

"Combined order of Hon'ble Supreme Court in the Civil Appeals preferred by SBI and SBI Caps to challenge the order of Special Court dated 24.10.1996 in MA 185 of 1993 wherein the claim of Custodian/HSM for recovery of 2.5 Crore Units was granted. The order of Special Court was set aside on the ground that SBI should have been given an opportunity to lead evidence to prove its allegations instead of deciding the issues on the basis of affidavits."

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 46 OF 1997

536590

State Bank of India

..Appellant(s)

vs.

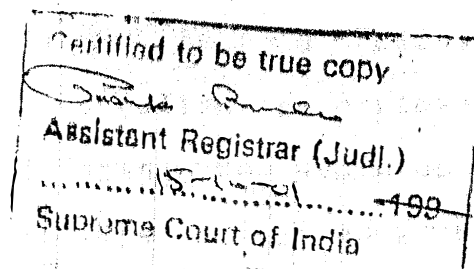
A.K. Menon & Ors.

..Respondent(s)

(with C.A. No. 90 of 1997)

ORDER

Civil Appeal No. 46 of 1997

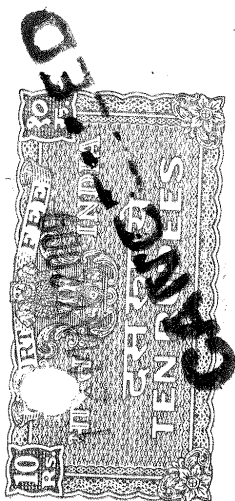


This is an appeal against the decision of the Special Court which allowed the application of the Custodian and directed the appellant herein to hand over to the Custodian 2.5 crore units of UTI's US-64 along with accretion thereon at the rate of Rs. 2.5 per unit for the year ended June 1992 and Rs.2.6 per unit for the year ended June 1993.

It is not necessary to give any details of the disputes in question except to note that this claim was put forth by the Custodian of the notified party-respondent No. 3, namely, Harshad Mehta. The claim was made on the footing that 3.71 crore unit belonged to Harshad Mehta and had not been given to him by respondent No. 1.

The application was decided on the basis of the affidavits filed and a Report received from a Chartered Accountant. On behalf of the appellant, it was contended that

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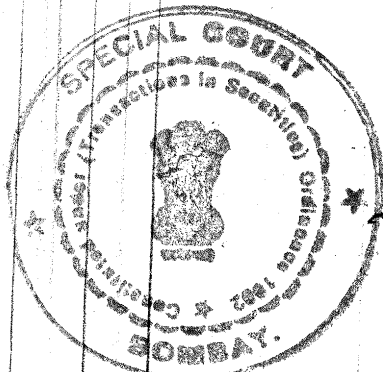
Shown to H.A.
To be heard
a/w Smt 4/95
447
19/10/2001

this was not a case which should be decided merely on affidavits and it was necessary that evidence should be recorded. In support of this contention, it was submitted on behalf of the appellant that there had been a collusion between Harshad Mehta and one of the appellant's employees, namely, one Sitaraman. It is this Sitaraman who wrote or got written the Waste Book and it is on this Waste Book that reliance was placed in deciding the case against the appellant. The request for examining witnesses was disallowed and the case was decided merely on the basis of affidavits.

One of the reasons given by the Special Court was that the technical provisions of the Code of Civil Procedure do not apply and as long as the procedure evolved is just and fair keeping in mind the principles of natural justice, it would be in order for the Court to proceed with the case.

We find that against the notified party the appellant has filed Suit No. 41/95 which is still pending before the Special Court. As we have already noted, the main defence of the appellant was that there was a collusion between Sitaraman and Harshad Mehta and, in our opinion, this aspect could not have been brushed aside, as seems to have been done by the Special Court. It is not in dispute that the Waste Book, on which reliance was placed on the basis of which the Court came to the conclusion that money had been paid by Harshad Mehta

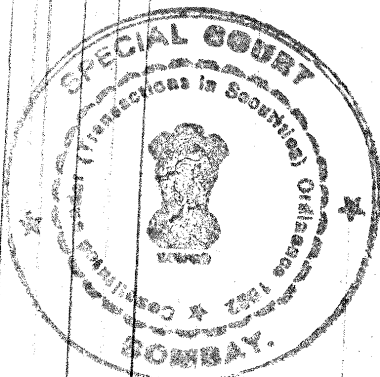
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and he was entitled to receive the said units, was prepared by or under directions of Sitaraman against whom serious allegations were alleged by the appellant.

The Special Court, looking at the nature of the dispute between the parties, should have, therefore, not only tried the case as a suit but should have heard it along with Suit No. 41/95 and any other connected suit. We do agree that the lengthy procedure of the Code of Civil Procedure does not apply and, therefore, it would have been in order, in the first instance, for the Special Court to take in evidence by affidavits and then, whenever a request is made and the Court thinks it proper to allow cross-examination of the deponents, it may do so. In addition thereto, looking into the object of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, namely, for the speedy trial of offences relating to transactions in securities and the role which has to be played by the Special Court, it would be in order that in appropriate cases wherever the Special Court so feels, it should summon and enforce attendance of persons whom it considers necessary for the purpose of recording their evidence. When claims are made against notified parties, the Court may form an opinion that it is necessary to examine the notified party or some other person and even if they are not summoned as witnesses by any of the parties before it, but in

...4/-



order to ascertain the truth and to ensure the realisation of all the assets of the notified party for the purposes of the Act, the Special Court ought to, wherever necessary, summon a person as a court witness. This will help in speedy disposal of cases as well as assist the Court in coming to a correct decision.

For the aforesaid reasons, this appeal is allowed, the impugned judgment of the Special Court is set aside and the case is remanded to the Special Court for a fresh trial. As already held, this case should be tried along with Suit No. 41/95. We make it clear that we are not expressing any opinion on the merits of the case and all legal contentions are open to the respective parties.

Civil Appeal No. 90 of 1997 CT

In terms of the above order in Civil Appeal No. 46 of 1997, this appeal is also disposed of.

sd/-J.
(B.N.KIRPAL)

sd/-J.
(N. SANTOSH HEGDE)

sd/-J.
(AJAY BHAN)

New Delhi;
October 9, 2001.

Applied on.....11/5/09
Pages.....
Examined by.....Mrs. Malik
Compared with.....Mr. Belusky
Ready on.....11/5/09
Delivered on.....12/5/09



Certified to be a true copy

For OFFICER ON SPECIALITY
- Officer of the Special Court
Bombay

11/5/09