

CASE NO.:
Appeal (civil) 4268 of 2003

PETITIONER:
L.S. Synthetics Ltd.

RESPONDENT:
Fairgrowth Financial Services Ltd. & Anr.

DATE OF JUDGMENT: 06/09/2004

BENCH:
N. Santosh Hegde, S.B. Sinha & A.K. Mathur

JUDGMENT:
J U D G M E N T
with C.A. No. 4269 of 2003 and
C.A. No. 4270 of 2003

S.B. SINHA, J:

These appeals arising out of the judgments and orders dated 21st March 2003 passed by the Special Court at Bombay in Miscellaneous Petition Nos. 71, 72 and 99 of 1999 involving similar questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

FACTS:
The fact of the matter, however, is being noticed from Civil Appeal No. 4268 of 2003.

A notification was issued on 2.7.1992 by the Custodian notifying the Respondent No. 1 as a notified party in terms of the provisions of the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992 (for short "the said Act").

The Appellant herein obtained short term loans amounting to Rs. 14.25 lakhs from the notified party during the period 1.4.1991 to 6.6.1992 as specified in the said Act. The Custodian called upon the Appellant herein to furnish particulars of the said loans pursuant to or in furtherance whereof the Appellant herein accepted the same to be outstanding as on 30.6.1992 in the books of Respondent No. 1 payable to him. On the said amount of loan, interest at the rate of 21% per annum was payable.

The Appellant herein was directed to deposit the principal amount by the Custodian which was not complied with. The concerned Chartered Accountant, however, gave a certificate to the effect that a sum of Rs. 14.25 lakhs was advanced as loan to the Appellant by the Respondent No. 1 with interest at 21% per annum and that the total sum outstanding was Rs. 34,98,967.04/- . The Respondent No. 1 thereafter initiated a proceeding before the Special Court praying for a direction upon the Appellant herein to pay to the Custodian a sum of Rs. 34, 99,900.68/- on behalf of his behalf.

The contentions of the Appellant before the Special Court were that it having furnished full details of the amount in question to the Custodian in 1993, the claim was barred by limitation and the said Act did not enable the Respondent herein to recover any time barred debts from it. It was further urged that the transaction in question having not arisen out of transactions in securities, the Special Court had no jurisdiction to deal with the matter. It was also contended that in that view of the matter Section 9A of the said Act

must be read down.

JUDGMENT:

By reason of the impugned judgment, the Special Court, however, rejected the said contentions holding that once a property is found to be owned by a notified party, all claims relating thereto must be adjudicated upon by the Special Court.

Following its earlier decision of the Tribunal in A.K. Menon, Custodian Vs. Modern Chemical Corporation & ors. [2002 (1) All M.R. 180], the Special Court held that the provisions of the Limitation Act would have no application to the proceedings under the said Act. It was consequently ordered:

"(a) I hereby direct Respondent No. 1 to pay to the Custodian on behalf of FFSL Rs. 14.25 lacs with interest at 15% per annum from the date on which the loan(s) have been advanced upto payment."

SUBMISSIONS:

Mr. G.L. Sanghi, learned senior counsel appearing on behalf of the Appellant would contend that the advances made by the Respondent being not transactions of the nature specified in the Act, an application filed by the notified party was not maintainable. It was submitted that the provisions of the said Act and in particular those contained in Section 9A must be read down so as to uphold the constitutionality of the said Act. Strong reliance in this connection has been placed on Harshad Shantilal Mehta Vs. Custodian and Others [(1998) 5 SCC 1] and Canara Bank Vs. Nuclear Power Corporation of India Ltd. and Others [1995 Supp (3) SCC 81].

The learned counsel would further submit that by reason of the provisions of the said Act, the plea of limitation which could have been taken by the Appellant, had a suit been filed by the Respondent No. 1 against it, would still be available as the transaction is of civil nature. It was argued that only because a statutory attachment comes into force by reason of Section 3(3) of the Act, the property of the notified party does not vest in the Custodian. In any event, Mr. Sanghi would argue that the notified party had no locus to initiate the proceedings before the Special Court.

The learned counsel would, in the alternative, submit with reference to Civil Appeal Nos. 4269 and 4270 of 2003 that there being no agreement to pay interest, the Special Court erred in directing such payment of interest without arriving at a finding that any demand in relation thereto was made in terms of the provisions of the Interest Act.

Mr. Subramonium Prasad, learned counsel appearing on behalf of the Respondent, on the other hand, would argue that as all properties stood attached in terms of the said notification on 22.7.1991 and all amount recovered are required to be utilized towards the dues of the notified person; an application at the instance of the notified person was maintainable.

The learned counsel would submit that the Special Court could initiate a suo motu proceeding and as it has a duty to issue direction(s) as regards the attached property and in that view of the matter, the provisions of the Limitation Act will have no application. Strong reliance in this connection has been placed on Mt. Laxmibai Vs. Tukaram [AIR 1930 Nagpur 206].

ATTACHMENT:

It is not in dispute that the Respondent No. 1 herein has advanced loan to the Appellant by different cheques amounting to Rs. 14.25 lakhs which were to be repaid at the interest rate of 21% per annum, the details whereof are as under:

"Cheque No.	Date	Amount
234285	28.01.92	1,50,000
244746	27.04.92	3,50,000
244825	06.05.92	1,00,000
246029	25.05.92	1,00,000
246038	25.05.92	75,000
246159	09.06.92	6,50,000"

The said Act was enacted to provide for the establishment of a Special Court for the trial of offences relating to transactions in securities and for matters connected therewith or incidental thereto. A Special Court is established under Sub-Section (1) of Section 5 of the said Act. Not only all prosecutions relating to offences committed under the said Act are to be initiated before the Special Court in terms of Section 7 of the Act, by reason of Section 9A thereof which was inserted by Act 24 of 1994 with effect from 25th January, 1994, the Special Court is empowered to exercise all such jurisdiction, powers and authority as were exercisable immediately before such commencement by any Civil Court in relation to any matter or claim inter alia relating to any property standing attached under Sub-section (3) of Section 3 thereof.

In terms of the provisions of the said Act, the Custodian has three functions to perform:

- (i) to notify a person in the Official Gazette, on being satisfied on information received that he has been involved in any offence relating to transactions in securities during the period specified therefor;
- (ii) He has the authority to cancel any contract or agreement relating to the properties of the notified persons which, in his opinion, has been entered into fraudulently or for the purpose of defeating the provisions of the Act as specified in Section 4.
- (iii) He is required to deal with the properties in the manner as directed by the Special Court.

By reason of Sub-section (2) of Section 3 of the Act, the Custodian who may be appointed under Sub-section (1) thereof is entitled to notify a person on satisfying himself that he is involved in any offence relating to transactions in securities, wherefor he may rely upon the information received from any of the sources specified in Rule 2 of 1992 Rules. Sub-section (3) of Section 3 provides for a non-obstante clause in terms whereof any property movable or immovable belonging to the notified person shall stand attached simultaneously with the issue of the notification.

JURISDICTION OF THE SPECIAL COURT:

The jurisdiction of the Special Court is of wide amplitude. Subject to a decision in appeal therefrom, its decision is final.

In this case, the notified person himself had disclosed that a sum of Rs. 14.25 lakhs is owing and due to it from the Appellant. The debt at the hands of the Appellant payable to the Respondent being admitted, we have no hesitation to hold that the same would be subject matter of attachment.

The debt in question is capable of being attached being a property belonging to the notified party and upon such attachment the consequences provided therefrom would ensue and in that view of the matter the Special Court will have jurisdiction to pass an appropriate order in relation thereto by issuing appropriate directions in terms of the provisions of the said Act. As the Special Court had the requisite jurisdiction to deal with the attached property, it is immaterial whether the factum of the statutory provisions is brought to its notice by the notified party himself or by the Custodian. The Court has the requisite jurisdiction; nay a duty to apply itself to the said question once the matter is brought to its notice.

The jurisdiction of the Special Court, it is not correct to contend, is

confined only to the illegal transactions in securities and properties acquired by the notified person out of the same. Once the properties are attached under Sub-section (3) of Section 3, the Custodian has no other option but to apply the same in such a manner as the Special Court may direct.

LOCUS OF THE RESPONDENT :

The said Act does not specify as to who can initiate a proceeding before the Special Court. The Special Court, as would appear from the plain wordings of the said Act, is entitled to direct the Custodian as regard application of any property which stands attached. It may, therefore, do so at the instance of the notified person apart from the Custodian. It can also initiate a proceeding suo motu once attachment of any property belonging to a notified person is brought to his notice.

READING DOWN OF SECTION 9A OF THE ACT :

The primal question which, however, arises for consideration is whether a statutory attachment in terms of Sub-section (3) of Section 3 of the said Act would apply only in relation to a property which was the subject-matter of the transactions in securities.

Application of all properties belonging to the notified person who, according to the Custodian, might have committed an offence within the meaning of the provisions thereof evidently for the purpose of discharge of such liabilities is obviated by reason of Section 11 of the said Act which reads as under:

"11. Discharge of liabilities. - (1) Notwithstanding anything contained in the Code and any other law for the time being in force, the Special Court may make such order as it may deem fit directing the Custodian for the disposal of the property under attachment.
(2) The following liabilities shall be paid or discharged in full, as far as may be, in the order as under :
(a) all revenues, taxes, cesses and rates due from the persons notified by the Custodian under sub-section (2) of Section 3 to the Central Government or any State Government or any local authority;
(b) all amounts due from the person so notified by the Custodian to any bank or financial institution or mutual fund; and
(c) any other liability as may be specified by the Special Court from time to time."

It is not a case where a third party right is involved as was the case in *Kudremukh Iron Ore Co. Ltd. Vs. Fairgrowth Financial Services Ltd.* and Another [(1994) 4 SCC 246]. The purpose of the said Act is to discharge the liabilities of the Government Banks, financial institutions, mutual funds, etc. and for the said purpose, the statute itself provides that all properties belonging to the notified person shall stand attached. Once a statutory attachment comes into force, although the properties in question unlike the provisions of some other Acts do not vest in the Custodian but the same evidently remain under the control of the Special Court. There is, in our considered opinion, no basis to hold, as has been urged by Mr. Sanghi, that only those properties belonging to the notified person which are subject matter of the transactions in securities would stand attached and for that purpose Section 9A of the said Act is not required to be read down.

HARSHAD SHANTILAL MEHTA:

Our attention has been drawn by Mr. Sanghi to paragraph 14 of Harshad Shantilal Mehta (supra) which reads as follows:

"14. It has also been submitted before us by one of the notified parties (*Dhanraj Mills v. Custodian*)

that properties belonging to notified persons which have no nexus with the transactions in securities of the notified person during the "statutory period", also cannot be attached under Section 3. Reliance is placed on the decision of the Bombay High Court in the case of Hitesh Shantilal Mehta v. Union of India ((1992) 3 Bom CR 716) (to which one of us was a party) in this connection. Our attention is drawn to the following passage in the High Court's judgment : (at p. 719)

"If the person ... approaches the Special Court and makes out, for example, a case that the property which is attached has no nexus of any sort with the illegal dealings in securities belonging to banks and financial institutions during the relevant period and/or that there are no claims or liabilities which have to be satisfied by attachment and sale of such property, in our view, the Special Court would have the power to direct the Custodian to release such property from attachment."

Hence a property not having any nexus with the illegal dealings in securities can be released from attachment by the Special Court in an appropriate case."

This Court in paragraph 14 was merely recording the submissions of one of the notified parties. Even a question as to whether all properties of notified persons would be subject to the statutory attachment under Sub-section (3) of Section 3 of the said Act or not did not arise for consideration therein.

Therein indisputably this Court was referring to a judgment of the Bombay High Court but did not pronounce finally on the correctness or otherwise thereof.

In Hitesh Shantilal Mehta (supra) the Bombay High Court appears to have merely held that in appropriate cases the Special Court would have the power to direct the Custodian to release such property from attachment, in the event, it is found that the property which is attached has no nexus with the illegal dealings in securities belonging to banks and financial institutions during the relevant period and/ or there are no claims or liabilities which have to be satisfied by attachment and sale of such property. Once it is held that a debt can be subject matter of attachment, the provisions of Sub-section (3) of Section 3 of the said Act would squarely be applicable in view of the fact that the same was the property belonging to a notified person. This position in law is not disputed. Such attached property, thus, if necessary, for the purpose of discharging the claims and liabilities of the notified person indisputably would stand attached and can be applied for discharge of his liabilities in terms of Section 11 of the said Act.

In Harshad Shantilal Mehta (supra), it was, inter alia, opined :
28\005 It was, therefore, expected that the available funds from attached assets would be speedily restored to the banks and financial institutions. It was also expected that even after the discharge of tax liabilities for the relevant period, substantial funds would be left over for being paid to the banks and financial institutions concerned."

CANARA BANK:

In Canara Bank (supra) this Court was concerned with transfer of an application pending before the Company Law Board in terms of Sub-Section (2) of Section 9-A of the Act and only in that context, it was observed:
"10. Sub-section (1) of Section 9-A is divisible into two parts. By the first part, the Special Court

is empowered to exercise, on and from the commencement of the Amendment Ordinance, all such jurisdiction, powers and authority as were exercisable before such commencement by any civil court. By the second part, the Special Court is empowered to exercise such jurisdiction, powers or authority in regard to the matters or claims therein specified, which include matters or claims arising out of transactions in securities entered into between the stated dates in which a notified person is involved. So read, the Special Court has the jurisdiction, powers and authority of a civil court to exercise the same in regard to matters or claims arising out of transaction in securities entered into between the stated dates in which a notified person is involved. Sub-section (1) of Section 9-A, therefore, invests the Special court with the jurisdiction, powers and authority necessary for the purposes of entertaining matters or claims of the nature specified therein. Sub- section (2) provides for the transfer of such matters or claims pending in any court to the Special Court on the commencement of the Amendment Ordinance. And sub-section (3) expressly debars any court other than the Special Court from exercising any jurisdiction, powers or authority in relation to such matters or claims."

LIMITATION:

The contention as regards the applicability of the Limitation Act must be considered having regard to the foregoing findings .

The Limitation Act, 1963 is applicable only in relation to certain applications and not all applications despite the fact that the words "other proceedings" were added in the long title of the Act in 1963. The provisions of the said Act are not applicable to the proceedings before bodies other than courts, such as quasi-judicial tribunal or even an executive authority. The Act primarily applies to the civil proceedings or some special criminal proceedings. Even in a Tribunal, where the Code of Civil Procedure or Code of Criminal Procedure is applicable; the Limitation Act, 1963 per se may not be applied to the proceedings before it. Even in relation to certain civil proceedings, the Limitation Act may not have any application. As for example, there is no bar of limitation for initiation of a final decree proceedings or to invoke the jurisdiction of the Court under Section 151 of the Code of Civil Procedure or for correction of accidental slip or omission in judgments, orders or decrees; the reason being that these powers can be exercised even suo motu by the Court and, thus, no question of any limitation arises. [See Nityananda, M. Joshi and another Vs. the Life Insurance Corporation of India and others, AIR 1970 SC 209, Hindustan Times Ltd. Vs. Union of India and Others, (1998) 2 SCC 242 and Mt. Laxmibai (supra)]

Even no period of limitation is prescribed in relation to a writ proceeding.

S.N. Variava, J. in A.K. Menon, Custodian (supra), whereupon the learned Special Court has placed reliance, observed:

"19. It is thus that the said Act lays down a responsibility on the Court to recover the properties. So far as monies are concerned, undoubtedly the particular coin or particular currency note given to a debtor would no longer be

available. That however does not mean that the lender does not have any right to monies. What is payable is the loan i.e. the amount which has been lent. The right which the creditor has is not a "right to recover" the money. The creditor has the title/ right in the money itself. An equivalent amount is recoverable by him and the title in any equivalent amount remain is the lender. Thus the property which a Notified Party would have is not the right to recover but the "title in the money itself." Thus under Section 3(3) what would stand attached would be the title/ right in the money itself. Of course what would be recoverable would be an equivalent of that money. Once the money stands attached then no application is required to be made by any parties for recovery of that money. It is then the duty of the Court to recover the money. No period of limitation can apply to any Act to be done by a Court. Therefore in all such Applications the only question which remains is whether on the date of the Notification the right in the property existed. If the right, in the property existed then irrespective of the fact that the right to recover may be barred by limitation there would be a statutory attachment of that property. Once there is a statutory attachment of that property the Court is duty bound to recover it for the purposes of distribution. There can be no period of limitation for acts which a Court is bound to perform. In this case since the Court is compulsorily bound to recover the money there can be no limitation to recover the money there can be no limitation to such recovery proceedings. To be remembered that Section 3(3) as well as Section 13 provide that provisions of the said Act would prevail over any other law. This would include the limitation Act."

We respectfully agree with the said view.

We may, however, add that the attachment of the properties of the notified party being for specific purposes, i.e., for the purpose of discharging his liabilities, the Special Court is bound to pass appropriate orders in relation thereto. A property once attached shall remain under attachment till an appropriate order is passed. It is, therefore, idle to contend that even in respect thereof the provisions of the Limitation Act would apply. The Court while issuing directions to the Custodian in relation to the attached property for the purpose of discharge of the liability of the notified person must pass an appropriate order. So long the claims or other proceedings initiated before the Special Court as regard discharge of liability of the notified person continue, the attachment remains in force. A proceeding before the Special Court is not a suit for recovery of an amount. The proceedings before the Special Court are extraordinary in nature. Distribution of the assets of a notified person may take a long time but it would bear repetition to state because all the claims filed before the Special Court are disposed of, the property of the notified person stands attached. In other words, the provisions of the Limitation Act would inter alia apply only when a suit is filed or a proceeding is initiated for recovery of an amount and not where a property is required to be applied towards the claims pending before the tribunal for the purpose of discharge of the liabilities of the notified person in terms of Section 11 of the said Act.

A Special Court having regard to its nature and functions may be a court within the meaning of Section 3 of the Indian Evidence Act, 1872 or Section 3 of the Limitation Act, 1963 but having regard to its scope and object and in particular the fact that it is a complete code in itself, in our

opinion, the period of limitation provided in the schedule appended to the Limitation Act, 1963, will have no application. For the applicability of Section 29(2) of the Limitation Act, the following requirements must be satisfied by the Court invoking the said provision:

(1) There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application.

(2) Such prescription of the period of limitation under such special or local law should be different from the period of limitation prescribed by the Schedule to the Limitation Act, 1963.

In terms of the provisions of the said Act, no period of limitation is prescribed, evidently because the Parliament thought it to be wholly unnecessary. Once the statutory operation relating to the attachment of the property belonging to a notified person comes into being, the duties and functions of the Special Court start. In relation to the duties and functions required to be performed by a court of law, no period of limitation need be prescribed. Furthermore, Section 13 of the said Act provides for a non-obstante clause which has been used as a device to modify the ambit of provisions of law mentioned therein or to override the same in the specified circumstances. [See T.R. Thandur vs. Union of India and Others \026 (1996) 3 SCC 690 \026 para 8]. The said Act does not provide for any period of limitation, the reasons wherefor have been noticed hereinbefore and in that view of the matter, in our considered opinion, Articles 19, 28 and 55 providing for period of limitation prescribed would have no application. Section 13 of the said Act provides for a non obstante clause which is of wide amplitude. In a case of conflict between the said Act and any other Act, the provisions of the former shall prevail.

In *Solidaire India Ltd. Vs. Fairgrowth Financial Services Ltd. & Ors.* [2001 (2) SCALE 1], this Court held :

"10\005The Legislature being aware of the provisions of Section 22 under the 1985 Act still empowered only the Special Court under the 1992 Act to give directions to recover and to distribute the assets of the notified persons in the manner set down under section 11(2) of the 1992 Act. This can only mean that the Legislature wanted the provisions of Section 11(2) of the 1992 Act to prevail over the provisions of any other law including those of the Sick Industrial Companies (Special Provisions) Act, 1985. It is a settled rule of interpretation that if one construction (sic constructions) leads to a conflict, whereas on another construction, two Acts can be harmoniously constructed then the latter must be adopted. If an interpretation is given that the Sick Industrial Companies (Special Provisions) Act, 1985, is to prevail then there would be a clear conflict if it is held that the 1992 Act is to prevail."

A statute of limitation bars a remedy and not a right. Although a remedy is bared, a defence can be raised. In construing a special statute providing for limitation, consideration of plea of hardship is irrelevant. A special statute providing for special or no period of limitation must receive a liberal and broader construction and not a rigid or a narrow one. The intent and purport of the Parliament enacting the said Act furthermore must be given its full effect. We are, therefore, of the opinion that the provisions of the Limitation Act have no application, so far as directions required to be issued by the Special Court relating to the disposal of attached property, are concerned.

Only in the event, all the claims as provided for under Section 11 of

the said Act are fully satisfied, the amount belonging to the notified person can be directed to be released in his favour or in favour of any other person.

INTEREST:

It does not appear from the judgment of the Special Court that any argument was advanced before it that there did not exist any agreement as regard payment of interest. No such contention has even been raised in the Memorandum of Appeal or in the Affidavit filed before the Special Court. In fact, it is admitted that the Custodian and the Appellant exchanged certain correspondences in this behalf in the year 1992.

We do not find any merit in the contention of Mr. Sanghi that the Special Court had no jurisdiction to issue any direction for payment of interest. The said direction, in our opinion, could have been issued having regard to the fact that the attached amount was being utilized by the Appellants; assuming that there existed no agreement in relation thereto. As the attached property remained in the hands of the Appellant and they had applied the same for their own benefit, the Special Court was entitled to grant interest by way of restitution.

CONCLUSION:

We, therefore, hold:

- (i) A notified party has the requisite locus to bring the fact to the notice of the Special Court that certain sum is owing and due to him from a third party whereupon a proceeding can be initiated for recovery thereof by the Custodian and consequent application thereof in discharge of the liability of the notified person.
- (ii) Sub-section (3) of Section 3 should be literally construed and so construed all properties belonging to the notified person shall be subject to attachment which may, consequently, be applied for discharge of his liabilities in terms of Section 11 of the said Act.
- (iii) The provisions of Limitation Act, 1963 have no application in relation to the proceedings under the said Act.

For the reasons aforementioned, we do not find any merit in these appeals which are dismissed accordingly. No costs.