

Harshad Mehta group theory seeking joint discharge of liabilities is violative of law laid down by Honble Supreme Court: 6 and 7

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all. The grounds urged in the injunction application were insufficient for the grant of such a relief.

47. There is an increasing tendency on the part of litigants to indulge in speculative and vexatious litigation and adventurism which the fora seem readily to oblige. We think such a tendency should be curbed. Having regard to the frivolous nature of the complaint, we think it is a fit case for award of costs, more so, when the appellant has suffered heavily. Therefore, we award costs of Rs 25,000 in favour of the appellant. It shall be recovered from the first respondent. C.A. No. 4584 of 1994 arising out of SLP (C) No. 272 of 1994 is allowed accordingly.

Civil Appeal No. 4587 of 1994 (arising out of SLP (C) No. 321 of 1994)

48. In view of what we have observed above, the writ petition has rightly come to be rejected though in our view, it would have been better had the High Court given reasons instead of dismissing it summarily. Hence, C.A. No. 4587 of 1994 arising out of SLP (C) No. 321 of 1994 is dismissed. No costs.

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(BEFORE M.N. VENKATACHALIAH, C.J. AND S. MOHAN, J.)

KUDREMUKH IRON ORE CO. LTD. .. Appellant;

Versus

FAIRGROWTH FINANCIAL SERVICES LTD.
AND ANOTHER .. Respondents.

I.A. No. 1 of 1993 in Civil Appeal No. 5151 of 1993[†],
decided on May 6, 1994

Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (27 of 1992) — Ss. 11 and 3(2) — Jurisdiction of Special Court to entertain claim in respect of properties belonging to a 'notified person' — Existence of obligations based on contractual, statutory or other legally recognised rights between the claimant and the 'notified person' necessary — A stranger to the consideration respecting transaction between the 'notified person' and a third party cannot seek to enforce obligations thereunder — Jurisdiction

The appellant deposited with the Andhra Bank Financial Services Ltd. under what are called inter-corporate deposits aggregating to about Rs 55 crores. The Andhra Bank, in turn, invested large sums of money with a company called the Fairgrowth Financial Services Ltd. When the appellant's deposits fell due for repayment, the Andhra Bank pleaded its inability to make immediate repayment on the ground that its own funds were locked up with the Fairgrowth Financial Services Ltd. The appellant had no privity of contract with the said Fairgrowth Financial Services Ltd. the appellant moved the Special Court for a direction that the securities of the Fairgrowth Financial Services Ltd. in the hands of the custodian be directed to be sold and the proceeds disposed of in favour of the

[†] From the Judgment and Order dated 26-8-1993 of the Special Court (Trial of Offences Relating to Transactions in Securities, at Bombay in M.P. No. 58 of 1993)

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a Andhra Bank Financial Services Ltd. and that out of the sums so found payable, the sum of Rs 54 crores which was then due to the appellant together with accrued interest, be appropriated and applied for the discharge of the appellant's claims. The Special Court declined to entertain the appellant's prayer on ground of lack of jurisdiction. Dismissing the appeal the Supreme Court

Held :

b Section 11 of the Act exclusively empowers the Special Court to give directions in the matter of the property of a notified person. The foundation for the jurisdiction under Section 11 to deal with any such property is that it should have been a property under attachment. It is with respect to this attached property that powers under Section 11 of the Act could be exercised. (Para 7)

c The power to order payment of amounts due from a 'notified person' 'to any bank or financial institution or mutual fund' presupposes and proceeds on the existence of obligations inter se between the parties based on contractual, statutory or other legally recognised rights and in the instant case such vinculum juris is absent as between the appellant on the one hand and the Fairgrowth Financial Services Ltd. on the other. The appellant which is a stranger to the consideration respecting transactions between the Andhra Bank Financial Services Ltd. and the Fairgrowth Financial Services Ltd., cannot seek to enforce the obligations thereunder. The remedy of the appellant against its debtor which itself is not a notified person, lies in the ordinary courts of the land. (Para 7)

d Appeal dismissed S-M/T/13078/C

Advocates who appeared in this case :

S. Ramaswamy Iyengar, K.V. Vishwanathan and K.V. Venkataraman, Advocates, for the Appellant;

Ashok Desai, Senior Advocate (Ashwin Pandya, R.N. Karanjiwala, Ms Suruchi Agarwal and Ms Manik Karanjiwala, Advocates, with him) for the Respondents.

e The Judgment of the Court was delivered by

VENKATACHALIAH, C.J.— M/s Kudremukh Iron Ore Company Limited, a Government Company, prefers this appeal under Section 10 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (for short 'the Act') against the order dated 26-8-1993 made by the Special Court at Bombay in Miscellaneous Petition No. 58 of 1993. By the said order the Special Court held that in relation to the transactions referred to and relied on by the appellant, it had no jurisdiction to exercise powers under the 'Act'.

g 2. The appellant on various dates in July 1992 deposited with the Andhra Bank Financial Services Ltd. under what are called inter-corporate deposits aggregating to about Rs 55 crores. The deposits were to carry interest ranging from 21% to 22%. It would appear that the Andhra Bank Financial Services Ltd. had, in turn, invested large sums of money said to be in the order of Rs 240 crores, with a company called the Fairgrowth Financial Services Ltd. When the appellant's deposits with M/s Andhra Bank Financial Services Ltd. fell due for repayment, the latter pleaded its inability to make immediate repayment on the ground that its own funds were locked up with the Fairgrowth Financial Services Ltd.

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3. The said Fairgrowth Financial Services Ltd. was a 'notified person' under Section 3(2) of the Act and accordingly the Special Court under Section 11 of the Act had jurisdiction to direct repayment of its liabilities. The appellant, it is not disputed, had no privity of contract with the said Fairgrowth Financial Services Ltd. However, on the stand of the Andhra Bank Financial Services Ltd. that its funds were, in turn, locked up with and retained by the said Fairgrowth Financial Services Ltd., the appellant moved the Special Court for a direction that the securities of the Fairgrowth Financial Services Ltd. in the hands of the custodian be directed to be sold and the proceeds disposed of in favour of the Andhra Bank Financial Services Ltd. and that out of the sums so found payable, the sum of Rs 54 crores which was then due to the appellant together with accrued interest, be appropriated and applied for the discharge of the appellant's claims.

4. The Special Court by its order dated 26-8-1993, now under appeal, declined to entertain the appellant's prayer. It said :

"In my view, this Court can only adjudicate on claim in respect of properties belonging to notified parties. The petitioner's claim against the 2nd respondent does not fall within the purview of the jurisdiction of this Court. This Court has no jurisdiction over such claims or dispute. It is for the petitioners to adopt such proceedings as they may be advised in the normal civil or criminal courts.

Petition disposed of on ground that this Court has no jurisdiction."

5. Shri Ramaswamy Iyengar, learned counsel for the appellant, urges that when financial transactions are so inextricably interwoven it is unrealistic to limit the identity of the 'notified person' so narrowly. What determines the jurisdiction of the Special Court, says counsel, is not a mere technical, distinctive legal entities but the composite character which the degree of the subsumption of the funds impart to them. Learned counsel submits that, in this case, having regard to the nature of the large-scale involvement of Andhra Bank Financial Services Ltd. and its funds with the Fairgrowth Financial Services Ltd., the purpose of the 'Act' would not be fulfilled by ignoring the character of these financial interrelations.

6. We are afraid, it may not be necessary to go into this proposition as to what extent and nature of interdependence may render the two apparently distinct legal entities to be reckoned as one for purposes of the Act. For one thing, the Special Court itself was not treated to any such argument. Secondly, no factual foundations necessary to compel an inference necessary to enable a piercing of the veil were laid before the Court. We do not, therefore, propose to examine this proposition purely as a matter of law. The fact remains that the 'notified person' under Section 3(2) of the Act was the Fairgrowth Financial Services Ltd. and no privity between that 'notified person' and the appellant having been established, the view taken by the Special Court as to jurisdiction seems to us to be unexceptionable on the facts and the circumstances of this case.

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7. Indeed, Section 11 of the Act exclusively empowers the Special Court
- a to give directions in the matter of the property of a notified person. The foundation for the jurisdiction under Section 11 to deal with any such property is that it should have been a property under attachment. Section 3(3) of the Act provides that attachment of property, whether moveable or immovable, or both, belonging to the notified person becomes effective simultaneously with the issue of the notification under Section 3(2)
- b of the Act. It is with respect to this attached property that powers under Section 11 of the 'Act' could be exercised. We might, here, take a look at Section 11 of the Act :

- c “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—

- d (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;
- (c) any other liability as may be specified by the Special Court from time to time.”

- e The reasoning implicit in the order under appeal is that the power to order payment of amounts due from a 'notified person' 'to any bank or financial institution or mutual fund' presupposes and proceeds on the existence of obligations inter se between the parties based on contractual, statutory or other legally recognised rights and that such vinculum juris is absent as between the appellant on the one hand and the Fairgrowth Financial Services Ltd. on the other. What is further implicit is that the appellant which is a stranger to the consideration respecting transactions between the Andhra Bank Financial Services Ltd. and the Fairgrowth Financial Services Ltd., cannot seek to enforce the obligations thereunder. The remedy of the appellant against its debtor which itself is not a notified person, lies in the ordinary courts of the land. This reasoning is not shown to be unsound.

- g 8. The appeal is, accordingly, dismissed without any order as to costs. IA No. 1 of 1993

In view of the dismissal of the main appeal, IA No. 1 of 1993 does not survive and is, accordingly, dismissed.

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