trial Court the applicants could not place on record that additional affidavit as Counsel for the applicant was under belief that it was already filed on record. It is submitted that the applicants have controverted the claim of the non applicants as to existence of committee having management and control of the temple premises, so also exclusive possession of the same, that in the additional affidavit filed by the applicants, the status of the committee, its existence and its area of operation has been explained showing that it has nothing to do with the management of the temple in dispute and it fortifies the contention of the applicants that the temple in dispute was in exclusive possession and management of the applicants in their proprietary rights to the exclusion of non applicants and public at large.

20. The learned Counsel for the applicant placed reliance on decisions reported in :

Sree Jain Swetambar Terapanthi Vid.(S) Vs. Phundan Singh and Others, .

2. Chhatrapati Charitable Deosthan Trust v. Parisa Bhoske, 1979 M.L.J. 163.

3. Prataprai N. Kothari Vs. John Braganza, .
4. Krishna Ram Mahale (Dead.) by his Lrs. v. Mrs. Shobha Venkat Rao 1989 (3) B.C.R. 364.
5. P.A. Ahammed Ibrahim Vs. The Food Corporation of India, .
6. Government of India Vs. Workmen of State Trading Corporation and Others, .
7. J.K. Industries Ltd. and Others Vs. Chief Inspector of Factories and Boilers and Others, .
8. Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd., and another, .
9. Ram Sumer Puri Mahant Vs. State of U.P. and Others, .
10. Pasupuleti Venkateswarlu Vs. The Motor and General Traders, .
11. Lalji Dharamsey v. Bhagwandas Ranchhoddas, 1981 M.L.J. 573.
12. Jattu Ram Vs. Hakam Singh and others, .
13. Rajappa Hanamantha Ranoji Vs. Sri Mahadev Channabasappa and Others, .
14. Ram Sumer Puri Mahant Vs. State of U.P. and Others,
15. Amresh Tiwari Vs. Lalta Prasad Dubey and Another, .
16. Pasupuleti Venkateswarlu Vs. The Motor and General Traders, .
17. 1981 M.L.J. 573.
18. Central Bank of India Vs. Elmot Engineering Co. Pvt. Ltd. and others. (In Liquidation), .
19. Rajappa Hanamantha Ranoji Vs. Sri Mahadev Channabasappa and Others, and
20. T. Arivandandam Vs. T.V. Satyapal and Another, .
21. The learned Counsel Mr. Lala appearing for respondents No. 2 to 11 pointed out that as held by the trial Court there was no actual settlement of possession in favour of either forefathers of the applicants or present applicants. There is no record to show that either the applicants or their forefathers were having proprietary interest on a given date or they have right of settled possession at any date. Therefore, mere entry in the record of rights in respect of Survey No. 326 will not create any right in favour of applicants/plaintiffs. No declaration has been made by the Government as yet that the plaintiffs or their forefathers were outgoing proprietors. He pointed out that the Additional District Judge, Nagpur while deciding Misc. Civil Appeal No. 161/1999 has observed that the plaintiffs have failed to establish even prima facie their title or vesting of title by settlement of possession and consequent exclusive possession in respect of

temple premises. Therefore, that Misc. Civil Appeal No. 161/1999 was allowed and the plaintiff's application Exhibit 5 in R.C.S. 27/98 came to be dismissed. That position continued in as much as the findings by the Appellate Court in that appeal has attained finality. There is no finding by any Court in any proceedings upholding the plaintiffs' claim of exclusive possession vis-a-vis temple property. He submitted that when the Apex Court disposed of the criminal appeal only suit between the parties that was pending was Special Civil Suit No. 514/2000 as R.C.S. No. 27/98 before the Civil Judge, Junior Division, Katol was dismissed in default on 6-7-2001. In addition to that even before the Apex Court the present respondents No. 2 to 11 were parties and plaintiffs have also filed first Suit R.C.S. No. 27/98 against them as defendants as they were interested and plaintiffs apprehended threat to their possession of the temple premises. Therefore, once they were impleaded in Special Civil Suit No. 514/2000, they cannot be called as strangers. It is submitted that it was quite within competence of the non applicants to protect the property, to file application Exhibit 49. He also reiterated that applicants/plaintiffs deliberately did not join non applicants No. 2 to 11 as defendants in later suit i.e. S.C.S. 514/2000 after the Appellate Court in Misc. Civil Appeal No. 161/99 rejected the application for interim injunction. The learned Counsel further submitted that the trial Court has committed no error in appointing Receiver for the protection of the temple property by invoking the power under Order 40, Rule 1 of C.P.C. though the application Exhibit 49 has been titled as "application for suitable direction u/s 151 of C.P.C". Before the trial Court the non-applicants have made it clear by filing pursis that they claim appointment of Receiver by invoking the powers under Order 40, Rule 1 of C.P.C. It is therefore, submitted that in view of this the order has been passed by the trial Court precisely invoking the power under Order 40, Rule 1 of C.P.C., this revision is not maintainable. It is submitted that the remedy provided under the CPC is that of Misc. Civil Appeal. The learned Counsel further pointed out that the trial Court rightly placed reliance on the documents filed by the respondents showing that the temple was ancient one and was in existence since the time immemorial which belied the plaintiffs' claim that the temple was constructed in the year 1916 by their forefathers. He further urged that the material on record goes to show that the management of the temple was with the committee established and the applicant No. 1 was one of the members of the committee, but there has been embezzlement of amounts received by the temple, respondents thought it fit to move the Court for appointment of Receiver to have better management of the temple by doing away with the unauthorised and uncalled hindrance of the applicants. He submitted that non applicants have already approached the Assistant Charity Commissioner for vindicating their rights vis-a-vis the temple and that the dispute in that regard is pending. The Apex Court has also observed that it was for the Civil Court where the matter is pending to adjudicate upon the question relating to possession and title in respect of the temple property. Accordingly, the Civil Court in Special Civil Suit No. 514/2000 is also ceased of the matter wherein the applicants claim of ownership and exclusive possession will be adjudicated

taking into consideration the objection and counter claim of the defendants including the present non applicants No. 2 to 11, but then as observed by the Apex Court non applicants No. 2 to 11, being aggrieved person and being defendant in the suit were well within their right to move the Court for interim relief for protection of the property in dispute. That is how they have filed application Exhibit 49 and the trial Court has also with all justification granted relief invoking the power and jurisdiction under Order 40, Rule 1 of C.P.C. He therefore, urged that the revision be dismissed.

22. Shri Patel, learned A.G.P. for respondent No. 1 supported orders passed by the lower courts. He also made it clear that respondent No. 1 had no objection for transfer of the suit in pursuance of the order passed by the Extra Joint District Judge, Nagpur. He further submitted that so far as respondent No. 1 is concerned, there has been no adjudication as to the proprietary rights of applicants in respect of the temple premises. The matter is under consideration, he therefore supported the order passed by the trial Court appointing Receiver in respect of the temple property.

23. After having given my cautious thought to the submissions made by the learned Counsel for the applicants and having taken into consideration material and factual backdrop of the controversy between the parties, I have reached the conclusion that the trial Court was absolutely right in passing the order making appointment of Receiver for better management of the temple premises thereunder, so also the affairs of the temple, till controversy between the parties and the rival claims, more particularly that the applicants/plaintiffs in the suit is adjudicated by the Court. In earlier part of the judgment I have reproduced the observations of the Apex Court in Criminal Appeal No. 698/2001 anticipating the attack by the Counsel for the applicants as to the approach and interpretation by the trial Court on the observations in the judgment. The basis for quashing the proceeding u/s 145 of Cri.P.C. by the Apex Court was the decision rendered by the Apex Court in Ram Sumer Puri Mahant Vs. State of U.P. and Others, which undisputedly entitles a person aggrieved to approach Civil Court for adequate protection of the property and that too the Court in which civil litigation is pending in respect of the same property wherein question of possession is involved. When the civil litigation is pending for the same property wherein the question of possession is involved and parties are in a position to approach the civil Court for interim orders such as injunction, or appointment of Receiver for adequate protection of the property during the pendency of the dispute, there is no justification for initiating a parallel criminal proceeding u/s 145 of Cri.P.C. In the case before hand as the factual position makes it clear when the Apex Court decided Criminal Appeal on 13-7-2001 the only suit that was pending between the parties was Special Civil Suit No. 514/2000. Much has been made of non applicants thrusting entry in that suit by moving application Exhibit 15. But we do not find any substance in the cry and grievance of the applicants in that regard. It is already stated that after the 7th Additional District Judge dismissed the applicants' application Exhibit 5 in R.C.S. 27/1998 by allowing the Misc. Civil

Appeal No. 161/1999, applicants filed the present Special Civil Suit No. 514/2000 deliberately omitting to join the non applicants as defendants. This is said to be deliberate and skimming because in earlier suit i.e. R.C.S. 27/1998 the non applicants No. 2 to 11, were alone the defendants and the relief sought in the suit was same which applicants have sought in subsequent Special Civil Suit No. 514/2000. It is the grievance of applicants that non applicants No. 2 to 11 have caused threat to the applicants' proprietary right and peaceful possession of the temple in dispute. Non-applicants No. 2 to 11 have already initiated a proceeding before Assistant Charity Commissioner, Nagpur. The applicants were well aware of that fact. The applicants had appeared before the Assistant Charity Commissioner for resisting the proceedings initiated at the behest of the non applicants. Applicants' proprietary right as to the temple as claimed by them by force of section 5 of the M.P. Abolition of Proprietary Rights (Estate, Mahals, Alienated Lands) Act is yet to be adjudicated by the competent Court. Similarly, defendants claim that the temple is of a public trust is yet to be adjudicated. Therefore, the position of the applicants and non applicants vis-a-vis claim for the temple for its management, is the same. This is in the sense at this stage it cannot be attributed that non applicants No. 2 to 11 are strangers. The approach of the applicants even before the Civil Court is on the footing that the defendants are rank trespassers and strangers vis-a-vis temple premises. The trial Court has rightly observed and the material on record fortifies his conclusion that plaintiffs' claim in relation to the temple in dispute is yet to be adjudicated. Even respondent No. 1 does not admit that proprietary right in respect of the temple has been settled and vested in applicants/plaintiffs.

24. We are mindful of the fact and legal position that mere entry in the revenue record does not confer title over the applicants. In a decision reported in *Rita Premchand and Another Vs. State of Maharashtra and Others*, and in *Jattu Ram Vs. Hakam Singh and others*, the Apex Court has laid down in clear terms that entries in revenue record are not dispositive or conclusive on questions of titles. The principle of law is well settled that entries in the revenue record are not dispositive or conclusive on the question of title. The entries are relevant only for fiscal purpose. Therefore, we have no hesitation in saying that merely because in the revenue record there is entry in respect of the temple in question as "Sarvajanik" that does not by itself establish the claim of non applicants, but at the same time in the background of other facts and circumstances attending the case that entry is sufficient to support the claim of defendants. We also make it clear that merely that entry does nullify the applicants proprietary claim. It is suffice to say that the defendants cannot be at this stage stamped as strangers for the temple. If that is so, then their very existence as contesting defendants in Special Civil Suit No. 514/2000 entitles them to approach the Court and seek interlocutory relief for protection of the temple or the affairs of the temple. Therefore, it is absolutely irrelevant to consider whether the Apex Court in the judgment referred to the suit bearing R.C.S. 27/98 only. That apart as pointed out by Shri Lala, learned Counsel for the defendants from the SLP that the

applicants before the Apex Court reference was to the subsequent suit i.e. S.C.S. 514/2000 filed by the applicants in the Court of Civil Judge, Senior Division, Nagpur in addition to this admittedly it was all applicants' endeavour to get both the suits consolidated and for that the applicants had approached the Extra Joint District Judge, Nagpur by filing the first Misc. Civil application No. 113/2001. Therefore, the non applicants were not wrong at any point of time in any manner in moving the Court for interim relief in respect of the temple premises in Special Civil Suit No. 514/2000 taking recourse to the observations by the Apex Court in Criminal Appeal. The trial Court also committed no error in accepting the interpretation of the observations of the Apex Court for deciding the application Exhibit 49 filed by the non applicants for interim relief as sought for.

25. At this stage, I would like to refer to the decisions of the Apex Court as relied upon by the applicants : State of Punjab Vs. Baldev Singh, . I have carefully gone through all the decisions rendered by the Apex Court. There cannot be any other opinion about the law laid down by the Apex Court in these cases. Everything said in a decision does not constitute the precedent. A decision has to be considered in the context in which it was rendered. It goes without saying that it is not proper and fair to read a sentence from Supreme Court's judgment divorced from context and built up a case treating that sentence to be complete law on the subject. In the case before hand it is not only the trial Court, but I am also interpreting the observations of the Apex Court in the context of the facts attending the case. It is found that the Apex Court in the Criminal Appeal between the parties and the subject matter of the dispute at hand reference was in respect of both the suits between the parties, and persons aggrieved were the parties in the suits including the non applicants No. 2 to 11. It is in this context there appears no ignorance of the settled decisions of the Apex Court on the part of the trial Court in holding that non applicants are entitled to seek interim relief for protection of the property in dispute taking recourse to the observations of the Apex Court in the judgment in Criminal Appeal between the parties. I am mindful of the decision of the Apex Court in Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd., and another, wherein it is observed that when law is well settled by judicial pronouncement of Supreme Court, ignoring the same by subordinate courts including the High Court, and passing contrary orders amounts to judicial impropriety and judicial adventurism. In the case before hand the trial Court has not interpreted the observations of the Apex Court in Criminal Appeal contrary to the settled legal position nor it is interpreted out of context or divorced of the factual backdrop.

26. Much has been made by the learned Counsel for the applicants of the fact that the trial Court has granted relief invoking inherent powers u/s 151 of C.P.C. and that is in flagrant violation of the provisions enriched under Order 40, Rule 1 of C.P.C. In this context reliance has been placed on decision reported in P.A. Ahammed Ibrahim Vs. The Food Corporation of India, . There is no dispute as to the preposition that is laid down by the Apex Court that inherent jurisdiction cannot be invoked when the result would be nullification of the procedure

prescribed by the Court. The position in this case before hand is entirely different. It is true that the application Exhibit 49 is titled as seeking interim relief invoking inherent powers of the Court u/s 151 of C.P.C., but then during the course of hearing of the application before the trial Court, the non applicants by filing pursis have made it clear that their intention in seeking interim relief is by invoking the powers envisaged under Order 40, Rule 1 for the relief of appointment of Receiver for the protection of the property. This factual position was very much known to the applicants, but despite of that, applicants have agitated this issue as to the maintainability of the claim of interim relief. The trial Court has also dealt with this issue and rightly placing reliance on the pursis filed by the non applicants making it clear that interim relief is sought invoking the powers of the Court u/s 40, Rule 1 of C.P.C. That apart the trial Court has considered the entitlement of the interim relief as sought for by the non applicants, adhering to the conditions laid down under Order 40 Rule 1 of C.P.C. The trial Court has found and specifically observed that defendants would be entitled to the relief of appointment of Receiver when it is just and convenient for protection of the property. It is needless to say that under Order 40, Rule 1 the Court is empowered to appoint a Receiver in respect of the property in dispute when it is found to be just and convenient when the property in dispute is in danger of being dissipated. Therefore, there is no merit in the contention of the applicants about the tenability of the application seeking interim relief and granting of interim relief by the trial Court.

27. It is urged that the trial Court committed illegality in appointing Receiver for the affairs of the temple as direct consequence of implementation of the order would be ouster of the applicants of exclusive possession of the temple premises. It is submitted that this is not permissible under law. In order to substantiate this submission the learned Counsel placed reliance on decision reported in Sree Jain Swetambar Terapanthi Vid.(S) Vs. Phundan Singh and Others, . In this case in a suit for declaration and injunction the trial Court finding the prima facie cases have been made out by the plaintiffs granted temporary injunction which came to be vacated by the High Court and appointing two Joint Administrators in place of the society's Managing Committee. The Apex Court found that since none of defendants had successfully challenged his expulsion in a suit under any law, the appointment of Joint Administrator by the High Court which had the effect of ousting existing Managing Committee from the management of the society and its schools was neither legal nor just and proper. The position in this case in the hand is entirely different in the sense though applicants have claimed their exclusive possession over the temple premises, none of the courts where the proceedings were pending has found even prima facie in favour of the applicants. In this context we may refer to the observations of the 7th Additional District Judge in Misc. Civil Appeal No. 161/2001 when he has rejected plaintiffs' application Exhibit 5 in R.C.S. 27/1998 for temporary injunction against the non applicants on the ground that the applicants were in exclusive possession over the suit temple. The learned Additional District Judge has observed that plaintiffs

have failed even prima facie to establish their title and exclusive possession over the suit temple. He has observed that the applicants/plaintiffs have not been able to establish even semblance of their right of ownership over the temple. He has negated the contentions of the applicants that the temple in question was constructed by their forefathers in the year 1916. We will not give much importance to the observations as to the failure of the plaintiffs to establish the title over the temple, but nonetheless it is very relevant the observations of the learned Judge that plaintiffs have failed to establish their exclusive possession over the temple premises. As against that the plaintiffs have vociferously contended before the Court that the appointment of the Receiver would be ousting them of the possession and control over the temple premises. That is why in earlier part of the judgment I have specifically remarked that the plaintiffs/applicants have come before the Court on the assumption that the temple premises are in their exclusive possession. That apart before the trial Court applicants could produce no material showing their exclusive possession over the temple. As against that as observed by the trial Court, the document produced by the defendants in support of their claim positively indicated that the temple premises were and are on exclusive control and possession of the panch committee constituted for the "Chandikadevi Devasthan" way back in the year 1990. As observed by the trial Court, on the basis of the documents, the temple is housed in the property which is registered in the record of Katol Municipal Council as property No. 61 in the name of "Chandika Mandir Devasthan". Even in the revenue record this temple is registered in the name of "Chandikadevi Sansthan" situated at property Survey No. 1191. To crown this all, an electric meter for the temple has been obtained in the name of "President, Chandikadevi Devasthan, Katol". What is more striking from the documents produced by the defendants alongwith their additional affidavit in the trial Court is the resolutions passed by the panch committee of this "Chandika Devi Sansthan" from time to time every year and it is admitted that the present application No. 1 was very much constituent of this panch committee occupying as member of the committee. It is pertinent to note that applicants have not controverted the documents so also additional affidavits filed by defendants in support of the documents vide Exhibit 30 in the trial Court.

28. The Counsel for the applicants has made feeble attempt to get in counter affidavits in this revision application by filing the same alongwith one civil application which is also not numbered. I am not much impressed of the reasons put forth by the learned Counsel for the applicants for permitting him to file counter affidavits in this proceeding before this Court. That apart, in the course of arguments and submissions, the learned Counsel submission that this Court has taken into account affidavits that is sought to be filed as subsequent event. In order to substantiate his contention learned Counsel placed reliance on a decision in 1981 M.L.J. 573 and Pasupuleti Venkateswarlu Vs. The Motor and General Traders, . I have gone through the decisions very carefully. I am of the opinion that the decisions relied upon have no bearing and application also

having regard to the facts of the case before hand. We do not dispute that for making a right or remedy claimed by the party just and meaningful as also legal and factual incorrect that carrying realities the Court can and in many cases must take cautious cognizance for events and developments subsequent to the initiation of the proceedings provided the rules on fairness to both the sides are scrupulously obeyed. It is very difficult to say and accept that counter affidavit of the persons whose names are disclosed in the documents produced by the defendants in the trial Court could be termed as subsequent event so as to allow the applicants to refer in this case while deciding the revision application. The least that could be said is that the attempt on the part of the applicants is an afterthought when the trial Court has specifically observed that the documents placed on record and additional affidavit filed by defendants in the trial Court has gone unchallenged. That led the trial Court to place emphasis and reliance on those documents to conclude that the temple was not in exclusive possession of the applicants, but its management was under the control of the committee constituted by name "Chandika Devi Devasthan" way back in 1990. Therefore, there is no substance and merit in the contention of applicants that the consequence of the appointment of the Receiver was ouster of the applicants/plaintiffs of their possession and management of the temple.

29. Much has been made of the observations of the High Court in Criminal Application and also of the Sub-Divisional Magistrate while passing order of Receiver. It is submitted that till then the factual position as accepted was that the temple premises were in exclusive possession of the applicants/plaintiffs. Having taken into consideration the material on record including observations by the High Court in Criminal Application and Sub-Divisional Magistrate, it is very difficult to say that at any stage the Court has observed that management of the temple was exclusively with the applicants/plaintiffs. The Sub-Divisional Magistrate has in fact observed that he was not in a position to decide as to who amongst rival parties before him was in actual possession of the temple premises. Even otherwise as the thing stands in my assessment there could be no exclusive possession of the applicants so far as the management of the temple premises are concerned. We make it clear that there could not have been exclusive possession and control of the temple premises in either of the parties. The possession would have been of both the parties. It appears that both the parties must have access to the temple premises. It is in this sense we say that the temple premises could not have been in exclusive possession of the applicants or defendants, nonetheless it appears that the management and control of the affairs of the temple have been with the panch committee that was constructed way back. If that is so, then there was nothing wrong on the part of the defendants in approaching the Court seeking interim relief for protection of the management of the temple. We may say that their approach was fortified by the observations of the Apex Court in the judgment in the Criminal Appeal wherein the Apex Court has quashed the proceedings u/s 145 between the parties.

30. The learned Counsel for the applicants tried to substantiate his claim that the temple has been built in the year 1916 by forefathers of the applicant which fact revealed by the letters engraved in the stone plaque that is fixed in the wall of the temple. No doubt it bears the name of one of the forefathers of the applicants. The trial Court has rejected this contention of the applicants having regard to other material on record, more particularly the entry of the temple in the Gazetteer of India, Maharashtra State, Nagpur District. It is found that Nagpur District Gazetteer was prepared in 1908. In this Maharashtra State Gazetteer for Nagpur District on page 715 there is reference to "Chandikadevi Mandir" situated at Katol. The earlier part of the judgment referred to the other details of the information regarding this temple. The trial Court has rightly concluded that the temple is ancient one. What is significant to note is that there is no challenge to this entry in the Gazetteer in respect of this temple in question, if that is so, then it falsifies the claim of the applicants that the temple has been built by their forefathers in the year 1916. It is very apparent from the description of the temple and more particularly of the fact that the construction of the temple of Hemadpanthi style, that the temple must have been originally built in way back prior to 1900. At least we can legitimately infer that the installation of the goddess in the temple must have been way back prior to 1900. If that is so, then mere there being stone-plaque in the wall of the temple on which the name of the plaintiffs' forefathers has been engraved will not be sufficient to hold that the temple belongs to the applicants exclusively.

31. In the facts and circumstances attending the case, it was crystal clear that there was dispute between the parties over the management of the temple and admittedly the applicants on one hand have been asserting their proprietary claim over the temple and for that though of late, they approached the revenue authorities for correcting the entry in respect of the temple that was made in the year 1970 by the city survey officer showing the temple as that of "Chandika Devi Devasthan". They have also filed civil suits. Defendants have also in right earnest approached the Assistant Charity Commissioner raising dispute and seeking declaration that the temple be declared as Public Trust. This dispute between the parties over the temple also led to the proceedings u/s 145 initiated by the Sub-Divisional Magistrate. That proceeding ultimately came to be quashed by Apex Court. When the matter was sub judiced before the Civil Court in Special Civil Suit No. 514/2000, after plaintiffs did not press that application for injunction and made a move for deleting the names of present respondents, defendants respondents rightly approached the Court for seeking interim relief as claimed in application Exhibit 49 for protection of the temple and for better management of the temple. The trial Court has rightly found that in the background of the dispute between the parties over the management of the temple, the affairs of the temple so also the management could be protected and improved by appointing Receiver. By this appointment of the Receiver in strict sense there is no ouster of possession of either of the parties of the temple premises. The trial Court has made it very clear in its order that the appointment

of Receiver is for the management, protection, preservation and improvement of the "Chandika Devasthan". He also made it clear in his observations that it is just and proper to appoint Receiver for management, protection and preservation and improvement of the temple till the dispute between the parties as to the ownership and possession of the temple is adjudicated by the Court. Therefore, no interference is called for in the order passed by the trial Court on application Exhibit 49. This revision has to be dismissed.

32. For the reasons stated above all the three civil revision applications are dismissed. No orders as to cost. Rule discharged. Interim stay granted in C.R.A. 1085 stands vacated. However, at the request of Counsel for applicants interim stay to continue till five weeks from the date of this order. C.C. expedited.