IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

Tr.P(C).No. 496 of 2014 ()

(AGAINST EP.NO.167/2011 IN O.S.NO.34/2000 ON THE FILE OF THE IV ADDL. DISTRICT COURT, THIRUPATHI TRANSMITTED TO DISCTRICT COURT, ERNAKULAM FOR EXECUTION AS PER ORDER DATED 21.2.2011 AND NOW PENDING BEFORE THE I ADDL. DISTRICT COURT, ERNAKULAM)

PETITIONER(S):

SRIMAD SUDHINDRA THIRTHA SWAMIJI,
REPRESENTED BY HIS GENERAL POWER OF ATTORNEY
HOLDER SRI.GURUPUR GANAPATHY PRABHU
S/O.LATE GURUPUR DAMODARA PRABHU
RESIDING AT NO.1, MANUSMRITHI, RELIEF ROAD
DAULAT NAGAR, SANTACRUZ (W), MUMBAI - 400 054.

BY ADVS.SRI.R.VENKATARAMANI (SENIOR ADVOCATE)
SRI.R.LAKSHMI NARAYAN
SMT.R.RANJINI

RESPONDENT(S):

1. RAGHAVENDRA THIRTHA SWAMI,
AGED 41, SANYASI
RESIDING AT DWARAKA KALA MANDIR,
PUDUKKALVATTOM, ELAMAKKARA,
KOCHI - 682 026.

ADDL. 2. THE STATE OF KERALA,
REPRESENTED BY THE ADDITIONAL
CHIEF SECRETARY (HOME)

(SUO MOTU IMPLEADED AS THE SECOND RESPONDENT AS PER ORDER DATED 16.10.2014 IN TR.P(C) NO.496/2014)

ADDL.3. THE DIRECTOR, CENTRAL BUREAU OF INVESTIGATION
PLOT NO.5 B, CGO COMPLEX, LODHI ROAD
NEW DELHI - 110 003.

(IMPLEADED AS ADDL. R3 AS PER ORDER DATED 24.7.2015 IN IA.NO.1484/2015)

ADDL.4. V.RAJKUMAR KAMATH,
S/O.SHRI.A.VASUDEVA KAMATH
HOUSE NO.XL/7183, T.D.ROAD
ERNAKULAM, COCHIN - 682 035.

ADDL.5. K.SREEDHARA BHAT, S/O.LATE A.KRISHNA BHAT
HOUSE NO.40/7138, T.D.ROAD, COCHIN - 682 035.

ADDL.6. N.K.PRABHAKARA NAIK, S/O.LATE N.N.KRISHNA NAIK
NEDUMPULLISSERY PARAMBIL, GOPALA PRABHU ROAD
ERNAKULAM, COCHIN - 682 035.

ADDL.7. G.RATNAKARA PRABHU
S/O.LATE GOVINDA PRABHU, HOUSE NO.63/1226
KANAKA VIHAR, CEMETRY JUNCTION,
ERNAKULAM, COCHIN 682 035.

ADDL.8. ANAND.K.PRABHU, S/O.SHRI.KRISHNA PRABHU
A2, SREE LAKSHMI APARTMENTS,
T.D.ROAD, ERNAKULAM, COCHIN - 682 035.

ADDL.9. V.V.JAYAGOPAL SHENOY, S/O.SHRI.V.D.VASUDEVA SHENOY,
HOUSE NO.59/283, MAHAKAVI BHARATIYAR ROAD,
ERNAKULAM, COCHIN - 682 035.

ADDL.10. S.SURENDRANATHA PRABHU, S/O.SHRI.A.P.SREEDHARA PRABHU
PRABHU NIVAS, PUTHUKALAVATTOM ROAD,
ELAMAKKARA, COCHIN - 682 026.

ADDL.11. SANTHOSH.S.SHENOY, S/O.SRI.G.SREEDHARA SHENOY
EWS 513, GANDHI NAGAR, COCHIN - 682 020.

ADDL.12. G.MURALEEDHARA PRABHU, S/O.N.GOPALAKRISHNA PRABHU
PLOT NO.828, EWS, KADAVANTHARA P.O.
GANDHI NAGAR, COCHIN - 682 020.

(IMPLEADED AS ADDL. RESPONDENTS 4 TO 12 AS PER ORDER DATED 12.8.2015 IN I.A.NO.1512/2015)

R1 BY ADV.SRI.T.KRISHNAN UNNI, SENIOR ADVOCATE
R2 BY ADV. DIRECTOR GENERAL OF PROSECUTION SRI.T.ASAF ALI
R3 BY ADV. SRI.P.CHANDRASEKHARA PILLAI, SC FOR C.B.I.
R4-R12 BY ADV. SRI.B.KRISHNAMANI

THIS TRANSFER PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04.08.2015 ALONG WITH I.A.No.17447/2013 IN OPC. 256/2013, THE COURT ON 12.8.2015 PASSED THE FOLLOWING:

APPENDIX IN TR.P(C) No. 496/2014

PETITIONER(S) EXHIBITS

EXHIBIT P1	:	TRUE COPY OF THE JUDGMENT DATED 28.1.2009 RENDERED BY THE IV ADDL. DISTRICT COURT JUDGE, TIRUPATHI
EXHIBIT P2	:	TRUE COPY OF THE JUDGMENT REPORTED IN AIR 2010 SC 296.
EXHIBIT P3	:	TRUE COPY OF THE EXECUTION PETITION EP.NO.167/2011 ON THE FILE OF THE 1ST ADDL. DISTRICT COURT, ERNAKULAM.
EXHIBIT P4	:	TRUE COPY OF THE ORDER REPORTED IN 2011 (4) KLT 265.
EXHIBIT P5	:	TRUE COPY OF THE ORDER REPORTED IN 2012 (2) KLT 444
EXHIBIT P6	:	TRUE COPY OF THE ORDER DATED 11.2.2013 IN OP.(C) NO.256/2013
EXHIBIT P7	:	TRUE COPY OF I.A.NO.17447/2013 IN OP(C) NO.256/2013
EXHIBIT P8	:	TRUE COPY OF THE ORDER DATED 2.9.2014 OF THIS HON'BLE COURT.

RESPONDENT(S) EXHIBITS

NIL.

//TRUE COPY//

P.S. TO JUDGE.

'C.R.'

V.CHITAMBARESH, J.

Tr.P (C) No.496 of 2014 &
I.A.No.17447 OF 2013 IN OP(C) No.256/2013

Dated this the 12th day of August, 2015

O R D E R

An elusive 'Swamiji' literally makes the decree holder run from pillar to post. He remains invisible to the Amin and the State Police. The entire machinery of the State is at crossroads.

2. The dispute between two pontiffs of Shri Kashi Math Samsthan to wrest its control and administration could not be amicably settled despite intervention by devotees. This lead to filing of a suit numbered as O.S.No.34/2000 on the file of the court of the IV Additional District Judge, Tirupati wherein the junior pontiff was camping. The junior pontiff was the second plaintiff and the senior pontiff was the first defendant of the first plaintiff Samsthan in the suit wherein a counter claim was laid. The suit for declaration that the second plaintiff is the Madathipathi of the first plaintiff Samsthan and for consequential injunction was dismissed. The counter claim was decreed restraining the second plaintiff by an injunction from interfering with the administration

of the Samsthan by the first defendant. The second plaintiff was further directed therein to hand over all the deities and other articles belonging to the Samsthan to the first defendant. The deities and articles were specified by amending the decree by order in I.A.No.168/2010 on the basis of an inventory report of the Advocate Commissioner. It is this amended decree in the counter claim in O.S.No.34/2000 that is put into execution by the first defendant to which one objection after another is being raised.

3. E.P.No.18/2009 was first filed on the file of the court of the IV Additional District Judge, Tirupati whereupon the second plaintiff contended that he has shifted his camp to Ernakulam. The decree was therefore transmitted to the court of the District Judge, Ernakulam and later made over to the court of the I Additional District Judge, Ernakulam. E.P.No.167/2011 was accordingly filed in the transferee court to get back the deities and other articles comprising of gold jewelery studded with diamonds, emeralds, blue sapphire etc. The objection as regards

the jurisdiction of the transferee court was turned down in Srimad Raghavendra Thirtha Swamy v. Srimad Sudhindra Thirtha Swamiji [2011 (4) KLT 265]. The objection as regards the executability of the decree was turned down in Srimad Raghavendra Thirtha Swamy v. Srimad Sudhindra Thirtha Swamiji [2012 (2) KLT 444]. The grant of police aid to execute the decree in E.P.No.167/2011 is concluded by Srimad Sudhindra Thirtha Swamiji v. Raghavendra Thirtha Swamiji [2013 (2) KLT 203]. The operative part of the judgment is extracted hereunder:-

> a) The I.G. Of police, Central Range is directed to constitute a team of police officers who shall render necessary assistance to the Amin appointed by the learned I Additional District Judge, Ernakulam to trace, arrest and produce the respondent before the said Court.
>
> b) Such police team shall assist the Amin appointed by the learned Additional District Judge to trace the paraphernalia and other items which are required to be delivered over to the petitioner as per the decree in the

> case and to produce the same in the said Court.
>
> c) It is made clear that the above order is only to the effect that the police shall assist the Amin in discharge of his duties as aforesaid, within the local limits of the territorial jurisdiction of learned I Additional District Court, Ernakulam. (emphasis supplied)

4. It has inter alia been stated in the penultimate paragraph of the judgment afore-quoted in disposal of OP(C) No.256/2013 as follows:-

> Having regard to the manner in which respondent has conducted himself with respect to the orders passed by the executing court, there is no reasonable possibility of the Amin executing that warrant of arrest.

This was precisely why the Inspector General of Police, Central Range was directed to constitute a team of police officers to assist the Amin 'to trace, arrest and produce' the second plaintiff in court. I.A.No.17447/2013 has been filed to re-open OP(C)

No.256/2013 complaining of the tardy progress in tracing out the second plaintiff and to issue appropriate directions to the police. I directed the Director General of Prosecution to inform this Court about the steps taken to trace out the second plaintiff and also his present whereabouts. A statement was filed by the Inspector General of Police, Ernakulam Range to the effect that the second plaintiff has not been traced out as yet. This was so notwithstanding the fact that two special teams of police were constituted to trace out the second plaintiff who was moving from one State to another. It was pointed out that criminal cases have already been registered against the second plaintiff in addition to a private complaint lodged by another. It transpires that Crime No.2409/2014 - the Central Police Station, Ernakulam has also been registered against the second plaintiff under Section 57(c) of the Kerala Police Act, 2011. Another statement was filed by the Inspector General of Police, Kochi Range expressing his helplessness and suggesting the entrustment of the investigation to the

Central Bureau of Investigation.

5. Tr.P(C) No.496/2014 has been filed by the first defendant seeking to withdraw E.P.No.167/2011 from the file of the Court of the I Additional District Judge, Ernakulam to this Court. The reason stated is that the execution proceedings cannot surge ahead in the court below due to the recalcitrant attitude exhibited by the police. It is asserted that the second plaintiff has made himself scarce moving from one State to another and that the execution proceedings require to be monitored by this Court. The second plaintiff objected to the prayer contending that no useful purpose would be achieved by withdrawal of the execution petition to this Court. The second plaintiff also stated that the services of the Central Bureau of Investigation need not be availed to assist the Amin within the limits of the transferee court. It is now brought to my notice that the High Court of Judicature at Hyderabad has dismissed A.S.Nos.90 & 91 of 2009 against the decrees in the suit and the counter claim. The operative part of the common judgment dated

1.6.2015 is extracted herein below:-

> "The learned counsel for the appellants -plaintiffs has not advanced arguments on the correctness or otherwise of the decree in connection with the counter claim out of which A.S.No.91 of 2009 has arisen for the reason that the main plea based on which the decree was questioned is subject matter of a Civil Revision Petition. Therefore it is needless to observe that the confirmation of the decree in the counter claim will be subject to the result of the said Civil Revision Petition.
>
> On the analysis of the above, both the appeals fail and the same are dismissed with costs."

The parties are at variance as to whether a Civil Revision Petition was in fact filed against the decree in the counter claim and even its number was not furnished to me despite repeated queries. The pendency of the Civil Revision Petition if any does not also matter since there is no stay of execution of the decree in the counter claim. The stay earlier granted

in A.S.Nos.90 & 91 of 2009 was since vacated and the same has also been affirmed by the Supreme Court in S.L.P.Nos.5715-5716/2012. Thus there is no impediment as of now to proceed with the execution of the decree in the counter claim in favour of the first defendant against the second plaintiff.

6. I heard Mr.R.Venkataramani, Senior Advocate on behalf of the first defendant, Mr.T.Krishnan Unni, Senior Advocate on behalf of the second plaintiff, Mr.B.Krishnamani, Advocate on behalf of the additional respondents impleaded, Mr.Asif Ali, Director General of Prosecution and Mr.P.Chandrasekhara Pillai, Standing Counsel on behalf of the Central Bureau of Investigation.

7. No doubt this Court can withdraw any proceeding pending in any court subordinate to it and dispose of the same under Section 24(1)(b)(i) of the Code of Civil Procedure, 1908 ['the CPC' for short]. The term 'proceeding' includes a proceeding for the execution of a decree or order for this purpose as evident by Section 24(3)(b) of the CPC after the

amendment by Act 104/1976. That Section 24 of the CPC applies to the execution proceedings as well has been held in Rajagopala Pandarathar's case [AIR 1926 Madras 421] even before the amendment. Also the transferee court has the power to send the decree for execution to another court under Section 42(2)(a) of the CPC thus removing all impediment for withdrawal. The execution petition even if withdrawn to this Court can proceed only subject to the constraints of Sections 38 and 39 (4) of the CPC. In other words the execution of the decree cannot pervade beyond the local limits of the jurisdiction of the District Court taking note of the court which passed the original decree. This is the purport and intent of Section 39(4) of the CPC as reiterated in Salem Advocates Bar Association v. Union of India [AIR 2005 SC 3353]. The local limits of the jurisdiction of the executing court cannot be enlarged by withdrawing the execution petition pending in the court below to this Court. What then is the earthly purpose of withdrawing an execution petition pending in the court below except clustering this Court with the

additional burden. This Court can always monitor the execution proceedings pending in the court below in exercise of its jurisdiction under Article 227 of the Constitution of India. I therefore dismiss Tr.P (C) No.496/2014 filed by the first defendant to withdraw E.P.No.167/2011 from the court of the I Additional District Judge, Ernakulam to this Court.

8. The registration of Crime No.2409/2014 on the file of the Central Police Station, Ernakulam under Section 57(c) of the Kerala Police Act, 2011 is a consequential development. The statutory provision reads thus:-

> 57. Police to attempt to locate missing persons:- (1) Whenever a Station House Officer receives any information from which he reasonably suspects that any person is missing and there are circumstances to believe that,-
> (a) x x x x
> (b) x x x x
> (c) such person is absconding himself to prevent someone from implementing a lawful right declared by any Court.

> Such officer shall register the information in a manner similar to the procedure prescribed for a cognizable offence and take immediate action to locate the missing person.

The crime has been registered on the allegation that the second plaintiff is absconding himself to prevent the first defendant from implementing a lawful right declared by the court in O.S.No.34/2000. The amplitude of the term 'abscond' has been discussed succinctly in O.V.Forbes v. Emperor [AIR (30) 1943 Oudh 325] as follows:-

> The word 'abscond' is not defined in the Code. According to Websters New International English Dictionary (Edn.2.1936) abscond means: (1) “to hide, withdraw, or be concealed” (2) “to depart clandestinely; to steal off and secret one's self.” Absconded means “hidden; concealed; secluded.” In 4 Mad.393 it was observed that the term “abscond” does not necessarily imply change of place. Its etymological and ordinary sense is “to hide oneself”, and it matters not if a person departs

> from his place or remains in it, if he conceals himself. In either case he is said to 'abscond'.

The lawful right declared by the Court enables the first defendant to get back the deities and the articles mentioned in the inventory report of the Advocate Commissioner from the second plaintiff. The registration of Crime No.2409/2014 is in addition to C.C. No. 114/2011 on the file of the court of the Judicial First Class Magistrate II, Aluva. C.C. No. 114/2011 is on the basis of a private complaint filed by another wherein a non bailable warrant issued against the second plaintiff remains unexecuted. The statement filed by the Inspector General of Police, Ernakulam range reflects that two special Police teams were constituted to trace out the second plaintiff. But their efforts were in vain since the whereabouts of the second plaintiff are unknown who is reliably learnt to have left the territorial jurisdictional limits of the transferee court. The Inspector General of Police, Kochi range has in his statement expressed his

helplessness and has suggested to entrust the case to the Central Bureau of Investigation. The following is the excerpt from his statement:

> "3. It is submitted that on analysing the entire gamut of issues involved in the matter and the need for conducting a thorough investigation spreading four South Indian States and to arrest the accused, who is known to be politically, economically and otherwise very powerful, the Police are of the considered opinion that this is a fit case, the investigation of which is to be entrusted to the Central Bureau of Investigation.
>
> Therefore it is most respectfully submitted that the Police have no objection in entrusting the investigation of the crime No. 2409/2014 of Central Police Station, Ernakulam to Central Bureau of Investigation."

9. The consent of the State Government to entrust the case to the Central Bureau of Investigation is explicit from the statement afore-quoted and also the stand taken by the Director General of Prosecution. This Court even in the absence of such a consent can so entrust the investigation as held in State of West Bengal and others Vs. Committee for Protection of Democratic Rights [(2010) 3 SCC 571]. A statement has

been filed on behalf of the Central Bureau of Investigation in Tr.P(C) No. 496/2014 and the relevant part thereof is extracted herein below:

> "3. That it is alleged that the judgment debtor has gone in hide out and remains absconding thereby a stale mate is created or arisen in the lawful decree execution and the process of the court is obstructed thereby seriously affecting administration of justice.
>
> 4. In the above circumstances, and in order administration of justice, it is humbly submitted that the CBI is prepared and willing to take up the investigation in tracing out the missing judgment debtor."

10. Here is a case where as many as 234 gold ornaments embedded with diamonds, rubies, emeralds etc. used for adorning the deities in addition to silver articles are to be recovered under the decree. The jewellery is reportedly worth Crores of rupees and have been acquired by the first plaintiff Samsthan over the years by contribution and otherwise. Sentimental value is attached to it more than its material value by the members of the community who are interested in retrieving the property of the Samsthan. The efficacy of the decree in the counter claim relating to the

valuables of the Samsthan cannot be allowed to be whittled down by the second plaintiff. The police aid to render assistance to the Amin 'to trace, arrest and produce' the second plaintiff as stated in 2013 (2) KLT 203 (supra) should be effective and meaningful. The police need not be pinned down by the limitations of not being able to render assistance beyond the territorial limits of the transferee court. There is no such limitation to move outside the territorial limits in view of the registration of Crime No.2409/2014 on the file of the Central Police Station. The accused has to be traced out and bundled up to be brought before the jurisdictional Magistrate which would force him to be within the jurisdictional limits of the transferee court as well.

11. I am conscious of the fact that the power to entrust a case to the Central Bureau of Investigation has to be exercised sparingly, cautiously and in exceptional situations. But the decree in the case has national ramifications since it involves the retrieval of deities and invaluable items of movables

belonging to the Samsthan. It cannot be lost sight that devotees across the globe visit the Samsthan to pay obeisance to the first defendant who is the spiritual Guru of Gowda Saraswath Brahmins. The decree obtained by the first defendant has been reduced into a mockery by the second plaintiff who continues to be elusive to the arms of law. The second plaintiff is politically, economically and otherwise very powerful as stated by the Inspector General of Police, Kochi Range and the process of court is obstructed. This is evidently a fit case where the investigation has to be entrusted to the Central Bureau of Investigation 'to trace, arrest and produce' the second plaintiff. The team of police officers headed by the Inspector General of Police, Central Range is therefore substituted by the Central Bureau of Investigation. The following observations in Subrata Chattoraj v. Union of India [2014 (8) SCC 768] popularly known as the 'Chit Fund Scam case' is apposite:

> It is unnecessary to multiply decisions on the subject, for this Court has

> exercised the power to transfer investigation from the State Police to CBI in cases where such transfer is considered necessary to discover the truth and to meet the ends of justice or because of the complexity of the issues arising for examination or where the case involves national or international ramifications or where people holding high positions of power and influence or political clout are involved. What is important is that while the power to transfer is exercised sparingly and with utmost care and circumspection this Court has more often than not directed transfer of cases where the fact situations so demand.

12. O.P.(C) No.256/2013 shall stand re-opened for this limited purpose and I.A.No.17447/2011 is disposed of entrusting the investigation to the Central Bureau of Investigation. This is done in exercise of the powers under Section 151 of the CPC and Article 227 of the Constitution of India to do complete justice lest the credibility of this system is lost. The State Police shall forthwith hand over the files to the

Central Bureau of Investigation, New Delhi who shall endeavour to trace out the missing judgment debtor. The Executing Court shall not dismiss E.P.No.167/2011 in O.S.No.34/2000 for statistical purposes without waiting for the outcome of the investigation by the Central Bureau of Investigation.

Tr.P (C) No.496/2014 is dismissed and I.A.No.17447/2013 in OP(C) No.256/2013 is allowed. No costs.

Sd/-
V.CHITAMBARESH,
Judge.

nj.