

GP101002

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IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) AT BOMBAY

MISCELLANEOUS APPLICATION NO. 107 OF 1993

Assistant Commissioner of Income Tax. ... Applicant

Versus

1. Mr. A.K. Menon, Custodian and Others. ... Respondents

Mr. Balasubramanian with Mr.L.K. Chatterjee, Advocates for the Applicant;

Mr. Setalwad with Mr. G.R.Joshi i/by M/s. Pravin Mehta & Mithi & Co., Advocates for Respondent No.1;

Mr. J.D. Mistry with Mr.Bharat Damodar i/b. M/s.Kanga & Co., Advocates for Respondent Nos. 2 to 14.

CORAM: S.N. VARIAVA J.

DATE: 2ND JULY 1993.

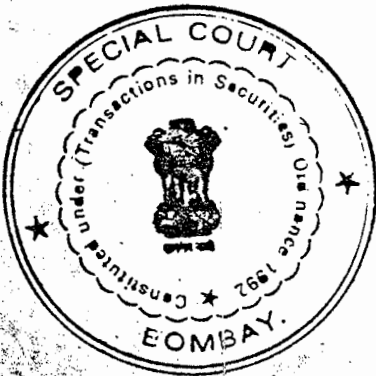
P.C.:

By this Application, the Income Tax Department asks for release of over Rs.200 crores towards alleged tax claims for the Assessment Year 1990-91. As against this demend, all the Assessees have filed Appeals. All the Appeals are pending. The Assessing Officer has refused stay and is now demanding the amount.

In my view, at this stage, it is not possible to release such a large amount. Mr. Balasubramanian submits that the amount must be released as the period of 30 days expires on 4th July 1993 and then the Assessees will become liable to pay interest/penalty on the amount.

This Court has been established due to certain unfortunate events that have taken place. The Special Court Act provides not just for prosecution but also for distribution of Assets in the manner laid down under Section 11 thereof. Under Section 11, the Income Tax Department has first priority. For purposes of

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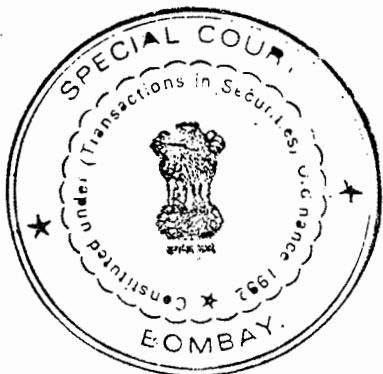


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ultimate distribution the properties of all Notified persons stand attached. Whilst the property is attached, no payments can be made without permission of Court. The Court cannot distribute unless a person is proved guilty and the Court has a correct and full picture of the assets before it. [In the meantime the Income Tax Department by continuing to Act, as if it is not concerned with what has happened, is creating innumerable problems. The Government must now consider restraining the Income Tax Department from levying interest and penalties on notified parties at this stage. This so that the collection & distribution is in an orderly fashion. I clarify that the Court is not suggesting that the rights and powers of the Department be curtailed or abrogated in any manner. But it would be better, if they wait patiently like others. If a notified party gets de-notified by Court or is ultimately not found guilty, then the question of penalty or interest may arise & could be enforced. Otherwise the Department should consider awaiting distribution under Section 11. This is merely a suggestion. It is for the Department and the Central Government to resolve this.]

So far as this Application is concerned, I direct the Appellate Authority to dispose off the pending Appeals of Respondents 2 to 14 within 3 months from today. However, the date for hearing to be fixed after 16th August 1993. This period of 1½ months being to enable Respondents 2 to 14 to get ready for the Appeal. The Appellate Authority, as far as possible, not to adjourn the hearing on the date fixed. In the meantime

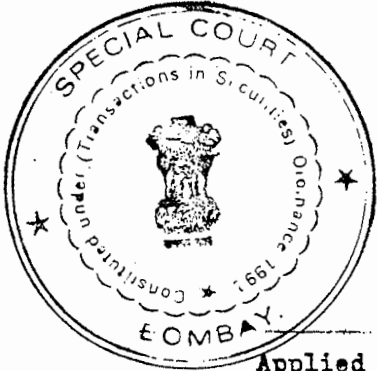
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the Applicant not to levy interest or penalty on their demands.

The Application is adjourned to 11th October 1993.



Sd/-A.M.Trivedi.
ASSOCIATE

Applied on 9.7.1993
Pages (3)
Examined by R.M. Kubal
Compared with B.S. Kadam
Ready on 15.7.93
Delivered on 16.7.93

Certified to be a true copy
J. Kodhigues
OFFICER ON SPECIAL DUTY 15.7.93
Office of the Special Court
Bombay.