

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).2799 OF 2008

MUKUNRAJ & ORS. . . . APPELLANT (S)

VERSUS

NATHMAL (DEAD) BY LR & ANR . . . . RESPONDENT (S)

O R D E R

1. Heard learned counsels for the parties and perused the relevant materials.

2. The plaintiffs' suit for dissolution of the partnership firm, Hiralal Nathmal, and rendition of accounts has been decreed by the learned trial Court and affirmed by the First Appellate Court. In the appeal, the High Court has upheld the concurrent findings recorded by the two Courts below. Aggrieved, the defendants are in appeal before this Court.

3. The only question that needs to be decided in the present appeal is with regard to the rate of interest payable on the amount found due and payable by the defendants to the

plaintiffs on the date of closure of the business of the firm.

4. To determine the aforesaid question, we have perused the materials on record including the plaint; the terms of the oral agreement between the parties as referred to therein; the written statement filed by the defendants and the report of the Commissioner appointed for settlement of the accounts. We have also perused the relevant parts of the orders of the First Appellate Court and the High Court.

5. From the report of the Commissioner, it is clear and evident to us that the amount owed by the Firm Hiralal Nathmal to its sister concern Himmatmal Hiralal was shown in the credit of defendants 1 and 2, as the said defendants were also the partners of the second firm i.e. Himmatmal Hiralal. The amount was thus outstanding to the credit of the defendants 1 and 2 at the time of dissolution of the firm in question i.e. Hiralal Nathmal.

6. Under the terms of the oral agreement between the parties, interest on the amount in deposit/deposited with the firm was to be paid at the rate of eight annas per hundred per month. The calculation of interest by the Commissioner on the amounts credited to the accounts of the defendants 1 and 2 was on the aforesaid basis. While it is correct that the firm in question i.e. Hiralal Nathmal had ceased to have any business and under Section 13(c) of the Partnership Act, 1932, interest is required to be paid only out of profits what cannot be overlooked is that Section 13(c) of the Act is subject to an agreement to the contrary. If the parties orally agreed to pay interest i.e. eight annas per hundred per month, the Commissioner was fully justified in computing the amount due to the defendants 1 and 2 on the aforesaid basis as on the date of submission of the report.

7. This is how the amount due to the defendant Nos. 1 and 2 i.e. Rs.3,44,565/- (each) was computed by the Commissioner as on

the date of the report as against the amount of Rs.46,286/- due outstanding to the each of the said defendants on the date of closure of business of the Firm Hiralal Nathmal in 1955.

8. Shri Pallav Shishodia, learned senior counsel for the appellants, has urged before us that the calculation and computation made by the Commissioner are incorrect. We do not agree and we do not find any fault with the same. Even otherwise, the issue cannot be reopened at this stage.

9. The decree carries with it an interest at the rate of 6% per annum. From the very face of the decree, it is clear and evident that the interest in terms of the decree is to be paid at the rate of 6% per annum (simple interest) on the amount due from the date of the order of the Commissioner till the date of actual payment. No controversy, therefore, arise on the aforesaid score.

10. For the aforesaid reason, we find that the order of the High Court impugned in the appeal requires no interference. Appeal,

therefore, is dismissed, however, with no  
order as to costs.

....., J.  
(RANJAN GOGOI)

....., J.  
(NAVIN SINHA)

NEW DELHI  
MARCH 22, 2017

ITEM NO.104

COURT NO.4

SECTION XV

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 2799/2008

MUKUNRAJ &amp; ORS.

Appellant(s)

VERSUS

NATHMAL (DEAD) BY LR &amp; ANR

Respondent(s)

(With interim relief and office report)

Date : 22/03/2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s) Mr. Pallav Shishodia, Sr.Adv.  
Mr. H.D. Thanvi, Adv.  
Ms. Ishita Jakhmola, Adv.  
For Mr. Sarad Kumar Singhania, Adv.

For Respondent(s) Mr. Rohit Kumar Singh, Adv.  
Mr. Omanakuttan K.K., Adv.  
For Mr. Prashant Bhushan, Adv.

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

The appeal is dismissed in terms of the  
signed order.

(Neetu Khajuria)  
Court Master

(Asha Soni)  
Court Master

(Signed order is placed on the file.)