

(1988) 05 CAL CK 0010

In the Calcutta High Court

Case No : Suit No. 640 of 1977, Appeal No. 177 of 1984

Tilokram Ghosh and Others

APPELLANT

Vs

Sm. Gita Rani Sadhukhan and Others

RESPONDENT

Date of Decision : 11-05-1988

Acts Referred:

Arbitration Act, 1940 — Section 30, 33
Contract Act, 1872 — Section 23
Partnership Act, 1932 — Section 10, 19, 19(2), 19(2)(e), 29

Citation : AIR 1989 Cal 254 : (1989) 1 CALLT 54

Hon'ble Judges : R.N. Pyne, Acting C.J.;Pratibha Bonnerjea, J

Bench : Division Bench

Advocate : Anindya Mitra Mr. Jayanta Mitra, Mr. Bimal Kumar Chatterjee and Mr. A. Paul appearing with him, for the Appellant;Dipankar Ghosh (Mr. P.K. Mullick appearing with him, for the Respondent

Final Decision : Dismissed

Judgement

Pratibha Bonnerjea, J.—The facts of this appeal are shortly as follows:

On 9.10.53, a deed of Partnership was executed amongst the defendant No. 5 Monoranjan Banerjee, the defendant No. 6 Gopika Ranjan Banerjee, the defendant No. 7 Sachidananda Banerjee as well as one Harihar Mal and one Sibram Ghosh, since deceased and the appellant No. 1. The business carried on by the firm was for exhibiting cinematographic films under the name and style of "Surasree Cinema". The Cinema House, one of the assets of the firm, was constructed on a plot of land situated in the district of Howrah. The said plot of land was purchased by the aforesaid six partners and was treated as one of the assets of the said firm. It was an unregistered Partnership and the partners had shares therein as set out in the said Deed. Subsequently Harihar Mal sold his share and the shares of the partners in the firm increased as set out in paragraph 7 of the plaint. This Deed of partnership contained an Arbitration Clause for resolving the disputes arising out of this partnership amongst the

parties inter se by arbitration.

2. Disputes and differences arose between the Banerjee Group of Partners and the Ghosh Group of Partners. Thereupon, Sachinanda Banerjee, the respondent No. 7 herein, by a letter, dated 5.3.55, addressed to his own lawyer Sri Bibhas Chandra Mitra, recorded that due to wrongful acts of the partner, Sibram Ghosh it would not be possible to carry on the business any more. He wanted to refer the disputes to the arbitrators in terms of the Arbitration Clause in the Partnership Deed and further recorded that the terms for reference should include the question of dissolution of the partnership. By that letter, respondent No. 7 appointed his lawyer Bibhas Mitra as his arbitrator. This letter is at page 9 of Part II of the Paper Book in Appeal No. 156 of 1962 which was handed over to this Court by the counsel for the respondents Nos. 1 to 4 during the hearing of this appeal. The disputes were, thereafter, referred to the arbitrators. For determination of the disputes, the arbitrators framed, inter alia, three main issues with which this Court is concerned in this Appeal:

(1) Was there any concluded contract on 8.5.55 as alleged ?

If so, is the same still subsisting and enforceable?

(2) Is Sibram Ghosh liable for the alleged or any damages ?

If so, to what extent?

(3) Is the partnership liable to be dissolved ? If so, on what terms and conditions?

3. It appears from the award, dated 21.9.53 set out at pages 306 to 311 of the Part I of the Paper Book in this Appeal, that it was alleged before the arbitrators that the Ghosh Group of Partners had agreed to sell their respective share to the Banerjee Group of partners and that agreement was arrived at on 8.5.55. In the award, the arbitrators held that there was a concluded contract on 8.5.55 and it remained enforceable and the arbitrators gave direction for giving effect to the said agreement. By that award the arbitrators also held that the firm stood dissolved on and from 8.5.55 when the contract for sale was concluded. The Ghosh Group did not accept the said award and challenged its validity and legality U/ss. 30 and 33 of the Arbitration Act. As a result, the sale of Ghosh Group's share in favour of the Banerjee Group did not take place. This application for setting aside the award, being Misc. Case No. 23 of 1956, was dismissed by the Subordinate Judge, First Court, Howrah, by Order, dated 29.5.61. Thereafter, Sibram Ghosh, who was a bachelor, died interstate leaving him surviving his sole heiress, his mother Smt. Bhabatarini Ghosh. The appellant No. 1 along with said Bhabatarini Ghosh preferred an appeal in this Court from the said Order, dated 29.9.61, being F.M.A. No. 156 of 1962, By an Order, dated 12.9.78, the said award was set aside in its entirety and stay of operation of the said Order was granted. From the Order, dated 12.0.78, the Banerjee group moved the Supreme Court for Special Leave on 1.11.78 but the said SLP was dismissed on 23.7.79. As a result of the Order, dated 23.7.79, the status quo

ante was revived. The Surasree Cinema continued to be a subsisting partnership and the appellant No. 1 and Sibaram Ghosh, during his life time along with the respondent Nos. 5, 6 and 7, the Banerjee Group, remained as the partners of the said Firm. On Sibaram's death, the appellant No. 1 along with Banerjee group became surviving present partners of the said Firm.

4. Taking advantage of the award, dated 21.9.53, the Banerjee group took possession of all the Assets of the Firm Surasree Cinema and carried on business with the shares of Ghosh partners. During the pendency of the application for setting aside the award, one Banisree Pictures instituted a Suit against the Firm Surasree cinema on 31.5.76 in this Court being Suit No. 278 of 1976 adding only the Banerjee group of Partners as the defendants and claiming specific performance of an alleged agreement between Surasree Cinema and the plaintiff Banisree Pictures. This suit was settled between the parties and a consent decree was passed on 22.9.77. This consent decree is at pages 382 to 387 of Part I of the Paper Book. The terms of the decree relevant for this Appeal are set out below:

(1) By consent of the parties Sm. Gitarani Sadhukhan, Sm. Jyotsna Sadhukhan, Sm. Chhabirani Sadhukhan and Sm. Anima Sadhukhan, all residing at No. 168 Sri Arabinda Sarani are added as defendants in this suit.

(2) It is declared that the defendants Nos. 2, 3 and 4 are the only partners of the Surasree Cinema.....

(3) It is recorded that the added defendants Sm. Gitarani Sadhukhan & Ors. have purchased the said Surasree Cinema House including its lands, buildings, structures, goodwill and all machineries, fittings, fixtures and furniture of the said Cinema House at or for the price of Rs 2,50,000.

(4) It is recorded that the added defendants have this day paid a sum of Rs. 1,40,000 out of the said sum of Rs. 2,50,000 to the plaintiff in full and final settlement of its claim and cost of the Suit and advances made by the plaintiff to the Joint Receivers. The plaintiff has no other claim against any of the defendants or the said business Surasree Cinema.

(5) The added defendants Sm. Gitarani Sadhukhan & Ors. have deposited the balance of Rs. 1,10,000 with Mr. N. C. Mullick, Advocate and the said Gitarani & Ors. are declared as owners of the said Surasree Cinema and will be entitled to carry on the said business in the name or in any other name and they are entitled to renew the Cinema licence and all other licences in their own names and will be entitled to substitute their names, with all Authorities. The defendants Nos. 2, 3 and 4 will execute and register a proper conveyance in favour of the added defendants. Mr. N. C. Mullick will pay out of Rs. 1,10,000, all liabilities of the Firm in respect of the Cinema Business, Land and Building including income tax, Provident Fund dues and outgoing including the dues of the Joint Receivers upto date and other dues. Thereafter, he shall pay to the defendants Nos. 2, 3 and 4 of the balance sum of Rs. 1,10,000 at the time of execution and

registration of the proper conveyance or conveyances by the defendants Nos. 2, 3 and 4 in favour of Sm. Gitarani Sadhukhan & Ors.....

(6) The Joint Receivers are directed to hand over possession of the said Cinema Business including its movable and immovable units to Sm. Gitarani Sadhukhan & Ors. The added defendants on Friday, i.e., 23rd September 1977.... The Joint Receivers will hand over possession of the remaining portion of the land including the stalls to. The defendants Nos. 1, 2, 3 and 4.

5. This consent decree was passed while the Banerjee partners had full knowledge of the pending appeal for setting aside the said award. They knew that the question of dissolution of the firm and the status of the appellant No. 1 and Sibaram Ghosh as the partners of Surasree Cinema were sub judice at that time. Before the Joint Receivers could give possession to the respondent Nos. 1 to 4 herein in terms of the aforesaid consent decree, some trouble arose and it is alleged by the appellant No. 1 Tilokram that he came to know about the aforesaid consent decree and took possession of the firm Surasree Cinema and its assets. Immediately on 6.10.77, the present Suit No. 649 of 1977 was filed against the respondents Sadhukhan group and Banerjee group praying for a declaration that the consent decree, dated 22.9.77 was not binding on them for dissolution of the Firm and for accounts, etc., subsequently by way of amendment, the other defendants were added as defendants in the suit and declaration were prayed for that certain sale of the immovable Assets of the Firm Surasree Cinema in their favour by Banerjee group, were not binding on the appellants herein and for cancellation of the said Deeds. The dissolution of the firm by the Court u/s. 44 of the Partnership Act was prayed for on the ground that by the purported consent decree, the Banerjee group agreed to sell their entire share in the Firm to the Sadhukhan respondents. Further they also agreed to sell the shares of the appellant No. 1 and the deceased partner Sibram Ghosh which they could not do without the consent and/or authority of the appellant No. 1 and the heirs of Sibaram Ghosh, since deceased. Another ground was that the Banerjee Group, as partners of the firm Surasree Cinema did not have any implied or express authority to admit the alleged liability of the firm Surasree Cinema in Banisree Pictures" Suit. to the extent of Rs. 1,40,000 and the purported admission was unauthorised and unlawful as it violated the provisions of Sec. 19(2) of the Partnership Act. The plaint in the Suit is unhappily drafted but on careful reading, the aforesaid grounds could be found out clearly. In view of the pendency of the Suit, no conveyance was executed in favour of the Sadhukhan by the Banerjee group in terms of the consent decree.

6. Section 37 of the Partnership Act deals with the rights of a retiring partner or the estate of the deceased partner in respect of the firm. On the death of a partner, if the shares of the deceased partner in the partnership business remains and the business is continued, the estate of the deceased partner, u/s 87 of the Partnership Act, becomes entitled to the subsequent profit earned by the business as may be attributable to the use of the share of the deceased

partner in the Firm or to have interest at the rate of 6% per annum or. the shares of the deceased partner in the Assets of the Firm provided there was no final settlement of the accounts as between the Firm and the Estate of the deceased partner. This right and/or the option conferred by the provisions of Sec. 37 of the Partnership Act on the Estate of the deceased partner cannot be properly exercised until the accounts of the subsequent business are made available and as such the Estate of a deceased partner is not bound to make the election until the profit earned in respect of the share of the deceased partner is ascertained. This section should be read with the provisions of Sec. 88 of the Indian Trust Act which provides that the continuing partners are trustees for the Estate of the deceased partner as would be evident from the illustration (f) set out thereunder. The Authority on this point is Ramnarayan and Others Vs. Kashinath Jagnarain and Another, . Therefore, on the death of Sibaram, Bhabatarini could claim, u/s. 37 of the Act and after her death, the appellants Nos. 2 to 8 became entitled to the all the right, title and interest of Bhabatarini conferred by Sec. 37 of the Act on account of Bhabatarini dying intestate. The plaintiff Nos. 2 to 8 are, therefore, entitled to the share of the profit which has been earned by the firm subsequently to the death of Sibaram in respect of his share which continued to remain in the firm and Banerjee group continued to be trustees for them. On dissolution of the firm, they will be entitled to exercise their option conferred by Sec. 37 of the Partnership Act when the accounts of the dissolved Firm would be taken in accordance with the provisions of Sec. 48 of the Partnership Act.

7. That the award, dated 21.9.58 has been set aside is an admitted fact and its inevitable conclusion and result are that the partnership Surasree Cinema has been continuing as a going concern. Under the circumstances, Banisree's suit excluding the appellant No. 1 was bad for non-joinder and the admission of the claim made by Banisree in its Suit by Banerjee group was an unauthorised act u/s. 19 of the Partnership Act and was not binding on the appellant No. 1. Section 19(2) of the Partnership Act clearly provides:

In the absence of any usage or custom of trade to the contrary, the implied Authority of a partner does not empower him to (a); (b); (c); (d); (e) admit any liability in a Suit or. proceeding against the Firm.

8. Such an admission, being prohibited u/s. 19(2) of the Partnership Act, if made, would be hit by the provisions of Sec. 23 of the Contract Act which provides that any object or consideration of an agreement, if it is prohibited by any statute or if it defeats any provision of any statute would be unlawful and void. The Banerjee group's whole object was to settle the Suit by admitting the liability of Surasree Cinema by way of consideration for settlement of the Suit instituted by Banisree. This admission of liability as done in this case without proving any usage or custom, defeated the provision of Sec. 19(2) (e) of the Partnership Act. Hence it was illegal and void u/s. 23 of the Contract Act. It is true that the question of illegality was not pleaded or raised by the parties, nor

the same was considered by the learned Trial Court. But the Courts always have the jurisdiction to take notice of any illegality, irrespective of the fact whether the same has been pleaded or raised by the parties or not.

9. In the opinion of this Court, the purported settlement, dated 22.9.77 is unlawful, void and not binding on the appellants on account of the provisions of Sec. 19(2) (e) of the Partnership Act and Sec. 23 of the Contract Act. Moreover, Sec. 44(e) of the Partnership Act clearly lays down that Court can dissolve the firm where -

a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party ..

10. Therefore, this agreement for sale by the Banerjee group to transfer their whole interest in the firm in favour of Sadhukhan respondents is a good ground for asking for dissolution of the Firm and accounts by the appellant No. 1 who is a partner of the Firm. The present Suit No. 649 of 1977 for declaration that the consent decree, dated 22.9.77 is not binding on the appellants, for dissolution of the firm and for account is a validity instituted Suit.

11. But this simple Suit was made complicated by adding the respondents, other than Sadhukhans and Banerjees, and praying for reliefs against them. It is an admitted position that no part of the cause of action in the Suit as against these respondents had arisen within the territorial jurisdiction of this Court. The relieves prayed for against them were in respect of immovable properties situate in the district of Howrah and, as such, so far as these respondents are concerned, the Suit was a Suit for land. This part of the suit should not have been pressed before the Trial Court but unfortunately that was done and was rightly refused by the learned Trial Judge on the ground of jurisdiction. Before us, the claims against these respondents were withdrawn on the ground that a substantive suit had been filed against them as would be evident from paragraph 53 of the stay petition filed in this Appeal.

12. During the hearing of the suit, one Kashinath Ghosh was examined on behalf of the appellants and the appellant No. 1 examined himself. Several issues were framed for decision of the Trial Court. But the entire suit was dismissed by the learned Trial Judge on two preliminary issues only, viz., it is a Suit for land and the Suit is hit by the provisions of Sec. 69(1) of the Partnership Act. Only Sadhukhan respondents contested the Suit before the First Court.

13. During hearing of this Appeal, the counsel for Sadhukhan respondents repeated the same argument made before the learned Trial Court that the Suit was hit by the provisions of Sec. 69(1) of the Partnership Act as the Firm was unregistered. The learned Counsel invited this Court's attention to the provisions of Sec. 69(1) of the Partnership Act which provided as follows:

No Suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a Firm

against the Firm or any person alleged to be or to have been a partner in the Firm unless the Firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the Firm.

14. The learned Counsel also invited this Court's attention to Sec. 19(2) (e) of the Partnership Act. It was submitted that the prayer for declaration that the appellant No. 1 was a partner of the firm Surasree Cinema was a right arising out of the contract of Partnership and this right could not be enforced by the Partner Tilokram in view of Sec. 69(1) of the Act as the Firm was unregistered. Further, the prayer for declaration that the consent decree, dated 22.9.77 was not binding on the appellants because the Banerjee group had no authority to admit the liability to the ex-tem of Rs. 1,40,000 in Banisree's Suit was also a right conferred by Sec. 19(2) of the Partnership Act and could not be enforced in a Court of law as prohibited u/s. 69(1) of the Act, The Counsel for Sadhukhan relied on Seth Loonkaran Sethiya and Others Vs. Mr. Ivan E. John and Others, and Sunderlal and Sons Vs. Yagendra Nath Singh and Another, in support of his contention and submitted that the Suit was rightly dismissed on this ground. But in the opinion of this Court, no declaration by the Court that the appellant No. 1 was a partner of Surasree Cinema was necessary to establish his right as a partner as he was admittedly a partner and he continued to be so through out, as the result of the award being set aside. No declaration by Court is called for to establish an admitted fact. This prayer is unnecessary, redundant and should not have been pressed before the Trial Court considering the facts of the present case. The prayer for declaration that consent decree, dated 22.9.77 is not binding on the appellant No. 1 has nothing to do with enforcement of any right conferred by the Partnership Act on the partners as submitted by the Counsel for Sadhukhan respondents. Sec. 10 of the Partnership Act does not confer any right on any partner. On the contrary it puts a limit on the partner's implied authority as an agent of the Firm and the other partners. Any act done by any partner in violation of the provisions of Sec. 19(2) of the Act, would be of no legal consequence being unauthorised and prohibited by the statute. A prayer for declaration that such an act is not binding on a partner is nothing but asking the Court to declare that the act is unlawful and unauthorised. The counsel for Sadhukhans then strenuously argued that the prayer for declaration that the sale of the assets of the partnership in favour of Sadhukhans was not binding on the appellants would amount to enforcing the right created in favour of the partners under Clause 8 of the Partnership Act which prohibited transfer of partnership assets without the consent of the other partners. According to him the cause of action in the suit is the breach of Clause 8 of the deed by the Banerjee group which again cannot be enforced due to the provisions of Sec 69(1) of the Act as the Firm is an unregistered Firm. Hence in this suit Court cannot dissolve the firm as that would amount to enforcing a right arising out of the contract and is hit by Sec 69(1) of the Act The fallacy of this argument is that the dissolution of the Firm has not been prayed for on the ground of breach of Clause 8 of the Deed by the Banerjee group of partners. This prayer has been made on the basis of Sec.

44(e) of the Partnership Act and as such the prayer comes within the purview of the exception expressly provided u/s. 69(3) of the Act. This Court is, therefore, unable to accept any of the contentions raised on behalf of Sadhukhan respondents. Seth Loonkaran Sethiya and Others Vs. Mr. Ivan E. John and Others, and Sunderlal and Sons Vs. Yagendra Nath Singh and Another, relied on by the Counsel for Sadhukhans have no application on the facts and circumstances of the present case.

15. It is also contended on behalf of the respondents Sadhukhans that at the time of his Sibaram was not a partner of the Firm. Hence the appellants Nos. 2 to 8 have no locus standi. They have no right against the Firm. This submission is fallacious. Sibaram was admittedly a partner and remained so throughout his life as a result of the award being set aside as hereinbefore mentioned. On his death Bhabatarini and on Bhabatarini's death the appellants Nos. 2 to 8 became entitled to enforce all rights available to the estate of Sibaram ups. 37 of the Partnership Act. There is no substance in this argument.

16. On behalf of Sadhukhans, it was further submitted that the suit was barred by limitation as Tilokram in his evidence before the learned Trial Court admitted that the partnership was at will and the same was dissolved by notice, dated 5.3.55. The learned Trial Judge in her judgment, dealt with this letter, dated 5.3.55 and came to the finding that the firm stood dissolved in early 1955. With due respect to the learned Trial Judge, this Court is of opinion that the letter, dated 5.3.55 does not amount to a notice of dissolution u/s. 43 of the Act. The Partnership Act provides that if the Firm is at will it can be dissolve by the partner or partners by giving notice in accordance with the provisions of Sec. 43(1) of the Act. The requirements are as follows:

S.43 (1) Where the partnership is at will, the Firm may be dissolved by any partner giving notice in writing to all the partners of his intention to dissolve the firm.

(2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

17. The letter, dated 5.3.55 does not comply with any of the requirements ups. 43(1) of the Act. This notice was given by the respondent No. 7 herein and was addressed to his own lawyer only. By this letter, respondent No. 7 appointed his said lawyer as his arbitrator and in the body of the letter expressly recorded his desire that the dispute regarding dissolution of the Firm should be referred to arbitration. Therefore, the respondent No. 7 had no intention to dissolve the Firm himself by giving any notice. A notice for dissolution of the Firm is a statutory notice and must fulfil all the provisions at the statute as embodied in Secs. 43(1) and (2) of the Partnership Act. It has already been recorded that the arbitrators in their award had held that Finn stood dissolved from 8.5.55. Obviously that was the stand taken by the Banerjee group before the arbitrators. It was not

contended at that time that the firm stood dissolved on and from 5.3.55 by this notice. The finding of the arbitrators regarding the dissolution of the firm is now set aside. Therefore, the said statement of Tilokram regarding dissolution of the firm on 5.3.55 is a palpably wrong statement and is a new case made out in evidence without having any legal basis whatsoever. Such statements cannot be treated as an "Admission" when the documentary evidence on record conclusively proves that there was no dissolution of Firm either in fact or in law in the year 1955. The Firm is subsisting and is continuing and is awaiting dissolution by the Court.

18. The Counsel for the respondent then strenuously argued that the main Assets of the Firm, being immovable property situate outside jurisdiction, this Court has no jurisdiction to entertain the present Suit, for dissolution of this Firm as it is a Suit for land. This Court is not impressed by this argument. In 1960 SC 1300 (Addanki Narayanappa & another v. Bhashkara Krishnappa) the Supreme Court while considering the provisions of Sec. 48 of the Partnership Act came to the conclusion:

.....that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership, it becomes the property of the Firm and what a partner is entitled to is his share of profit, if any, accruing to the partnership from the realisation of this property and upon dissolution of the partnership to a share in the money representing the value of the property. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to any one.

19. It was, therefore, held by the Supreme Court that the interest of the partners in the Partnership is movable property. This Court, on the basis of this authority, rejects the aforesaid contention of the Counsel for Sadhukhans. A Suit for dissolution of Partnership and account cannot be treated as a Suit for land even if its Assets consist of immovable properties. This Court has jurisdiction to declare the consent decree null and void and dissolve the firm as prayed for as this purported decree was passed by this Court. Mr. Dipankar Ghosh, Counsel for the Sadhukhans ultimately conceded that the suit dissolution of the firm was maintainable.

19A. For the reasons mentioned above, the appeal succeeds. The judgment and decree, dated 23.4.84 passed by the learned Trial Judge is set aside. It is declared that the consent decree, dated 22.9.77 is null and void and is not binding on the appellants. The Firm Surasree Cinema stands dissolved from date. Mr. N. D. Roy, Bar-at-Law is directed to act as the Receiver Jointly with the continuing Receivers Mr. Sarkar to run Surasree Cinema jointly for the purpose of beneficial winding up of the Partnership Firm. The Joint Receivers will be entitled to draw their remuneration fixed at 60 Gms. per month each, out of the funds of the Partnership Firm in their hand. The partnership accounts will be operated

jointly by the two Receivers. The joint Receivers are also directed to take possession of the Partnership Assets excluding the portions under dispute and claimed by the respondents Nos. 6, 6A to 6H, 7, 10 and 12 to 28, and to sell the Cinema Business of Surasree as a going concern by public auction or by private treaty. The parties to the Suit, that is, appellants, Sadhukhans and the Banerjee group of partners will have liberty to bid and to adjust their share if any, against the purchase price, if any of them is declared to be the highest bidder. The terms and conditions of sale are to be prepared by the Advocates on record of the appearing parties to be approved by the Joint Receivers at a meeting to be held for that purpose. The Partnership Business of Surasree Cinema is to be valued as a going concern by a valuer to be appointed by the Joint Receivers at a meeting and valuation report is to be submitted by the Valuer in a sealed cover to the Joint Receivers. The sale would be subject to the reserve price and subject to the confirmation by the Court. The Joint Receivers will be entitled to deduct out of the sale proceeds all costs expense for holding the sale including the costs of advertisements to be published for this purpose twice in two daily news paper of wide circulation, preferably once in the Statesman and once in Veswamitra or as decided by the Joint Receivers as also their further remuneration fixed at the rate of 5% of the total sale proceeds to be equally divided between the two Joint Receivers. The Balance Sale proceed will be held by Mr. N. D. Roy, who is also appointed as the Special Referee to take Partnership Accounts and to apply the same in accordance with the provisions of S. 48 of the Partnership Act. After paying of the Creditors of the firm and paying of all the outgoing in terms of S. 48, the residue to be divided in accordance with the shares of the partners as mentioned in paragraph 7 of the plaint. The value of the share attributable to Sibaram Ghosh, deceased, will be payable to the appellants Nos. 2 to 8 u/s. 37 of the Partnership Act. If Banerjee group want to sell their respective shares to Sadhukhans, then the value of their share will be payable u/s. 29 of the Act to Sadhukhans. If not, then the value would be paid to the Banerjees. Regarding the money advanced by the Sadhukhans to the Banerjees, the Banerjee group will be answerable for the same to Sadhukhans and the firm would not be responsible. The Special Referee is directed to submit his report within 8 months from the date of receipt of the signed copy of the operative portion of this judgment. Remuneration of the Special Referee will be fixed after his report is submitted and to be paid in equal 1/3rd by the appellants, Banerjees and Sadhukhans. The posts of the Suit and the Appeal, so far as the Banerjee group and the appellants are concerned, will come out of the Partnership Assets. Sadhukhans will pay and bear their own costs throughout In view of the fact that the appellants abandoned their case as against the respondents Nos. 6, 6A to 6B, 7, 10, 11 and 12 to 28, the Suit and the Appeal stand dismissed as against them but this Order of dismissal is without prejudice to the rights and contentions of the appellants and these respondents, in any Suit or proceeding, either pending or to be instituted in future, if so advised.

20. Liberty to mention.

R.N. Pyne, Acting Chief Justice.

21. I agree.