

N2ITEM NO.3 COURT NO.6 SECTION XVIA  
S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).28501/2009

(From the judgement and order dated 06/02/2009 in CRA No. 74/2005 of  
The HIGH COURT OF J & K AT JAMMU)

SANTOSH SHARMA & ORS. Petitioner(s)

VERSUS

MATA VAISHNO DEVI SHRINE BOARD Respondent(s)

WITH  
SLP(C) NO. 26567 of 2010  
(With office report)

SLP(C) NO. 28502 of 2009  
(With office report)

Date: 18/04/2011 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU  
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Petitioner(s)

Mr. Amit Anand Tiwari, Adv.  
Mr. Ashutosh Jha, Adv.

Ms. Binu Tamta, Adv.

Mr. Subhash Sharma, Adv.

For Respondent(s)

Mr. Ashok Mathur, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Leave granted.

The Appeals are allowed.

( Rajesh Dham )  
Court Master

( Indu Satija )  
Court Master

(signed order is placed on the file)  
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3309 OF 2011  
(arising out of S.L.P. (Civil) No(s).28501/2009)

SANTOSH SHARMA & ORS. Appellant(s)

VERSUS

MATA VAISHNO DEVI SHRINE BOARD Respondent(s)

WITH

Civil Appeal No. 3311 of 2011  
(arising out of SLP(C) NO. 26567 of 2010)

Civil Appeal No. 3310 of 2011  
(arising out of SLP(C) NO. 28502 of 2009)

O R D E R

Civil Appeal arising out of S.L.P. (Civil)  
No(s).28501/2009)

Heard learned counsel for the parties.

Leave granted.

This Appeal is directed against the impugned order dated 06.02.2009 passed by the High Court of Jammu & Kashmir in Civil Revision Application No. 74 of 2005 by which the revision petition was dismissed upholding the order of the trial court granting compensation to the respondent for use and occupation of shops prior to the eviction of the appellants, while the suit filed by the plaintiffs-appellants against their eviction is still pending.

:1:

It appears that during pendency of the suit filed by the plaintiffs-appellants seeking restraint from eviction, an application for injunction was allowed in favour of the plaintiffs-appellants against which an appeal was filed by the defendant-respondent. At this appellate stage, the court below set aside the order of injunction and also granted delivery of possession of the disputed premises to the defendant-respondent. However, the defendant-respondent did not feel satisfied merely with the grant of possession of the shops in question and hence filed an application subsequently for grant of compensation for the period during which the plaintiffs-appellants were in occupation of the suit premises, i.e., the shops. The plaintiffs-appellants filed civil revision against the same which was rejected.

This Appeal has now been preferred against the order dismissing the civil revision wherein it was contended by the appellants, that during pendency of the suit, the compensation during which they were in occupation of shops

as tenants, could not have been ordered to be paid, even before the suit has been finally dismissed.

We find substantial force in this contention as in the first place the suit was filed by the plaintiffs-appellants

against their forcible eviction wherein temporary injunction was granted but in appeal against grant of temporary injunction, the plaintiffs-appellants were straightaway evicted during pendency of the suit which is

difficult to appreciate. However, since this Appeal is not directed against their eviction, we do not propose to enter into the merits of the case against eviction. But the

question of determination of compensation for the period during which the appellants are alleged to be in unauthorised occupation, will obviously have to be decided at the stage of trial of the suit or in case it is finally dismissed, then determination of the mesne profit after the suit is finally tried.

Therefore, this Appeal is fit to be allowed for the reasons stated hereinabove. Consequently, the impugned order passed by the High Court is quashed and set aside but without costs.

It goes without saying that the respondent will be at liberty to file a fresh application for determination of compensation at the appropriate stage in case the suit filed by the plaintiff-appellants is finally dismissed.

:3:  
Civil Appeals arising out of SLP(C) NO. 26567 of 2010 and SLP(C) NO. 28502 of 2009)

The Order passed in Civil Appeal arising out of S.L.P. (Civil) No. 28501/2009 will also govern these Appeals.

Hence, for the reasons contained in the Order passed in Civil Appeal arising out of S.L.P. (Civil)

No(s).28501/2009), these Appeals are also allowed. No costs.

.....J.  
(MARKANDEY KATJU)

NEW DELHI;  
APRIL 18, 2011

.....J.  
(GYAN SUDHA MISRA)

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