

**Uma Shanker and Others Vs. Xth Additional District Judge, Aligarh and Others**

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**Court :** Allahabad

**Decided On :** May-08-1998

**Reported in :** 1998(3)AWC1779

**Judge :** D.K. Seth, J.

**Acts :** [Specific Relief Act, 1963](#) - Sections 38(3); [Constitution of India](#) - Article 226

**Appeal No. :** C.M.W.P. No. 13478 of 1998

**Appellant :** Uma Shanker and Others

**Respondent :** Xth Additional District Judge, Aligarh and Others

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** V.K. Nagaich, Adv.

**Judgement :**

**D.K. Seth, J.**

1. The petitioners had filed Original Suit No. 437 of 1996 in the Court of Civil Judge, Junior Division, Aligarh against the defendants-opposite parties praying for a decree of permanent prohibitory injunction restraining the defendants from

realising a sum of Rs. 13,944.75 paise. The petitioners had filed an application for temporary injunction restraining the defendants from realising the said amount till the disposal of suit. By an order dated 9.12.1996, the Civil Judge, Junior Division, Koil district Aligarh, had rejected the said prayer for temporary injunction. Civil Appeal No. 1 of 1997 was thereafter preferred. By an order dated 28.11.1997 passed by learned Xth Additional District Judge, Aligarh the Civil Appeal No. 1 of 1997 was dismissed and the order of learned Civil Judge dated 9.12.1996 was affirmed. Against these two orders the present writ petition under Article 226 of the Constitution, has been filed.

2. The petitioners have only claimed stay in respect of realisation of quantified and determined sums of money without any relief for declaration of damages. Section 38(3)(c) provides that injunctions are to be granted in cases 'where invasion is such that compensation of money cannot afford adequate relief. In the present case, the relief is quantified in sum of money which has been determined. Therefore, it can be adequately compensated in terms of money. Therefore, it is not a fit case for grant of injunction and the trial court rightly found that the plaintiff could have asked for relief of damages. The order of the appeal Court though contended by Sri. V.K. Nagaich learned counsel for the petitioner, that it does not give any reason, still then having gone through the records placed before me, I do not find that the said order suffers from any infirmity, in the facts and circumstances of the case. Therefore, I am not inclined to interfere with the orders impugned.

3. In that view of the matter, the writ petition falls and is accordingly dismissed. There will, however, be no order as to costs.

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