

Nirmal Kumar Patni

Vs

Seth Loon Karan Sethiya and Others

Civil Appeal No. 647 of 1980

(V. R. Krishna Iyer, A. D. Koshal JJ)

14.03.1980

JUDGMENT

KRISHNA IYER, J. -

1. The substantive suit which gave rise to the main appeal, has already been disposed of by this Court in C.A. No. 416 of 1973 (Seth Loonkaran Sethiya v. Ivan E. John, (1977) 1 SCC 379), as far back as 1976. But an interlocutory order has spiralled up this Court by special leave and we are disposing of the subject-matter thereof. It relates purely to a sum of Rs 58,295.45 which the trial court had directed to be paid to the appellant. We need not recount the whole story. All that we need state is that the appellant N.K. Patni had under the arrangement, which was approved by the trial court in its order dated September 4, 1970, been allowed Rs 6000 per month because he helped revive the mill by bringing in a financier and offering certain terms which were prudent and even attractive so far as the estate was concerned. That order has become final and has not been challenged. Once this fundamental fact is appreciated, it necessarily follows that the reasoning of the High Court cannot be upheld. Without further discussion we hold that the trial court's order awarding to the appellant a sum based on Rs 6000 monthly is correct and the contrary direction of the High Court is, therefore, liable to be and is hereby set aside.

2. This apart, having due regard to the ultimate financial position as emerging from the facts we made a suggestion to Shri Nariman, learned counsel for the appellant, that the equities of the situation would justify his client giving up his one-sixth share in the amount that may be allocable to the estate. Having consulted his client he has agreed to our suggestion as a gesture.

3. Thus we dispose of the appeal by directing the trial court to pay a sum of Rs 58,295.45 with accrued interest to the appellant as early as possible. The balance amount of Rs 84,000 with accrued interest thereon will be paid to the estate of late Shri Hiralal Patni or his legal representatives as early as possible (it being distinctly understood that no share out of that amount will be payable to the appellant, who otherwise might have been entitled to a one-sixth share). Since the arrangement has been a continuous one and the order that we have made, will continue to operate for the subsequent period of the agreement also, that is to say, the appellant will continue to get Rs 6000 per month and will also give up his one-sixth share in the amount of Rs 6000 per month that may be payable to the estate.

4. The appeal is disposed of accordingly.

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