

CASE NO.:
Appeal (civil) 4857 of 1992

PETITIONER:
SACHHIDANANDA BANERJEE (DEAD) THR. LRS.

RESPONDENT:
TILAKRAM GHOSH (DEAD) THR. LRS. & ORS

DATE OF JUDGMENT: 11/05/2005

BENCH:
CJI R.C. LAHOTI, G.P. MATHUR & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T

O R D E R

IN
I.A. NO. 6

P.K. BALASUBRAMANYAN, J.

This is an application for a modification of the Judgment of this Court dated 12.11.1992 and for certain consequential reliefs. By that order, this Court clarified an earlier order dated 10.10.1988. The dispute related to a partnership running a theater. Disputes having arisen, a notice of dissolution was given. It was followed by an arbitration. An award was passed on 24.09.1953 which was made the rule of court. That was challenged in appeal in the High Court of Kolkatta. The appeal was allowed and the award was set aside. A petition for special leave to appeal was dismissed by this Court on 23.07.1979. Taking advantage of the award, the group of shareholders referred to as Banerjee Group took possession of the theater. But in view of the setting aside of the award, not interfered with by this Court, the partnership stood revived.

It appears that the Banerjee group had entered into an agreement for sale with one Banishree Pictures. Banishree Pictures filed a suit for specific performance of the agreement for sale. There was a consent decree on 22.9.1977 in that suit. The group which came to be known as Sadhukhan group was acknowledged to have purchased the rights of Banerjee Group. Joint receivers who had been put in possession of the theater, pending this dispute were directed to deliver possession to the Sadhukhan Group. Another set of persons called the Ghosh Group claiming interest in the partnership, filed a Suit No.649 of 1977 against the Banerjee Group and the Sadhukhan Group challenging the consent decree. In that litigation the High Court held on 11.5.1988 that the consent decree dated 22.9.1977 was not lawful and it was void. A fresh decree for dissolution of the partnership was passed as on 11.5.1988. The said decision was challenged in this Court. But on 10.10.1988 the petition for special leave to appeal was dismissed. This Court noticed the readiness of the third Group, namely, the Ghosh Group to buy out the 83% outstanding shares in the partnership, on payment of Rs.14,94,000/- the total value being assessed at Rs.18,00,000/-. It also affirmed the finding that the Ghosh Group held 17% in the partnership. By the order dated 12.11.1992 this Court clarified that the matter will stand remitted to the learned Single Judge of the High Court and that the scope of the proceedings would be the adjudication of the inter se dispute between the Banerjee Group and the Sadhukhan Group. The Ghosh Group thereafter filed IA No.3 for extension of time for deposit of Rs.14,94,000/-. IA. No.4 was filed inter alia seeking a direction to the learned Single Judge of the High Court to expedite the adjudication as directed by this Court in its order dated 12.11.1992 between

Sadhukhan Group and Banerjee Group. This Court by order dated 18.8.1993 granted an extension of time to Ghosh Group on condition that interest also be paid on the sum of Rs.14,94,000, originally fixed, making it in all Rs.16,00,000/- Be it noted that the value of the theater earlier adjudged at Rs.18,00,000/- was not disturbed. This Court also directed the Single Judge of the High Court to expedite the adjudication of the dispute between the Sadhukhan Group and the Banerjee Group.

It is the case of the Sadhukhan Group in the present petition that the Ghosh Group had not paid the amounts as directed and in that situation, the order earlier made may be modified and the Sadhukhan Group may be permitted to purchase the 17% shares of the Ghosh Group by paying 17% of the sum of Rs.18,00,000/- originally assessed as value. It is submitted in the petition that the dispute between the Sadhukhan and the Banerjee Groups had been settled and 83% shares of the Surashree Cinema were owned by Sadhukhan Group. Since the Ghosh Group remains a defaulter, it would be just and proper to direct that group to receive the sum of Rs.3,06,000/- being 17% of the total value of Rs.18,00,000/- and put the Sadhukhan Group in possession of the theater by issuing appropriate directions to the trial court and the receiver.

Counsel for the petitioner submitted that since the Ghosh Group did not take advantage of the original order in its favour and the extension of time granted by this Court, this was a fit case where the rights of Ghosh Group should be directed to be conveyed to the Sadhukhan Group on payment of 17% of the value originally fixed. In the alternative, counsel submitted that a direction may be issued to the trial court to get the theater sold through the receiver in an appropriate manner and direct the division of the proceeds on the basis of the shares that have now become settled. No one has appeared on behalf of Ghosh Group or the Banerjee Group to raise any objection. But we find that the valuation of the theater was made quite sometime back and at this distance of time it would not be just to permit Sadhukhan Group to pay off the Ghosh Group 17% of the value as then assessed. It is notorious that values have gone up. In such a situation, we think that it will be more equitable if we direct the trial court to have a sale conducted by public auction after due publicity, clarifying that the respective groups of sharers would also be entitled to participate therein. After the sale is approved by the court, it will be for the court to expeditiously direct the disbursement of the amounts to the respective sharers after settling the accounts of the receiver and the theater until the same is put in possession of the purchaser.

The application is disposed of with the above directions.