

XIV

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 5469 OF 1999

K.D. SHARMA (DEAD) BY LRS.

Appellant

(s)

VERSUS

H.K. MODY (DEAD) BY LRS.

Respondent

(s)

(With appln(s) for directions against the appellant for non-compliance of order dated 20.9.1999)

Date: 10/02/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE A.K. MATHUR

For Appellant(s)

Mr. S.Balakrishanan, Sr. Adv.

Mr. Subramonium Prasad, Adv.

Mr. Jay Kishor Singh, Adv.

Mr. Sree Narain Jha, Adv.

For Respondent(s)

Mr. S.S.Rana, Adv.

Ms. B. Rana, Adv.

Ms. Abhilasha Dewan, Adv. for

M/S S.S. Rana & Co.

UPON hearing counsel the Court made the following

O R D E R

In view of the dismissal of the appeal, I.A. 4 has become infructuous and is dismissed as such.

The Appeal is dismissed in terms of the signed order.

(Parveen Kr. Chawla)

Court Master

(Kanwal Singh)

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5469 OF 1999

K.D. Sharma (Dead) by Lrs.

Appellant (s)

Versus

H.K. Mody (Dead) by Lrs.

Respondent (s)

O R D E R

Shri H.K. Mody, the original plaintiff died during the pendency of the suit and is now represented by his legal representatives. Similarly, Shri K.D. Sharma, the original defendant

also died during the pendency of the appeal in this Court and his legal representatives have also been brought on record.

Defendant has come up in appeal in this court.

Shri H.K. Mody filed suit No. 105 of 1981, on the original side of the High Court, for possession of suit property and compensation by way of mesne profits. During the pendency of the suit, he filed an application under Order 39 Rule 1 & 2, Code of Civil Procedure for fixing the mesne profits. The High Court vide its order dated 8th January, 1998 fixed the mesne profits @ Rs. 10,000/- per month w.e.f. December 16, 1993. Defendant-appellant was given two months' time to deposit the arrears of compensation for use and occupation with a further direction to continue to deposit future compensation at the said rate i.e. Rs. 10,000/- per month on or before 7th day of each succeeding month till the decision of the suit.

Aggrieved against the interim order passed by the Single Judge trying the suit, the appellant filed F.A.O(OS) No. 63 of 1998 which has been dismissed by the Division Bench by observing that "the impugned order does not call for any interference".

By grant of special leave, the present appeal has been filed against the interim order passed by the Single Judge and affirmed by the Division Bench.

In our view, the interim order passed by the Single Judge trying the suit on the original side is just and proper in the facts and

circumstances of the case and does not call for any interference. The Civil Appeal is dismissed. However, the legal representatives of Shri K.D. Sharma, the original defendant, are allowed to deposit the arrears due as on today within a period of six months from today after deducting the amount, if any already deposited, and they shall continue to deposit future compensation at the said rate i.e. Rs. 10,000/- per month on or before 7th day of each succeeding month.

We are given to understand that with the change of pecuniary jurisdiction of the High Court, the suit which had been originally filed in the High Court, has now been transferred to the Civil Judge, Tis Hazari, Delhi. The same is renumbered as Suit No. 409 of 2003. Since the dispute is pending since 1981, the Civil Judge is directed to dispose of the suit No. 409 of 2003 as expeditiously as possible and in any case within a period of one year from today.

.J.

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(ASHOK BHAN)

New Delhi;
..J.
February 10, 2005.

.....
(A.K. MATHUR)