"The Hon'ble Supreme Court delivered a combined judgment in appeal filed by SBI against NHB to challenge the decree awarded by Special Court in its favour which appeal was granted to SBI on the grounds that NHB had failed to establish its case, it had abused the process of law and suppressed and withheld material facts and evidence in its possession. That the senior management of NHB was fully involved and even the conduct of Government was criticized as it made no attempt to find out the truth and resolve the dispute. The case of HSM and the evidence of his witness was found to be truthful. Law was also laid down that the provisions of Indian Evidence Act were applicable to the proceedings before Special Court and that Reports of Janakiraman Committee were inadmissible in evidence in proceedings before Court."

Harshad Mehta group theory seeking joint discharge of liabilities is violative of law laid down by Honble Supreme Court : 46 to 48

n Blue:The conduct of NHB is severely criticised by Hon'ble Supreme Court :14,25,40,46,55,58 to 61,64,65

In Pink:Custodian's conduct criticised : 37,38,57

In Green: Government criticised 66 to 71

backward class be visited with termination of her employment? We think that that is not the intent of the law, and certainly was not what the three-Judge Bench was confronted with in *Dattatray*[3]. In our opinion, therefore, the appellant should have been debarred from any further advantage that would enure to persons belonging to the "Halba" tribe.

16. Accordingly, we direct reinstatement of the appellant in service but without any back wages. With the passage of time it is possible that there may be another incumbent as Headmistress of Respondent 1 School and we think that it would not be equitable to remove such person. However, if this post falls vacant before the appellant reaches the age of retirement or superannuation she shall be reappointed to that post but with no further promotion as a Scheduled Tribe candidate unless she is otherwise entitled as a special backward class candidate. The appeal stands disposed of accordingly. The parties shall bear their respective costs.

(2013) 16 Supreme Court Cases 538

(BEFORE R.M. LODHA, J. CHELAMESWAR AND MADAN B. LOKUR, JJ.)

STATE BANK OF INDIA THROUGH GENERAL MANAGER . . Appellant;

Versus

NATIONAL HOUSING BANK AND OTHERS . . Respondents.

Civil Appeals No. 2155 of 1999† with Nos. 2294 and 3647 of 1999,
decided on July 31, 2013

A. **Debt, Financial and Monetary Laws — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Ss. 9-A and 9-B — Attached properties of notified persons — Claims against — Suit filed for recovering certain monies from attached properties — Proper mode of disposal — Material that may be relied on — Material other than legally admitted and proved evidence, such as certain Committee/Commission Reports, mere averments in pleadings or unproved correspondence of parties, held, cannot form the basis of decreeing claim(s) against attached property of notified person — In the absence any evidence establishing case set out in plaint, suit liable to be dismissed**

— Securities Scam, 1992 — Filing of suit against attached property for the sake of filing, without showing any evidence or intention to establish case — Abuse of process of law — Indifferent attitude of Banks and Government to get at the truth of scandal that shook the nation (in 1992), deprecated

— Suit filed by respondent Bank before Special Court for recovery of amount (Rs 95 crores plus interest) paid through cheque to D-1 appellant Bank in favour of D-2 notified person for purchase of IRFC bonds which were neither delivered nor was any bank receipt given for said amount —

3 *Union of India* v. *Dattatray*, (2008) 4 SCC 612 : (2008) 2 SCC (L&S) 6

† Appeal under Section 10 of Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, Judgment and Decree passed by the Special Court on 24-2-1999/25-2-1999 in Suit No. 2 of 1995

Special Court while concluding that respondent plaintiff Bank were not guilty of suppression of material facts opining that they disclosed all necessary facts, decreed said suit against D-1, (appellant Bank) with further direction to respondent plaintiff Bank to pay certain amount to second/fifth defendant relying on Second Report of Janakiraman Committee — Special Court also rejected plea of conspiracy, collusion and fraud holding that report of Janakiraman Committee would not be sufficient to foist any liability on individuals — Sustainability

— Held, Special Court erred in relying solely on conclusions of Janakiraman Committee Report, for courts are neither bound by conclusions and findings rendered by such commissions nor can statements made before such commissions be used as evidence before any civil or criminal court — Also, part of Report relied on by Special Court was substantially the version of D-2, as contained in his written statement — Course adopted by Special Court by relying on correspondence between parties, which was not proved, is not permissible in law

— There are doubts as to authenticity of the transaction — Both appellant and respondent Banks did not follow any procedure under banking law in their dealings with D-2 — Vital information as to: (i) how such transaction entered into their records, who was responsible for such entries, (ii) who took the decision to purchase IRFC bonds from D-1, (iii) who signed the cheque in question and (iv) how D-2 got custody of cheque, were never brought out in plaint nor explained — As respondent-plaintiff Bank never led any evidence in support of its pleadings to establish its case, suit is required to be dismissed on this ground — Thus, held, entire effort of both Banks was only to shield their officers who were responsible for such dealings by taking refuge under attractive legal pleas by suppressing all relevant information — Disapproving the attitude of both Banks in the manner in which litigation was conducted, and indifference of Government in finding out the truth, held, said suit is sheer abuse of legal process and an eyewash which defeated professed purpose of Special Courts Act, 1992 — In the circumstances, suit dismissed and decree of Special Court set aside in toto

B. **Debt, Financial and Monetary Laws — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — S. 5 — Special Court — Establishment of — Scope and purpose explained (Paras 1 to 4)**

C. **Debt, Financial and Monetary Laws — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — S. 9-A(4) — Procedure that is to be followed by Special Court — Applicability of CPC and Evidence Act, 1872 — Held, Special Court is not bound by procedure under CPC, but has power to regulate its own procedure — However, it shall be guided by principles of natural justice and cannot violate basic principles of adjudication of entitlements and claims, that relief can only be decreed on the basis of legally admissible and proved evidence, and not otherwise (*see* Shortnote *A*), as Special Court is bound by Evidence Act, 1872 — Evidence Act, 1872, Ss. 3 to 5 and 59 to 61**

D. **Debt, Financial and Monetary Laws — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — S. 9-A(4) — Reliance on RBI Committee Report — Findings of Commissions/ Committees (statutory, parliamentary or otherwise) — Admissibility as evidence — Held, courts are not bound by conclusions and findings rendered by any committee or commission including statutory commission — Further, statements made before such committee or commission cannot be used as evidence before any civil or criminal court — Inquiries/Commission of Inquiry — Commissions of Inquiry Act, 1952 — Ss. 4 to 6 — Evidence Act, 1872, Ss. 3 to 5 and 59 to 61**

E. **Civil Procedure Code, 1908 — Or. 8 — Decree in favour of defendant — When permissible — Held, decree in favour of defendant is permissible if defendant either pleads set-off or makes a counterclaim in terms of Or. 8**
(Paras 29 and 30)

F. **Debt, Financial and Monetary Laws — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — S. 9-A(4) — Jurisdiction of Special Court to grant claim of defendant — Held, Special Court is authorised by law to adjudicate claim of defendant**
(Paras 31 and 32)

National Housing Bank (the respondent-plaintiff) drew a cheque on 3-1-1992 for an amount of Rs 95.39 crores on Reserve Bank of India in favour of State Bank of Saurashtra which later merged into State Bank of India (SBI) (first defendant) but towards the end of April 1992, the said transaction was still outstanding without any bank receipts or supporting documents or any securities in respect of such transactions and the first defendant had not delivered the related securities or any BR for the same. The plaintiff, therefore, after failing in its correspondence with the first defendant Bank, filed a suit before the Special Court against: (*i*) State Bank of Saurashtra which at that point of time was a subsidiary bank of State Bank of India but later got amalgamated with State Bank of India, (*ii*) Harshad S. Mehta (notified person), (*iii*) two of the employees of the plaintiff Bank, and (*iv*) the Custodian appointed under Section 3(1) of Act 27 of 1992 for the recovery of an amount of Rs 95.39 crores with interest. The Special Court framed a large number of issues and then decreed the suit against the appellant-first defendant Bank with a further direction to the plaintiff to make payment of certain amount to the second/fifth defendant. The Special Court also declined to decide the allegations of conspiracy, collusion and fraud. The Special Court further opined that the respondent-plaintiff had disclosed all necessary facts in the plaint and was not guilty of suppression of material facts. The Special Court also recorded that the only piece of evidence relied upon for the plea of fraud is the Second Report of the Janakiraman Committee, but opined that the Report would not be sufficient to foist any liability on individuals.

Though the first part of the decree was in favour of the plaintiff, the second part was virtually in favour of the second defendant, and the ultimate direction in this regard was that the plaintiff should pay certain amounts to the fifth defendant (statutory Custodian) of the second defendant's property under the Special Court Act. Aggrieved by the decree directing the payment to the respondent plaintiff, the appellant first defendant also preferred another appeal before the Supreme

Court challenging the decree of the Special Court. The respondent-plaintiff had also appealed against the part of the decree against it.

Dismissing the appeals and setting aside the decree of the Special Court in its entirety the Supreme Court

Held :

The course adopted by the Judge of the Special Court of looking into the correspondence between the parties, which even according to the Judge had not been proved is not permissible in law. The Special Court based its conclusions on Janakiraman Committee Report and the correspondence between the various parties. The Special Court Act though declares that the Court is not bound by the Code of Civil Procedure, it does not relieve the Special Court from the obligation to follow the Evidence Act. Further, the learned Judge extensively relied upon the second interim report of the Jankiraman Committee on the ground that the same was tendered by the first defendant. Irrespective of the fact whether such a report is admissible in evidence or not, it appears from the judgment under appeal that the relevant part of the report is substantially in accordance with the version of the second defendant, as contained in his written statement. (Paras 30, 31 and 47 to 49)

Courts are not bound by the conclusions and findings rendered by the Parliamentary Committees or those set up RBI or inquiry commissions (statutory or otherwise). The statements made before such committee/commission cannot be used as evidence before any civil or criminal court. It should logically follow that even the conclusions based on such statements can also not be used as evidence in any court. The Janakiraman Committee is not even a statutory body authorised to collect evidence in the legal sense. It is a body set up by the Governor of Reserve Bank of India obviously in exercise of its administrative functions. It is well settled by a long line of judicial authority that the findings of even a statutory commission appointed under the Commissions of Inquiry Act, 1952 are not enforceable proprio vigore and the statements made before such Commission are expressly made inadmissible in any subsequent proceedings civil or criminal. (Paras 48 to 52)

Ram Krishna Dalmia v. *Justice S.R. Tendolkar*, AIR 1958 SC 538, *affirmed*

T.T. Antony v. *State of Kerala*, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048; *Sham Kant* v. *State of Maharashtra*, 1992 Supp (2) SCC 521 : 1992 SCC (Cri) 765; *State of Karnataka* v. *Union of India*, (1977) 4 SCC 608; *Maharaja Madhava Singh* v. *Secretary of State for India in Council*, (1903-04) 31 IA 239, *relied on*

M.V. Rajwade v. *S.M. Hassan*, AIR 1954 Nag 71 : 1954 Cri LJ 366, *held, approved*

The report of such a committee as the Janakiraman Committee can at best be the opinion of the Committee based on its own examination of the records of the various banks (including the plaintiff and the first defendant) and the statements recorded (by the Committee) of the various persons examined by the Committee. The report of the Janakiraman Committee is not evidence within the meaning of Evidence Act which the Special Court is bound to follow. Thus, it is difficult to approve the procedure followed by the Special Court to record such conclusions. (Paras 53 and 54)

The scandalous thing about the litigation is that the plaintiff led no evidence. It merely tendered certain documents but did not bother to prove them in spite of a caution by the Special Court. There is absolutely no evidence on record except the Janakiraman Committee Report and the correspondence which is neither proved nor the content of the correspondence is explained. In the background of the above discussed pleadings and evidence, the suit is required to be dismissed on the ground that there is no evidence led by the plaintiff to establish its case.
(Paras 46 and 55 to 59)

Thus, the finding recorded by the Special Court that the plaintiff did not suppress the truth is not correct. The plaintiff approached the Special Court with unclean hands by suppressing the relevant material. The suppression of the original case coupled with the very fact that the first defendant paid various amounts in accordance with the instructions of the second defendant after encashing the cheque in question coupled with the first defendant's consistent stand that the cheque was issued for the benefit of the second defendant, leads to a possible inference that the first defendant acted on the instructions of some body high up in the administration of the plaintiff Bank. Neither of the banks explained the genesis of such practice. The plaintiffs were aware of the stand of the first defendant in the light of the correspondence that took place between the first defendant and the plaintiff prior to the filing of the suit. Such knowledge on the part of the plaintiffs is obvious from the averments made in the plaint itself. In the background of such a stand of the first defendant and the stand of the plaintiff in the unamended plaint that its record revealed that the cheque in question was issued "in respect of the sale by the first defendant to the plaintiff of 9% IRFC bonds", the plaintiff owes a basic duty to the Court to explain in the plaint and prove by producing its records in evidence: (*i*) as to how such a transaction came to be entered in its records, who was responsible for such entry, (*ii*) who took the decision to purchase the IRFC bonds from the first defendant, (*iii*) who signed the cheque in question, and (*iv*) how the second defendant got custody of the cheque. None of this information is given in the plaint.
(Paras 60, 61 and 64)

From the very history of this litigation and the background in which the Special Court Act came to be passed, it can safely be presumed that both the banks herein (along with other banks), did not follow any procedure when it came to the dealings in which the second defendant was involved. Eventually when the bubble burst, everybody tried to disown the responsibility trying to project an image of innocence. The entire effort of the plaintiff in the suit is to suppress all the relevant information and that such a process is resorted to in order to shield the delinquent officers of the bank (whoever they are) who are responsible for such dealings by taking shelter under the legal principles such as unjust enrichment and moneys had and received, etc. to recover the money paid by the plaintiff to the first defendant through the cheque in question. (Para 64)

Whether the payment in question was made in discharge of any existing legal obligation such as the one set up by Defendants 1 and 2 or not could be known only when the full facts are disclosed. It is equally irresponsible on the part of the first defendant to have acted on the instructions of the second

defendant without there being any legal authority in writing on the part of the second defendant to issue instructions regarding the disbursement of the proceeds of the cheque in question. An inference can be drawn that such payments were obviously made on the unwritten instructions by somebody in the plaintiff Bank. The whole attempt of both the Banks is to shield the officers on either side taking refuge under attractive legal pleas—which if examined in the context of the limited facts pleaded give a picture that the suit transaction is an innocuous transaction which unfortunately for the country is not. The suit is a sheer abuse of the legal process. The whole exercise appears to be an eyewash, a thinly veiled scorn for the orders of Supreme Court. The professed purpose of the Special Courts Act, the backdrop of the scandal that shook the nation, and the manner in which the litigation was conducted coupled with the absolute indifference of the Government to get at the truth only demonstrates the duplicity with which Governments can act. (Paras 65, 70 and 71)

National Housing Bank v. *State Bank of Saurashtra*, Suit No. 211 of 1995, order dated 3-2-1996 (Bom); *National Housing Bank* v. *State Bank of Saurashtra*, Suit No. 2 of 1995, order dated 24-2-1999 (Bom), *reversed*

State Bank of Saurashtra v. *National Housing Bank*, Civil Appeal No. 2155 of 1999, order dated 18-2-2009 (SC), *referred to*

G. **Public Sector — Dispute between two government departments or instrumentalities of the State — Resolution of, by Committee of Secretaries of Government of India — Reiterated (Para 66)**

[**Ed.**: However, see *Electronics Corporation of India Ltd.* v. *Union of India*, (2011) 3 SCC 404. Finding the futility of such a mechanism and holding that it had outlived its utility and was causing undue delays, the Bench of five Judges recalled the earlier orders in ONGC-II, ONGC-III and ONGC-IV cases for constitution of such Committees.]

N-D/52310/SV

Advocates who appeared in this case :

Harin P. Raval, Additional Solicitor General, Bishwajit Bhattacharyya, Senior Advocate (Sanjay Kapur, Ms Priyanka Das, Anmol Chandan, Ms Shubhra Kapur, Mohammed Himayatullah, Pradeep Kr. Tiwari, Ninad Laud, Mahesh Agarwal, E.C. Agarwal, Ms Megha Mehta Agrawal, Abhinav Agarwal, Anirudh Sharma, Palash Kanwar, Respondent-in-Person, Amit Yadav, Shishir Deshpande, Kaushal Narayan Mishra, Ms Sujata Kurdukar and Subramonium Prasad, Advocates) for the appearing parties.

Chronological list of cases cited ***on page(s)***

7. AIR 1958 SC 538, *Ram Krishna Dalmia* v. *Justice S.R. Tendolkar* 558*a-b*, 558*b*
8. AIR 1954 Nag 71: 1954 Cri LJ 366, *M.V. Rajwade* v. *S.M. Hassan* 558*b*
9. (1903-04) 31 IA 239, *Maharaja Madhava Singh* v. *Secretary of State for India in Council* 558*b*

The Judgment of the Court was delivered by

J. CHELAMESWAR, J.— These statutory appeals are filed under Section 10 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act 27 of 1992 (hereinafter referred to as "the Special Court Act"). An appeal both on questions of fact and law under the abovementioned provision is provided directly to this Court from any "judgment, decree, sentence or order" of a Special Court established under Section 5 of the abovementioned Act.

2. The Special Court Act was made in the aftermath of a scandal in the stock market in the year 1991-1992 when "large-scale irregularities and malpractices were noticed in both government and other securities, indulged in by some brokers in collusion with the employees of various banks and financial institutions".[1]

3. Under Section 3(2)[2] of the said Act, the Custodian appointed by the Government of India, if satisfied that any person was involved in "any

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1 In the course of the investigations by Reserve Bank of India, large-scale irregularities and malpractices were noticed in transactions in both government and other securities, indulged in by some brokers in collusion with the employees of various bonds and financial institutions. The said irregularities and malpractices led to the diversion of funds from banks and financial institutions to the individual accounts of certain brokers. 2. To deal with the situation and in particular to ensure the speedy recovery of the huge amount involved, to punish the guilty and restore confidence in and maintain the basic integrity and credibility of the banks and financial institutions the Special Court (Trial of Offences Relating to Transactions in Securities) Ordinance, 1992 was promulgated on 6-6-1992. The Ordinance provides for the establishment of a Special Court with a sitting Judge of a High Court for speedy trial of offences relating to transactions in securities and disposal of properties attached. It also provides for appointment of one or more Custodians for attaching the property of the offenders with a view to prevent diversion of such properties by the offenders.

2 "**3.** ***Appointment and functions of Custodian.***—(1) The Central Government may appoint one or more Custodians as it may deem fit for the purposes of this Act.

(2) The Custodian may, on being satisfied on information received that any person has been involved in any offence relating to transactions in securities after the 1st day of April, 1991 and on and before 6-6-1992, notify the name of such person in the Official Gazette.

(3) Notwithstanding anything contained in the Code and any other law for the time being in force, on and from the date of notification under sub-section (2), any property, movable or immovable, or both, belonging to any person notified under that sub-section shall stand attached simultaneously with the issue of the notification."

offence relating to transactions in securities" during the period falling between 1-4-1991 to 6-6-1992 is empowered to notify the name of such person in the Official Gazette. Upon such notification, all the properties whether movable or immovable belonging to any person so notified stand attached. The Custodian is required to deal with such attached properties in such manner as the Special Court may direct. The Act further authorises the Government of India to establish a Special Court to be presided over by a sitting Judge of a High Court to be nominated by the Chief Justice of the High Court within the local limits of whose jurisdiction the Special Court is to be located. The concurrence of the Chief Justice of India is required to be obtained for such nomination of a sitting Judge of the High Court.

4. The Special Court is invested with jurisdiction both criminal and civil to deal with the offences committed by the notified persons and also with the properties and transactions in securities in which a notified person is involved and any matter or claim arising therefrom. An appeal to this Court, is provided from the judgment, decree, sentence or order of such Special Court.

5. The entire scandal and the present litigation revolves around the second defendant (since deceased) — one Harshad S. Mehta [a notified person under Section 3(2) of the Act]. The scandal exposes the shortcomings and loopholes in the administration of banking sector of this country, more particularly, the State-owned/controlled banks.

6. National Housing Bank (hereinafter referred to as "the plaintiff") a statutory corporation created by an Act of Parliament (Act 53 of 1987) filed two suits, one invoking the original jurisdiction of the Bombay High Court (Suit No. 211 of 1995) and another before the Special Court established under Act 27 of 1992 being Suit No. 2 of 1995. The said suits came to be filed against (*i*) State Bank of Saurashtra which at that point of time was a subsidiary bank of State Bank of India but later got amalgamated with State Bank of India, (*ii*) Harshad S. Mehta, (*iii*) two of the employees of the plaintiff Bank, and (*iv*) the Custodian appointed under Section 3(1) of Act 27 of 1992.

7. It appears that the relief sought in both the abovementioned suits is substantially the same i.e. the recovery of an amount of Rs 95.39 crores with interest. By an order dated 17-4-1995, the Special Court directed the plaintiff Bank to elect one of the two fora for pursuing its litigation.

8. "Aggrieved" by the said direction, the plaintiff Bank approached this Court. This Court directed that both the suits be placed before the learned Judge who had been nominated to be the Judge presiding over the Special Court (the Hon'ble Justice Variava of the Bombay High Court, as His Lordship then was) for disposal in accordance with law. Consequently, a preliminary question regarding the forum which had jurisdiction to adjudicate the dispute which is the subject-matter of the two suits came to be

considered by the Hon'ble Justice Variava. By an order dated 3-2-1996[3], the learned Judge held that in view of the language of Section 9- A(1)(*b*) of the Special Court Act, it is the Special Court alone which had the jurisdiction to adjudicate the dispute as the dispute centres around a claim arising out of a transaction in which a person notified under the Special Court Act is involved. The abovementioned Suit No. 211 of 1995 came to be dismissed.

9. Subsequently, the plaintiff Bank moved an application to amend the pleadings in Suit No. 2 of 1995. The said application was allowed by an order of the Special Court dated 16-10-1996. The frame of Suit No. 2 of 1995 and the nature of the amendment made will be discussed later in this judgment.

10. In view of the amendment in the plaint, the first defendant Bank once again raised a preliminary issue regarding the maintainability of the suit before the Special Court. The Special Court rejected the preliminary objection by its order dated 22-11-1999. Aggrieved by the same, the first defendant Bank carried Civil Appeal No. 2294 of 1999 to this Court.

11. During the pendency of the said appeal, Suit No. 2 of 1995 itself came to be disposed of on 24-2-1999[4]. Challenging that part of the decree[5] which was against it, the first defendant Bank once again carried Civil Appeal No. 2155 of 1999 to this Court. Aggrieved by that part of the decree of the Special Court wherein the Special Court directed the plaintiff to deliver certain amounts to the Custodian[6], the plaintiff Bank filed Civil Appeal No. 3647 of 1999.

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3 *National Housing Bank* v. *State Bank of Saurashtra*, Suit No. 211 of 1995, order dated 3-2-1996 (Bom)

4 *National Housing Bank* v. *State Bank of Saurashtra*, Suit No. 2 of 1995, order dated 24-2-1999 (Bom)

5 *110.* Accordingly there will be a decree in favour of the plaintiffs and against the first defendant in a sum of Rs 95,39,78,082.19p. with interest thereon at the rate of 19% p.a. from 3-1-1992 till payment of realisation thereof.

6 *120.* Today a decree has been passed in favour of the plaintiffs and against the first defendant in the sum of Rs 95,39,78,082.19p. along with interest at 19% per annum. If the plaintiffs are allowed to keep interest on the sum of Rs 40.22 crores they will have unjustly enriched themselves. This because with effect from 30-3-1992 the plaintiffs liability to CANFINA stood discharged without their having paid any consideration for the 9% IRFC bonds f.v. Rs 38.75 crores. The plaintiffs will be receiving interest at 19% per annum even on the sum of Rs 40.22 crores. As stated above to allow the plaintiffs to retain that interest would be to allow the plaintiffs to unjustifiably enrich themselves. *Thus it is directed that* as and when the plaintiffs receive interest at 19% on the sum of Rs 40.22 crores, the plaintiffs must hand over the interest amount on Rs 40.22 crores from 30-3-1992 onwards to the Custodian. Clarified that plaintiffs will be entitled to keep the interest amounts, even on Rs 40.22 crores, from 3-1-1992 till 29-3-1992. This interest amount i.e. for the period 30-3-1992 onwards on Rs 40.22 crores would be payable to the Custodian within four weeks from the receipt of the amount by the plaintiffs.

12. The Prayer in Suit No. 2 of 1995 is as follows:

"(*a*) that the first defendant be ordered and decreed to pay to the plaintiff a sum of Rs 164,11,61,079.59p. as per particulars at Ext. B hereto with further interest thereon at the rate of 24% per annum from the date hereof till payment and/or realisation.

(*b*) In the alternative to Prayer (*a*) above Defendants 1 to 4 or any one or more of them be ordered and decreed to pay to the plaintiff jointly and/or severally a sum of Rs 164,11,61,079.59p. as per particulars at Ext. B hereto together with interest thereon at the rate of 24% per annum from the date hereof till payment and/or realisation.

(*c*) For costs; and

(*d*) For such further and other reliefs as the nature and circumstances of the case may require;"

13. According to the facts pleaded in the amended plaint, National Housing Bank drew a cheque on 3-1-1992 for an amount of Rs 95.39 crores approximately on Reserve Bank of India in favour of State Bank of Saurashtra. Towards the end of April, 1992, "*the plaintiff found that, while its records indicated that* ***certain transactions*** *had been entered into and were still outstanding, it did not possess any bank receipts (hereinafter referred to as 'BR') or supporting documents or any securities in respect of such* ***transactions****. On the basis of information gathered it was thought that the said transaction was outstanding and that the first defendant had not delivered the related securities or any BR for the same. The plaintiff, therefore, addressed letters to the first defendant drawing its attention to the said fact and request the first defendant for delivery of BR/securities or for return of the said amount.*"

14. A blissfully vague statement regarding the nature of the "transaction".

15. Long correspondence ensued between the plaintiff and the first defendant Bank. The first defendant Bank denied the existence of any "outstanding transaction" between the two and its liability to issue either a BR or deliver any securities or refund of the amount as claimed by the plaintiff Bank. The substance of the correspondence of the first defendant Bank as narrated in the plaint is "*the first defendant further stated that the amount of the cheque received by it had been for and on account and for the benefit of the second defendant. The first defendant further stated that its action of crediting the proceeds of the said cheque to the account of the second defendant was justified by a certain market/banking practice. The first defendant also stated that solely on the basis of instructions of the second defendant against the said cheque of the plaintiff it issued cheque on behalf of the second defendant in favour of certain third parties.*"

16. The unamended plaint[7] contained assertions that the plaintiff Bank drew the cheque in issue for the purpose of acquiring 9% IRFC bonds of face value of Rs 100 crores, the same was omitted by the amendment of the plaint. However, vague references continued even in the amended plaint to a transaction pertaining to the sale of 9% IRFC bonds.

17. The plaintiff based his prayers "on grounds which are set out in the alternative and without prejudice to each other". The grounds of the plaintiff are:

17.1. As there was no transaction between the plaintiff and the first defendant, the first defendant was bound to hold the money realised by encashing the cheque in question until further instructions were issued by the plaintiff Bank, but should not have paid the proceeds of the cheque on the directions of the second defendant. Therefore, the first defendant is "liable for conversion of the cheque". In the same breath the plaintiff also added "in any case is liable to repay the amount on the basis of moneys had and received without any consideration".

17.2. The second ground on which the plaintiff based his case in the alternative is "conspiracy, collusion and fraud between Defendants 1 to 4" thereby causing loss to the plaintiff Bank.

18. On the other hand, the first defendant Bank in its written statement took a categorical stand that the records of the Bank did not show "*that the cheque in dispute was issued in respect of any alleged sale by the first defendant to the plaintiff of 9% IRFC bonds of face value of Rs 100 crores*", but went on to say that the said cheque was issued for the benefit of the second defendant Harshad S. Mehta, through whose employee, the cheque was delivered to the first defendant Bank. The first defendant also took a stand that the cheque was delivered to the first defendant under a covering

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7 *Unamended plaint*—The records of the plaintiff, as mentioned by the Funds Management Group, show that a cheque bearing No. 173756 dated 3-1-1992 drawn by the plaintiff on Reserve Bank of India in the sum of Rs 95,39,78,082.19p. had been issued in favour of the first defendant in respect of the sale by the first defendant to the plaintiff of 9% IRFC bonds of the face value of Rs 100,00,00,000.

Amended plaint—A cheque bearing No. 173756 dated 3-1-1992 drawn by the plaintiff on Reserve Bank of India in the sum of Rs 95,39,78,082.19p. had been issued in favour of the first defendant. The plaintiff says that the cheques was originally drawn in the name of State Bank of India and was altered in the name of the first defendant and received as such as by the first defendant. However the documents and the records as maintained by FMG did not show a similar corresponding correction and continue as if the deal was between the plaintiffs and State Bank of India.

letter dated 3-1-1992 of Harshad S. Mehta containing instructions to the first defendant to make certain payments as detailed in the letter.[8]

19. The second defendant Harshad S. Mehta filed a written statement. According to him, the entire transaction in question occurred in the following manner:

"... (*a*) This defendant states that on 3-1-1992, the plaintiffs undertook a set of two transactions in respect of 9% IRFC bonds with a view to make an assured profit, without outlay of any funds of the plaintiffs, of 4 paise per face value of Rs 100 i.e. Rs 4 lakhs. Accordingly, the plaintiffs purchased 9% tax-free Indian Railways Finance Corporation (IRFC) bonds of the face value of Rs 100 crores @ Rs 93.08 and delivered the same, under instructions of this defendant, to CANFINA. This defendant states that accordingly *the plaintiffs delivered a banker's receipt to CANFINA and received a banker's receipt from Defendant 1.* This defendant says that the terms of the said transaction have been duly recorded in the computerised data of this defendant and a copy of the said data seized by the IT Department is also available with the office of Defendant 5. This defendant craves leave to refer to and rely upon the same as and when produced.

(*b*) This defendant further states that the sale of 9% IRFC bonds of the face value of Rs 100 cores by Defendant 1 to the plaintiffs as stated hereinabove was on behalf of this defendant under the routing facility offered by Defendant 1 as a customer to this defendant. The sale

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8 (*a*) The said cheque for Rs 95,39,78,082.19p. dated 3-1-1992 was to the knowledge of the plaintiff issued for the sole benefit of Defendant 2.

(*b*) Under cover of a letter dated 3-1-1992 the second defendant delivered the said cheque to this defendant. Pursuant to the instructions contained in the said letter dated 3-1-1992 as varied by the subsequent oral instructions of Defendant 2 this defendant issued four cheques, as follows:

Sl. No.	*Particulars*	*Amounts (Rs)*
1.	Bankers Cheque No. 202667 dated 3-1-1992 in favour of Canara Bank	79,79,69,041.09
2.	Bankers Cheque No. 202669 dated 3-1-1992 in favour of State Bank of India	5,01,58,904.18
3.	Bankers Cheque No. 202668 dated 3-1-1992 in favour of ANZ Grindlays Bank	5,37,00,000.00
4.	Bankers Cheque No. 202670 dated 3-1-1992 in favour of Bank of India	4,10,00,000.00
	Total	94,28,27,945.27

(*c*) Defendant 2, thereafter, by a letter dated 6-1-1992 requested this defendant to issue a bankers cheque in favour of ANZ Grindlays Bank for Rs 1,10,00,000 and debit his current Account No. 2230, titled as Harshad S. Mehta for the said sum of Rs 1,10,00,000. This defendant carried out the aforesaid instructions.

proceeds of the above bonds under the routing facility was, therefore, received by Defendant 1 from the plaintiffs and were credited into its own account maintained by it with Reserve Bank of India. Thereafter, the sale proceeds, as were due to this defendant, were credited to this defendant's current account maintained with Defendant 1.

9. This defendant further states that sometime thereafter in the month of March 1992, before the interest payment date fell due on 1-4-1992, this defendant initiated the process of liquidating the outstanding banker's receipts issued by both the plaintiffs and Defendant 1. This defendant arranged for physical delivery of 9% tax-free IRFC bonds of a face value of Rs 100 crores directly to CANFINA and *instructed CANFINA to tender the discharged banker's receipt to the plaintiffs to enable the plaintiffs to return the duly discharged banker's receipt issued by Defendant 1*. This defendant states that it is an admitted position that CANFINA has received delivery of 9% IRFC bonds of a face value of Rs 100 crores and it is also an admitted position that the said CANFINA has discharged the plaintiffs from all their liabilities under the banker's receipt issued by the plaintiffs.

10. This defendant says and submits that the above 9% IRFC bonds of the face value of Rs 100 crores covered under banker's receipt issued by Defendant 1 would now constitute an attached property of this defendant together with all the accruals thereon. This defendant, therefore, submits that the plaintiffs should be called upon to surrender the said 9% IRFC bonds of a face value of Rs 100 crores together with accrued tax free benefits and interest on the same to Defendant 5 on behalf of this defendant and accordingly this suit be dismissed with costs."

20. The Special Court framed a large number of issues arising between the plaintiffs and each of the defendants. The suit is decreed only against the first defendant Bank with a further direction to the plaintiff to make payment of certain amount to the second/fifth defendant.

21. The Special Court in the judgment under appeal clearly rejected the case of the plaintiff based on the principle of money had and received. The Special Court held as follows:

> "Thus on that ground, it will have to be held that the claim for money had and received would not be maintainable." (Para 77)

22. Coming to the allegations of conspiracy, collusion and fraud, at para 92 of the judgment, the Special Court recorded "... it is absolutely unnecessary to decide the alternate case whether there has been any fraud or not". It also recorded:

> "On the case of fraud, no party has led any oral evidence, the burden of proving fraud always lies on the party who alleges it." (Para 92)

23. The Special Court also recorded that the only piece of evidence relied upon on the plea of fraud is the Second Report of the Janakiraman Committee, but opined that the Report would not be sufficient to foist any liability on individuals (Para 98). On the other hand, the Special Court held:

> "Having received, encashed the plaintiff's cheque without there being any transaction, the first defendant is now liable to refund the money on the basis of conversion, fiduciary obligation and moneys paid without intending to do so gratuitously." (Para 84)

24. It can be seen from the judgment under appeal that some of the issues were not pressed even before the Special Court. The issue regarding suppression of material facts by the plaintiffs is common with reference to both the defendants. However, Issues 4 to 6 between the plaintiff and the first defendant and Issues 6 and 7 between the plaintiff and the second defendant imply (though inelegantly) that there was a sale transaction of the IRFC bonds of face value of Rs 100 crores between the plaintiff which the first defendant Bank routed through the second defendant. In view of the specific assertion of Defendants 1, 2 and 5 and particularly the second defendant in his written statement that the plaintiff entered into two transactions on 3-1-1992 — one for the purchase and the other for the sale of 9% IRFC bonds and that the first defendant also issued a BR (obviously for the value of the cheque in issue) in favour of the plaintiff Bank and the further assertion of the second defendant that he "*arranged for physical delivery of 9% IRFC bonds*" to CANFINA and instructed CANFINA to return the duly discharged BR issued by the plaintiff Bank in order to enable the plaintiff to discharge the BR allegedly issued by the first defendant Bank—in our opinion, a more specific issue—whether there were two transactions as alleged by the second defendant and also whether the first defendant also issued a BR for the value of the cheque in issue as averred by the second defendant, ought to have been framed.

25. The Special Court opined that the plaintiff had disclosed all necessary facts in the plaint and was not guilty of suppression of material facts. A conclusion which in our opinion is wrong and the consequences of suppression of material facts require a further scrutiny at a later stage of this judgment.

26. We have already noticed that the decree under appeal is in two parts. The first part of the decree is in favour of the plaintiff and the second part virtually in favour of the second defendant, though, the ultimate direction in this regard is that the plaintiff should pay certain amounts to the fifth defendant who is the statutory custodian of the second defendant's property under the Special Court Act.

27. The plaintiff preferred Civil Appeal No. 3647 of 1999 being aggrieved by the judgment of the Special Court insofar as it:

> (*a*) directs the plaintiff (NHB) to hand over Rs 40.22 crores to the Custodian with interest thereon at 19% per annum from 30-3-1992;
>
> (*b*) directs the plaintiff to pay costs of Rs 10,000 to Defendants 3 and 4 on the basis that no case of fraud had been made out against them; and

(*c*) holds that the plaintiff top management "were aware of what was going on".

28. The first defendant also preferred an appeal being Civil Appeal No. 2155 of 1999 aggrieved by the decree directing the payment to the plaintiff.

29. Under the Code of Civil Procedure, 1908 (for short "the Code"), such a decree in favour of a defendant is permissible in a case where the defendant either pleads a set-off or makes a counterclaim as contemplated under Order 8 of the Code.

30. The procedure that is required to be followed in the cases of set-off or counterclaim is detailed under Order 8 of the Code. From the record before us, it does not appear that the procedure contemplated under Order 8 of the Code is followed in the instant case. However, we do notice that under Section 9-A(4) of the Act, the Special Court is not bound by the procedure laid down by the Code but shall be guided by the principles of natural justice and has the power to regulate its own procedure.[9]

31. Under Section 9-A(1) of the Act[10], the Special Court has all jurisdiction to adjudicate any matter or claim arising out of a transaction in securities entered into during the period specified in the said section in which a notified person is involved in whatever capacity. We therefore, proceed on the basis that the Special Court is authorised by law to adjudicate the claim of the second defendant without being shackled by the procedural fetters imposed under the Code.

32. In exercise of such jurisdiction, the Special Court partially accepted the "counterclaim" made by the second defendant. Which counterclaim as already noticed from the written statement of the second defendant (relevant parts already extracted in para 19) is based on the existence of two transactions in securities, that is, (*i*) the sale and purchase of IRFC bonds

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9 "**9-A. (4)** While dealing with cases relating to any matter or claim under this section, the Special Court shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice, and subject to the other provisions of this Act and of any rules, the Special Court shall have power to regulate its own procedure."

10 Section 9-A(1)(*a*)

"**9-A.** ***Jurisdiction, powers, authority and procedure of Special Court in civil matters.***—(1) On and from the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1994, the Special Court shall 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—

(*a*) relating to any property standing attached under sub-section (3) of Section 3;

(*b*) arising out of transactions in securities entered into after the 1st day of April, 1991, and on or before the 6th day of June, 1992, in which, a person notified under sub-section (2) of Section 3 is involved as a party, broker, intermediary or in any other manner."

between the plaintiff and CANFINA (which is not a party to the suit), (*ii*) between the plaintiff and the first defendant Bank. According to the second defendant, both the transactions were routed through him. According to the second defendant under the first of the abovementioned transactions, the plaintiff Bank agreed to sell the IRFC bonds to CANFINA and received the agreed price of the bonds without actually delivering the bonds and issued a BR for the amount so received. The further case of the second defendant is that he got delivered the IRFC bonds to the satisfaction of CANFINA and on receipt of such bonds CANFINA returned the discharged BR of the plaintiff Bank. In the written statement, the second defendant does not dispute the assertion of the plaintiff Bank, that the second defendant "got possession" of the cheque which is the subject-matter of dispute in the suit. It is also worthwhile noticing that the second defendant does not dispute (either in his written statement or by way of any rejoinder to the written statement of the first defendant) the categorical stand taken by the first defendant that the cheque in issue was in fact delivered by the second defendant to the first defendant with a covering letter dated 3-1-1992 (the content of which has already been taken note of) the terms of which were acted upon by the first defendant.

33. The second defendant further took a categorical stand at Para 9 of the written statement;

> "9. … This defendant arranged for physical delivery of 9% tax-free IRFC bonds of a face value of Rs 100 crores directly to CANFINA and *instructed CANFINA to tender the discharged banker's receipt to the plaintiffs to enable the plaintiffs to return the duly discharged banker's receipt issued by Defendant 1.* This defendant states that it is an admitted position that CANFINA has received delivery of 9% IRFC bonds of a face value of Rs 100 crores and it is also an admitted position that the said CANFINA has discharged the plaintiffs from all their liabilities under the banker's receipt issued by the plaintiffs."

34. Though not expressly stated, in the written statement but it was argued that the cumulative effect of all the abovementioned factors is that the second defendant though appropriated the proceeds of the cheque in issue, such an appropriation is supported by consideration i.e. he relieved the plaintiff Bank of its obligation to deliver the IRFC bonds which it was obliged to deliver to CANFINA. In the process of the said transaction, the plaintiff Bank made a profit of Rs 4 lakhs in one day.

35. The first defendant also in his written statement categorically pleaded that there was a security transaction between the plaintiff and CANFINA on 3-1-1992 (as alleged by the second defendant in his written statement) and in that context, the plaintiff issued a BR in favour of CANFINA. The first defendant further took a stand that the second defendant discharged the

obligation of the plaintiff to CANFINA under the said BR by delivering the said IRFC bonds to CANFINA[11].

36. The fifth defendant, the Custodian also filed a written statement. It is recorded by the judgment under appeal at para 37 as follows:

> "*37.* The fifth defendant i.e. the Custodian avers that he is filing the written statement only for the purpose of placing facts before the Court. The fifth defendant clarifies that the facts placed before the Court are on the basis of the correspondence carried out by the Custodian with the plaintiffs, Standard Chartered Bank and CANFINA."

37. The substance of the fifth defendant's written statement[12] as culled out in the judgment under appeal in para 38 is also to the effect that there were two transactions in securities contended by the second defendant on 3-1-1992 and also that CANFINA had confirmed by its letter to the Custodian stating that the BR issued by the plaintiff was discharged on 31-3-1993 and IRFC bonds of face value of Rs 100 crores were delivered by the second defendant on behalf of the plaintiffs.

38. It is not clear either from the written statement of the fifth defendant or from any other material on record, what was the occasion for correspondence between the Custodian and the various parties whether the statements made to the Custodian by various parties involved in the transaction in the letters allegedly written by them contained any facts relevant to the adjudication of the issues in the suit, and whether such

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11 Para 10 of D-1's written statement—(*d*). Defendant 2 discharged the obligation of the plaintiff to CANFINA under the said BR by delivering the said IRFC bonds to CANFINA. The delivery to and receipt of the said IRFC bonds by CANFINA has been admitted by CANFINA in an affidavit dated 10-7-1995 of Mr S.A.P. Prabhu in Misc. Petition No. 79 of 1994 filed by this defendant in this Hon'ble Court. This defendant craves leave to refer to and rely upon the said affidavit when produced.

12 Relevant portion of the fifth defendant's written statement reads:

> "2. From the correspondence carried out by Defendant 5 as aforesaid, it appears as under:
>
> (*a*) According to the plaintiffs, on 3-1-1992, the plaintiffs issued a cheque in favour of Defendant 1 for Rs 95,39,78,082.19p. for the purchase of 9% IRFC bonds of the face value of Rs 100 crores on a ready forward basis. No BR was received by the plaintiffs from Defendant 1 for the aforesaid.
>
> (*b*) On the same day i.e. 3-1-1992, the plaintiffs had a back-to-back deal with CANFINA for the sale of 9% IRFC bonds of the face value of Rs 100 crores. For this sale the plaintiffs received from CANFINA a cheque for Rs 95,43,78,082.19p. and the same was credited into the plaintiffs' account with RBI. In respect of the aforesaid transaction, the plaintiffs issued a BR dated 3-1-1992 in favour of CANFINA. The said BR was returned by CANFINA, duly discharges to the plaintiffs on 31-3-1992. The said BR was returned as discharged by CANFINA, apparently as physical delivery of the bonds in respect thereof was made by Defendant 2."

statements are evidence at all in the eye of the law and if those statements are evidence what is the probative value of such evidence are questions which are required to be decided if such documents are sought to be proved. But we only note that the fifth defendant also pleaded that there were two transactions in securities as alleged by the first defendant and a BR was issued by the plaintiff in favour of the CANFINA and the same was returned discharged to the plaintiff Bank.

39. It is on the basis of such pleadings of the parties, the Special Court passed the decree which is the subject-matter of these two appeals, though the plaintiff did not choose to adduce any evidence in support of its pleadings.

40. Apart from the problem of the plaintiff not adducing any evidence, it is rather difficult to understand the process followed by the Special Court to reach the conclusion that the plaintiff is entitled to the decree as prayed for and at the same time not entitled to retain the entire amount but should share a part of it with the second defendant.

41. Such conclusions are recorded on the basis of the following findings:

41.1. That the first defendant received the cheque in issue without there being any consideration for the same.

41.2. There was a transaction between the plaintiff and CANFINA where the plaintiff agreed to sell IRFC bonds of face value Rs 100 crores to CANFINA for a consideration of Rs 95.43 crores (approx.). Initially the plaintiff issued a BR in favour of CANFINA without actually delivering the bonds though the plaintiff received the sale price of the bonds.

41.3. The said BR was returned discharged by CANFINA to the plaintiff.

41.4. Such discharge was a consequence of the receipt of the IRFC bonds of face value of Rs 100 crores by CANFINA.

41.5. The said bonds were delivered to CANFINA partly by the second defendant and partly by Standard Chartered Bank.

42. We are, therefore, required to examine the factual correctness of the abovementioned five conclusions reached by the Special Court. The first conclusion is obviously based on the admission made by the first defendant in its written statement. The content of Para 8 of the written statement of the first defendant has already been taken note of wherein the first defendant admits receipt of the cheque in question through the second defendant. It is further specifically stated in Para 8(*d*) of the written statement of the first defendant as follows:

> "8(*d*) On 3-1-1992 no amount was due and payable by the plaintiff to this defendant. The proceeds of the said cheque were intended for the benefit of Defendant 2. The said cheque was, in fact, handed over by the plaintiff to Defendant 2. The said cheque was drawn in favour of this defendant to facilitate Defendant 2 to obtain same day credit of the proceeds of the said cheque. Defendant 2 was the intended beneficiary and real owner of the proceeds of the said cheque."

43. Insofar as the remaining four conclusions are concerned, such findings can arise only out of the pleadings of Defendants 1 and 2 as the plaintiff never made any reference to any transaction between the plaintiff and CANFINA. However, it is the specific defence of Defendants 1 and 2 that there was another transaction on 3-1-1992 whereunder the plaintiff agreed to sell IRFC bonds of face value Rs 100 crores to CANFINA and received the price of the same of Rs 95.43 crores (approx.) by a cheque which was acknowledged by the plaintiff by issuing a BR. The said receipt was subsequently returned discharged by CANFINA on receipt of the abovementioned IRFC bonds. It is the case of the second defendant that the said bonds were delivered to CANFINA by him and secured the discharge of BR given by the plaintiff to CANFINA. In support of such a plea, the second defendant examined a witness. The witness of the second defendant clearly spoke to the fact that there were two transactions in securities i.e. the sale and purchase of IRFC bonds of face value Rs 100 crores (as alleged by the second defendant) on 3-1-1992, whose evidence remains undisturbed as there was no cross-examination on this aspect by the plaintiff. Further, the said witness also spoke to the facts pleaded by the second defendant that the plaintiff had issued a BR to CANFINA acknowledging the receipt of the payment made by CANFINA towards the price of the IRFC bonds agreed to be sold by the plaintiff and the said BR was returned discharged by CANFINA to the plaintiff in view of the fact that CANFINA had received the delivery of the IRFC bonds of face value Rs 100 crores.

44. From the judgment under appeal, it is obvious that the Special Court accepted the defence of the second defendant at least to the extent of (*1*) the existence of an obligation on the part of the plaintiff to deliver IRFC bonds of face value Rs 100 crores, (*2*) the factum of delivery of the said bonds to CANFINA and (*3*) the return of the duly discharged BR by CANFINA.

45. Whether the cheque in question was issued as a part of the transaction which is alleged to be a "back-to-back" transaction between CANFINA Ltd., the plaintiff and the first defendant is one of the issues which necessarily arose on the above-extracted pleadings. The second defendant specifically pleaded and adduced some evidence to prove the existence of "back-to-back" transaction which remained unrebutted. The said transaction is completely suppressed by the plaintiffs.

46. The scandalous thing about the litigation is that the plaintiffs led no evidence. They merely tendered certain documents but did not bother to prove them in spite of a caution by the Special Court. By the judgment under appeal, it is recorded in this regard as follows:

> "*46.* The plaintiffs have led no oral evidence. The plaintiffs merely tendered documents. The first defendant attempted to lead evidence of a witness from CANFINA. However, the witness had no personal knowledge. The second defendant then led no further oral evidence. It also merely tendered some documents. The second defendant has led evidence of his dealer at the relevant time and tendered documents. The

third and fourth defendants have led no oral evidence, but merely tendered documents. At the time when these documents were being tendered it was clarified to all parties that mere tendering of documents would only establish that there was in existence such a document and that it stated what is stated. It was clarified that the contents of the documents would not be deemed to have been proved. It was clarified that any party who wanted to prove the truth of the contents had to do so by positive evidence. As stated above, except for second defendant, no other party has led any oral evidence."

Further at para 48 the judgment under appeal records as follows:

"*48.* Apart from this oral evidence, the Court has before it the evidence of what was claimed by the parties in correspondence. The truth of what was claimed in the correspondence and in the various documents has not been proved. However, in the absence of any contrary evidence the Court is proceeding on footing that what parties have stated to the Custodian is true."

47. The Special Court based its conclusions on Janakiraman Committee Report and the correspondence between the various parties (whose details are not even specified in the judgment).

48. We regret to say that the course adopted by the learned Judge of the Special Court of looking into the correspondence between the parties, which even according to the learned Judge had not been proved is not permissible in law. The Special Court Act though declares that the Court is not bound by the Code of Civil Procedure, it does not relieve the Special Court from the obligation to follow the Evidence Act. Further, the learned Judge extensively relied upon the second interim report of the Jankiraman Committee[13] on the ground that the same was tendered[14] by the first defendant.

49. Irrespective of the fact whether such a report is admissible in evidence or not, it appears from the judgment under appeal that the relevant part of the report is substantially in accordance with the version of the second defendant, as contained in his written statement. It is recorded by the judgment under appeal at para 45:

"In respect of the suit transactions the Janakiraman Committee notes that on 3-1-1992 the plaintiffs had entered into back-to-back transactions to purchase 9% IRFC bonds face value Rs 100 crores from the first defendant and sell the same to CANFINA. The Janakiraman Committee notes that the plaintiff's banker's receipt to CANFINA stands discharged without the plaintiffs having made any delivery whatsoever. The Janakiraman Committee notes that the plaintiffs banker's receipt stood discharged by CANFINA on 31-3-1992 by taking physical delivery of the bonds from Defendant 2 (herein). The Janakiraman Committee notes that

13 Committee set up by RBI on 30-4-1992 which submitted six reports and the Final Report was on 7-5-1993

14 Para 62 of the judgment: "As this document is tendered and relied upon by the first defendant they are bound by what it contains."

for the amount paid to the first defendant, the plaintiffs (herein) have made a claim which claim is being disputed by the first defendant (herein)."

50. It is well settled by a long line of judicial authority that the findings of even a statutory commission appointed under the Commissions of Inquiry Act, 1952 are not enforceable proprio vigore as held in *Ram Krishna Dalmia* v. *Justice S.R. Tendolkar*[15] and the statements made before such Commission are expressly made inadmissible in any subsequent proceedings civil or criminal. The leading judicial pronouncements[16] on that question were succinctly analysed by this Court in *T.T. Antony* v. *State of Kerala*[17], SCC paras 29-34. Para 34 of the judgment inter alia reads: (SCC p. 204)

"*34.* ... In our view, the courts, civil or criminal, are not bound by the report or findings of the Commission of Inquiry as they have to arrive at their own decision on the evidence placed before them in accordance with law."

51. Therefore, courts are not bound by the conclusions and findings rendered by such commissions. The statements made before such commission cannot be used as evidence before any civil or criminal court. It should logically follow that even the conclusions based on such statements can also not be used as evidence in any court. The Janakiraman Committee is not even a statutory body authorised to collect evidence in the legal sense. It is a body set up by the Governor of Reserve Bank of India obviously in exercise of its administrative functions,

"... the Governor, RBI set up a committee on 30-4-1992 to investigate into the possible irregularities in funds management by commercial banks and financial institutions, and in particular, in relation to their dealings in government securities, public sector bonds and similar instruments. The Committee was required to investigate various aspects of the transactions of SBI and other commercial banks as well as financial institutions in this regard."[18]

52. Its terms of reference are:

The Committee is required to specifically—

(*a*) enquire into the extent of non-compliance by banks and financial institutions with the guidelines of RBI regarding securities transactions including transactions in PSU bonds, units, etc.;

(*b*) enquire into the inadequacies in systems and procedures in force in these institutions generally and the extent of use of bank receipts

15 AIR 1958 SC 538

16 *Maharaja Madhava Singh* v. *Secretary of State for India in Council*, (1903-04) 31 IA 239; *M.V. Rajwade* v. *S.M. Hassan*, AIR 1954 Nag 71: 1954 Cri LJ 366; *Ram Krishna Dalmia* v. *Justice S.R. Tendolkar*, AIR 1958 SC 538; *State of Karnataka* v. *Union of India*, (1977) 4 SCC 608 and *Sham Kant* v. *State of Maharashtra*, 1992 Supp (2) SCC 521 : 1992 SCC (Cri) 765

17 (2001) 6 SCC 181 : 2001 SCC (Cri) 1048

18 *See* the Janakiraman Committee's first interim report, May 1992, p. 1.

(BRs) which have been in vogue in regard to the transactions in government securities and other instruments;

(*c*) suggest such corrective steps as may be necessary to have a more efficient and accountable system in the future;

(*d*) examine and determine the extent of malpractices, if any, indulged in by officials of banks and financial institutions, where their funds have been allowed to be used for speculative transactions by brokers and other intermediaries, and whether undue benefits have been thereby derived by brokers and others through unauthorised access to borrowed funds of the banks/financial institutions and fix responsibility therefor and recommend the action to be taken; and

(*e*) scrutinise the procedure adopted by Public Debt Offices (PDOs) of RBI in regard to the maintenance of SGL accounts and other related matters and suggest remedial measures to tone up the responsiveness of the system.

53. The report of such a committee in our view can at best be the opinion of the Committee based on its own examination of the records of the various banks (including the plaintiff and the first defendant) and the statements recorded (by the Committee) of the various persons examined by the Committee. In our considered view the report of the Janakiraman Committee is not evidence within the meaning of Evidence Act which the Special Court is bound to follow.

54. We find it difficult to approve the procedure followed by the Special Court to record such conclusions.

55. The first defendant summoned the Executive Vice-President, one Mr Prabhu of CANFINA and examined him. The said Mr Prabhu in his chief-examination categorically admitted that there was a security transaction dated 3-1-1992 between the plaintiff and CANFINA.[19] Interestingly, the plaintiff did not choose to cross-examine the said witness.

56. The only other witness examined in this case before Special Court is one Hiten B. Mehta who claimed that he was working at the relevant point of time (1992) with the second defendant as a Chief dealer. He also spoke to the existence of two transactions and the issue of a BR by the plaintiff to CANFINA as pleaded by the second defendant. He made a categorical statement in his chief-examination as follows:

"I got the discharged BR from CANFINA and delivered the same to NHB."

There is no cross-examination on behalf of the plaintiff in this regard.

57. Unfortunately, even the Custodian himself did not choose to prove the various letters alleged to have been received by him from various parties involved in the transaction, though the entire written statement of the Custodian is based on such correspondence.

19 On 3-1-1992 there were transactions in securities. On 3-1-1992 there was a transaction in securities between National Housing Bank and CANFINA. CANFINA had purchased 9% IRFC bonds f.v. Rs 100 crores from NHB.

58. Coming to the conclusion of the Special Court that only a part of the IRFC bonds are delivered to CANFINA by the second defendant is based on the contents of the Janakiraman Committee Report and the "correspondence". The Special Court recorded that the plaintiffs had on 30-3-1992 issued a cheque drawn on RBI in favour of Standard Chartered Bank for a sum of Rs 55,18,43,647.07. When the plaintiff sought to recover the said amount, Standard Chartered Bank, took a stand that at the behest of the second defendant they had delivered to CANFINA, IRFC bonds of face value Rs 80 crores and therefore, it was under no obligation to refund to the plaintiffs the amount of Rs 55 crores (approx.) as the same was paid to Standard Chartered Bank towards the price of IRFC bonds of face value Rs 80 crores which eventually came to be delivered to CANFINA by Standard Chartered Bank on behalf of the plaintiff Bank. There is absolutely no evidence on record regarding the payment of the abovementioned amount of Rs 55 crores (approx.) by the plaintiff Bank to Standard Chartered Bank except the Janakiraman Committee Report and the correspondence which is neither proved nor the content of the correspondence is explained. On the other hand, the Special Court recorded[20] with respect to the payment of Rs 55 crores (approx.) to Standard Chartered Bank by the plaintiff:

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20 The correspondence suggests that CANFINA received 9% IRFC bonds f.v. Rs 100 crores from the second defendant. Having received 9% IRFC bonds f.v. Rs 100 crores, CANFINA discharged the plaintiffs' banker's receipt and handed it back to the plaintiffs. The plaintiffs were thus initially inclined not to make a claim against the first defendant. However, it then turns out that the plaintiffs had on 30-3-1992 issued an RBI cheque in the name of Standard Chartered Bank in a sum of Rs 55,18,43,657.07. The said cheque had been accepted and encashed by Standard Chartered Bank. In the plaintiffs' records there is no clear indication as to for what transaction this cheque had been issued. The plaintiffs were therefore not sure for what this cheque had been issued. Thus at different times they claim/specify different securities. The Janakiraman Committee Report indicates Standard Chartered Bank has given credit of the proceeds of this cheque to one Growmore Research and Asset Management Co. Ltd. This is one of the group companies run by the second defendant. It must be mentioned that Growmore Research and Asset Management Co. Ltd. is also a notified party. The plaintiffs therefore made a claim against Standard Chartered Bank for the sum of Rs 55,18,43,657.07. Standard Chartered Bank then claimed that, at the behest of the second defendant, they had delivered to CANFINA 9% IRFC bonds f.v. Rs 80 crores. Standard Chartered Bank claimed that out of these 9% IRFC bonds f.v. Rs 80 crores they had delivered 9% IRFC bonds f.v. Rs 61.25 crores to CANFINA on behalf of the plaintiffs. Initially the plaintiffs dispute this claim. Initially they claim that in their record there was no such transaction and they had never authorised Standard Chartered Bank to make any such delivery. CANFINA however confirmed that out of the 9% IRFC bonds f.v. Rs 100 crores received from the second defendant they had received 9% IRFC bonds f.v. Rs 80 crores from Standard Chartered Bank. CANFINA confirms that these had been received towards the plaintiffs' liability under their banker's receipt. Thus, it would appear that the amount of Rs 55,18,43,657.07 received by Standard Chartered Bank was set off by Standard Chartered Bank against 9% IRFC bonds f.v. Rs 61.25 crores which it had delivered to CANFINA.

"In the plaintiff's record there is no clear indication as to for what transaction this cheque had been issued. The plaintiffs were, therefore, not sure for what this cheque had been issued."

59. In the background of the above discussed pleadings and evidence, we are of the opinion the suit is required to be dismissed on the ground that there is no evidence led by the plaintiff to establish its case.

60. We must also record our disapproval of the finding recorded by the Special Court that the plaintiff did not suppress the truth. We are of the opinion that the plaintiff approached the Special Court with unclean hands by suppressing the relevant material. We shall first discuss the nature of the suppression and then examine the legal consequences that should follow.

61. As already noticed that the plaint, as originally filed, stated that the cheque in question was drawn "in favour of the first defendant in respect of the sale by the first defendant to the plaintiff of 9% IRFC bonds of face value Rs 100 crores". But subsequently the plaint was amended omitting the reference of the purchase of the abovementioned IRFC bonds.

62. It is pertinent to note that Defendants 1, 2 and 5 pleaded and Defendants 1 and 2 adduced oral evidence to prove that the plaintiff incurred an obligation to deliver IRFC bonds of face value Rs 100 crores on 3-1-1992 to CANFINA Ltd. It, therefore, appears that in order to discharge its obligation to CANFINA to deliver the abovementioned bonds, the plaintiff sought to purchase the bonds from the first defendant and drew the cheque in question. We may also note that such a stand is not taken by the defendants for the first time in the written statement. The plaintiffs were aware of the stand of the first defendant in the light of the correspondence that took place between the first defendant and the plaintiff prior to the filing of the suit. Such knowledge on the part of the plaintiffs is obvious from the averments made in the plaint itself. In the background of such a stand of the first defendant and the stand of the plaintiff in the unamended plaint that its record revealed that the cheque in question was issued "in respect of the sale by the first defendant to the plaintiff of 9% IRFC bonds", the plaintiff owes a basic duty to the Court to explain in the plaint and prove by producing its records in evidence (*i*) as to how such a transaction came to be entered in its records, who was responsible for such entry, (*ii*) who took the decision to purchase the IRFC bonds from the first defendant, (*iii*) who signed the cheque in question and (*iv*) how the second defendant got custody of the cheque. None of this information is given in the plaint.

63. On the other hand, we cannot ignore the pleading of the third defendant who took a categorical stand that the decision such as the one to purchase or sell securities are taken at a higher level of the plaintiff Bank. It is only on the instructions of the appropriate higher authorities, cheques such as the one in question, are prepared. Assuming for the sake of argument that the cheque in question came to be handed over to the second defendant without the knowledge of the higher authorities, it is difficult to believe that those who are responsible for the management of the plaintiff Bank at a

higher level did not bother to verify till the scandal broke out as to how a debit of Rs 95 crores came to be made to the account of the plaintiff Bank — we are unable to believe that such a failure is only an accident. Even the judgment under appeal records that the plaintiff's top management "were aware of what was going on".

64. The suppression of the original case coupled with the very fact that the first defendant paid various amounts in accordance with the instructions of the second defendant after encashing the cheque in question coupled with the first defendant's consistent stand that the cheque was issued for the benefit of the second defendant, leads us to a possible inference that the first defendant acted on the instructions of some body high up in the administration of the plaintiff Bank. Neither of the banks explained the genesis of such practice. But from the very history of this litigation and the background in which the Special Court Act came to be passed, we can safely presume that both the Banks herein, (along with other banks), did not follow any procedure when it came to the dealings in which the second defendant was involved. Eventually when the bubble burst, everybody tried to disown the responsibility trying to project an image of innocence. The entire effort of the plaintiff in the suit, according to us, is to suppress all the relevant information and we are convinced that such a process is resorted to in order to shield the delinquent officers of the Bank (whoever they are) who are responsible for such dealings by taking shelter under the legal principles such as unjust enrichment and moneys had and received, etc. to recover the money paid by the plaintiff to the first defendant through the cheque in question.

65. Whether the payment in question was made in discharge of any existing legal obligation such as the one set up by Defendants 1 and 2 or not could be known only when the full facts are disclosed. But disclosure of full facts might (though we are almost certain) lead to trouble to somebody or the other in the management of the plaintiff Bank or perhaps both the Banks and God knows who else. It is equally irresponsible on the part of the first defendant to have acted on the instructions of the second defendant without there being any legal authority in writing on the part of the second defendant to issue instructions regarding the disbursement of the proceeds of the cheque in question. We may not be far from truth if we draw an inference that such payments were obviously made on the unwritten instructions by somebody in the plaintiff Bank. The whole attempt of both the Banks is to shield the officers on either side taking refuge under attractive legal pleas—which if examined in the context of the limited facts pleaded give a picture that the suit transaction is an innocuous transaction which unfortunately for the country is not. In our opinion the suit is a sheer abuse of the legal process.

66. On the other hand, the dispute such as the one on hand, where the contesting parties are either organs of the State or its instrumentalities, is better resolved through a Committee of Secretaries of the Government of India or the States, as the case may be, as directed by this Court on more than one occasion. Unfortunately, such orders remain unimplemented. In fact, it appears from the judgment under appeal that even in this case the Special

Court had directed such a settlement without any success. The Special Court in paras 2 to 5 of the judgment under appeal elaborately recorded the legal requirement of settling the dispute to the Committee of Secretaries and efforts made by the Special Court to have the matter so settled and eventually directed:

> "Officer on Special Duty is directed to send a copy of this judgment to the Ministry of Law and Ministry of Finance and the Governor of Reserve Bank of India with a request to take action on this and on the aspect set out in Paras 27, 73, 74, … "

67. Even during the pendency of the instant appeal, this Court on 18-2-2009[21], passed an order to the following effect:

> "These appeals are filed by State Bank of Saurashtra against National Housing Bank and others. Having regard to the dispute between these two public sector banks, we feel it appropriate that the matter be considered at the level of the Finance Minister, Union of India to explore the possibility as to whether there could be any settlement between the parties. Therefore, we adjourn these appeals and request the Finance Minister, Union of India to look into the matter and suggest any possibility of settlement between the parties. The parties would be at liberty to bring this order to the notice of the Finance Minister, Union of India.
>
> Adjourned by three months."

Still the Government did not think it fit to settle the matter.

68. By a Letter dated 11-6-2010, signed by one Raman Kumar Gaur, Under-Secretary to the Government of India, Ministry of Finance, Department of Financial Services, addressed to the Registrar of this Court, it was informed as under:

> "8. The Special Court had gone into all aspects of the matter including the transaction of NHB with Standard Chartered Bank and CANFINA before arriving at its conclusions. The Hon'ble Court has also gone into the alteration in the cheque, the initial stand of NHB before the Court, etc. The Court has even awarded costs to NHB and others looking into the conduct of SBS before it. The Hon'ble Court has also observed

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21 *State Bank of Saurashtra* v. *National Housing Bank*, Civil Appeal No. 2155 of 1999, order dated 18-2-2009 (SC), wherein it was directed:

> "These appeals are filed by State Bank of Saurashtra against National Housing Bank and others. Having regard to the dispute between these two public sector banks, we feel it appropriate that the matter be considered at the level of the Finance Minister, Union of India to explore the possibility as to whether there could be any settlement between the parties. Therefore, we adjourn these appeals and request the Finance Minister, Union of India to look into the matter and suggest any possibility of settlement between the parties. Parties would be at liberty to bring this order to the notice of the Finance Minister, Union of India. Adjourned by three months. IA No. 2 is allowed. Cause-title be amended accordingly."

that each transaction has to be dealt with independently and did not agree with the contention of SBS about satisfaction of its liability by delivery of bonds by Harshad Mehta to CANFINA. As far as an amicable solution is concerned, all along SBI has insisted that it be given 50% of total amount received by NHB for which NHB is not agreeable. Thus, it was felt that the Special Court has looked into all the above aspects of the matter and has given its well-reasoned judgment. It has therefore been decided, with the approval of Finance Minister, that there seems to be no reason to suggest any change in the decision of the Special Court."

A reading of the letter demonstrates utter callousness on the part of the Government in dealing with the matter. We must also place our disgust at the audacity of the author of the letter to state—

"that there seems to be no reason to suggest any change in the decision of the Special Court."

69. Apart from the question of propriety of the language employed in the said suggestion, the content of the letter indicates that both the plaintiff and the respondent Banks simply reiterated their respective stands before the Committee of Secretaries. No attempt appears to have been made by the Government to find out the truth as to (*1*) how the plaintiff Bank parted with a high denomination cheque and gave custody of the same to Harshad Mehta and (*2*) as to how the first defendant Bank paid the various amounts to the dictation of Harshad Mehta in the absence of any authorisation by the plaintiff Bank. Be that as it may, if really the Government believed that the judgment of the Special Court does not require any interference, nothing stopped the Government from directing both the Banks to withdraw their appeals before this Court.

70. The whole exercise appears to be an eyewash. A thinly veiled scorn for the orders of this Court.

71. The professed purpose of the Special Courts Act, the backdrop of the scandal that shook the nation, and the manner in which the litigation was conducted coupled with the absolute indifference of the Government to get at the truth only demonstrates the duplicity with which Governments can act.

72. We dismiss the suit and set aside the decree in toto. The consequences follow insofar as the appeals are concerned. But in the circumstances, we do not award any costs.

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