

“The Hon’ble Special Court passed an order in MP 285 of 1995 laying down the law that it is the duty of Hon’ble Court to recover every attached asset belonging to notified persons found to be lying in the hands of third parties.”

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A. K. Menon, Custodian Vs. M/s. Modern Chemical Corporation

Court in **Mechalec Engineering (AIR 1977 SC 577)** which provides thus

“(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the Court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence.”

The amount equivalent to the aforesaid amount shall be computed by the Prothonotary & Senior Master on the basis of the rate of exchange as prevailing today and shall be deposited within a period of 8 weeks from today, in this Court.

16. On such deposit, the suit be transferred to the list of Commercial Causes. The Defendants shall file their Written Statement within 8 weeks thereafter. Inspection and discovery will be completed within 8 weeks thereafter.

17. In the event the amounts are deposited as aforesaid, the Prothonotary & Senior Master to initially deposit the said amount in a Nationalized Bank, for a period of one year and thereafter, for equal successive periods, till disposal of the suit.

18. On failure to deposit the aforesaid amount, liberty to the Plaintiffs to apply for further orders.

19. Summons for Judgment is disposed of in the aforesaid terms. No costs.

Order accordingly.

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

HON’BLE MR. JUSTICE S. N. VARIAVA, JUDGE, SPECIAL COURT

A. K. Menon, Custodian
Vs.

M/s. Modern Chemical Corporation & ors.

Misc. Petition No.285 of 1995
2nd August, 1996.

Shri. SHIRAJ RUSTOMJEE, i/b P.M. MITHI & CO. for the Petitioner.

Mr. PRADEEP SANCHETI with Mr. VIREN JANI i/b MAYUR NARENDRA & CO. for Respondents No.1.

Mr. D. P. DESAI i/b M/s. M. K. AMBALAL & CO. for Respondent No.2

Mr. L. S. VYASI i/b Mr. R. C. SIDHWA for Respondent No.3

Special Court (Trial of Offences Relating to Transactions in Securities) Act (1992), Ss.3(3), 3(4), 11 - Limitation Act (1963), Arts.19, 20, 21, 22 - Application of Custodian for return of money belonging to lender from third party - Contention that application barred by limitation - Held, application not one for recovery of money but merely bring to notice of court that third party is in possession of attached assets and are refusing to give them - As Third Parties to whom funds diverted attempt to secrete the funds - U/s. 3(3) what gets attached is the right in the money itself - Once money stands attached then no application be made by parties for recovery of money - When right in money existed on date of notification

then even if right to recover gets barred by limitation the property is statutorily attached - Limitation Act not to apply to acts of court as duty of Court is to recover the properties. (Para 19)

CASES CITED

PARA

Babu Manmohan Das Vs. Baldeo Naraiyan Tandon, AIR (1938) Privy Council 66 4

C. S. Ananthnarayana Iyer Vs. Sivaramakrishna Iyer. AIR (1943) Madras 370 5

Savitra Khandu Beradi Vs. Nagar Agricultural Sale and Purchase Co-operative Society Ltd. Ahmednagar, AIR (1957) Bombay 178 5

Nithoor Thimmanna Bhat Vs. Aithappa Adyanthaya, AIR (1940) Madras 908 5

Beni Singh Vs. Barhamdeo Singh, AIR (1916) Calcutta 231 6

ML. Laxmibai Vs. Tukaram. AIR (1930) Nagpur 206 6

Mohammed Akbar Khan Vs. Attar Singh, (1936) PC 171 8

V.E. A. Annamalai, Chettair Anr. Vs. S.V.V.S. Veerappa Chettiar. AIR (1956) SC 12 8

Ram Janki Devi & Anr. V/s. M/s. Juggilal Kamlat, AIR (1971) SC 2551 8

JUDGMENT :- By this Petition the Custodian is bringing to the notice of the Court that the 1st Respondent is bound and liable to pay to the 2nd Respondent, who is a Notified Party, a sum of Rs. 3,30,000/-.

2. In the Affidavit the 1st Respondent does not deny that a sum of Rs. 3,30,000/- was advanced to them as a loan by the 2nd Respondent in the year 1986. The 1st Respondent, however, claims that this was an interest free loan. The 2nd Respondent also

admits that a friendly loan of Rs. 3,30,000/- was given to the 1st Respondent in the year 1986. The 2nd Respondent also claims that this was an interest free loan. The only defence taken up is of limitation.

3. Mr. Sancheti submitted that the period of limitation would run from the date of the loan. He submitted that this would be the position under Articles 19, 20 and 21 of the Limitation Act. He submitted that in any view of the matter the claim is barred by the Law of Limitation.

4. In support of his submission he relied upon Halsbury's 4th Edition, Volume 28 para 663 on page 299 wherein it has been stated that if there is no period specified then the statute would run from the date of the loan. Reliance is also placed upon the authority in the case of **Babu Manmohan Das Vs. Baldeo Naraiyan Tandon & Ors.** reported in **AIR (1938) Privy Council Pg.66.**

5. As against this Mr. Rustomjee, on behalf of the Custodian, submits that it is settled Law that the Limitation Act does not bar the right but only the remedy. In support of this he relies on the authorities in the cases of **C. S. Ananthnarayana Iyer Vs. Sivaramakrishna Iyer & Anr.** reported in **AIR (1943) Madras Pg. 370**, **Savitra Khandu Beradi Vs. Nagar Agricultural Sale and Purchase Co-operative Society Ltd. Ahmednagar & Anr.** reported in **AIR (1957) Bombay Pg. 178** and **Nithoor Thimmanna Bhat Vs. Aithappa Adyanthaya** reported in **AIR (1940) Madras Pg.908.**

6. Mr. Rustomjee submits that as the right was not barred, on the 2nd Respondent getting notified, the property got attached under Section 3(3) of the Special Court (Trial of Offences Relating to Transaction in Securities) Act (hereinafter called the said Act). Mr. Rustomjee submits

that once the property got attached then that property could only be dealt with in the manner as directed by this Court. Mr. Rustomjee submitted that, therefore, it is this Court which is then dealing with the property. He submits that the Court is then bound to issue directions for preservation and protection of the attached asset so that it is available for distribution. He submits that as it is this Court which is dealing with the property the period of limitation cannot apply. He submits that period of limitation cannot apply to acts which have to be done by the Court. In support of this he relied upon the case of **Beni Singh Vs. Barhamdeo Singh** reported in AIR (1916) Calcutta, Pg.231 and in the case of **ML. Laxmibai Vs. Tukaram** reported in AIR (1930) Nagpur, Pg.206.

7. Mr. Rustomjee further submits that in any case this would be covered not by Articles 19,20, or 21 of the Limitation Act but by Article 22 of the Limitation Act. He submits that from the Affidavits filed by the 1st and the 2nd Respondents it was clear that no period was provided for repayment. He submits that neither party has pleaded that the amount was not repayable on demand. He submitted that both the parties have further stated that it was interest free. He submitted that all this clearly discloses that the intention was to keep the amount deposited with the 1st Respondent till such time as it would be required back by the 2nd Respondent. He submitted that what is important is the intention of the parties.

8. In support of the above Mr. Rustomjee relied upon the judgments in the cases of **Mohammed Akbar Khan Vs. Attar Singh and Ors.** reported in (1936) Privy Council Pg.171, **V.E. A. Annamalai, Chettair Anr. Vs. S.V.V.S. Veerappa Chettiar & Ors.** reported in AIR (1956) Supreme Court Pg.12 and **Ram Janki Devi & Anr. V/s. M/s. Juggilal Kamlatpat** reported in AIR (1971)

Supreme Court, Pg.2551.

9. Mr. Rustomjee submitted that even if this is presumed to be a loan then it would clearly be a loan which is not payable on demand. He submitted that, therefore, the Limitation would not start running till the demand is made. He submitted that the demand was made only by this Petition and, therefore, it is within the period of Limitation.

10. Mr. Sancheti very fairly admitted the legal position that the Limitation Act does not bar the right but only the remedy. He submitted that even though the right may not be barred only the relationship of debtor and creditor continued. He submitted that the only right which the 2nd Respondent had was a right to recover the monies lent to the 1st Respondent. He submitted that the only method of exercising that right was to come to Court. He submitted that even though the right may not have been extinguished still that right could not be enforced in a Court of Law and that therefore no claim could be made even by a Court.

11. Mr. Sancheti submitted that the provisions of the said Act made no difference to the above position. He submitted that under Section 3(3) what stood attached was merely the right to recover. He submitted that the right to recover having been barred by Limitation even prior to the Notification, in effect nothing stood attached. He submitted that under Section 3(4) the Court merely has power to give directions regarding attached properties. He submitted that as the "right to recover" was itself barred there are no directions which the Court can give. Mr. Sancheti submitted that the attachment did not divest the 1st Respondent of the possession of the property and that such divestment could only take place by virtue of recovery proceedings which were now barred.

12. Mr. Sancheti further submitted that in cases of monies lent there could be no right in any particular coin or currency note. He submitted that the lender no longer remained the owner of the particular coin or currency note which was given to the debtor. He submitted that in cases of money the only right of the lender was to get back an equivalent. He submitted that for this reason also there would be no attachment of any monies in the hands of the third parties. He submitted this also would show that the attachment could only be of the right to recover which is already barred.

13. Mr. Sancheti further submitted that this was an interest free loan. He submitted that this was not a deposit and Article 22 would not apply. He submitted this was admitted by the 2nd Respondent. He submitted that both parties to the transaction state that it is a loan and it is not open to the Custodian to contend that a contrary intention must be deduced.

14. This Application raised important questions. It is a well-known fact of which this Court has already taken judicial notice that a large amount of public monies had been siphoned out by certain persons from Banks and Financial Institutions. This large amount of public monies, after being siphoned out, had been diverted into various channels. Even after all these years it has not been possible to trace a large amount of these monies. The object and purpose of the said Act have to be looked at. In my view the first object was to punish persons who were so guilty of siphoning off the monies. But that was not the only purpose. The second purpose of the said Act is to recover and distribute back the monies to the various Banks and Financial Institutions. The Act undoubtedly has been very loosely drafted but that was because of the pressing circumstances then prevailing. Under Section 3(4) as well as Section 11 of the said Act, all the properties which stand attached can only be dealt with in

the manner as directed by the Special Court. This necessarily means that it is only this Court which can issue directions in regard to properties which are attached. This also means that if the third parties are shown to be in possession of properties which belong to notified parties and they are wrongfully refusing to hand over that property then the Court can pass directions for recovery of these properties. Thus one of the functions statutorily entrusted to this Court is recovery of properties of notified parties. In such matters the Custodian is neither recovering nor filing any proceedings for recovery of any property. All the Custodian is doing is bringing to the notice of the Court the fact that the third parties are in possession of attached assets and are refusing to hand them over.

15. There is a purpose why the Court has been entrusted this function. One of the purposes being that Limitation would not apply to acts of Court. This was necessary as it was envisaged that the notified parties and third persons to whom the properties were diverted would make attempts to secrete the properties. It may, therefore, be years before the property is located. In this case also it must be noticed that neither the Custodian nor the Court would have come to learn about this loan if the Income Tax Department had not brought it to the notice of the Custodian.

16. This case is an example of how notified parties try to secrete the properties. This Court, had, as far back as 16th August, 1993, directed the 2nd Respondent to disclose on Affidavit all properties movable and immovable whether in India or abroad, whether held by him or by someone else on his behalf. The 2nd Respondent in spite of such a clear Order tried to secrete properties by merely filing an Affidavit stating that in the title to the Application he has been described as a Managing Director and that as a Managing

Director he did not hold any assets. When this was brought to the notice of the Court by an Order dated 4th November, 1993 it was clarified that the 2nd Respondent was to disclose all his assets whether held personally or as Managing Director or in any other capacity. The C.B.I. as well as the Income Tax Department were directed to make available to the 2nd Respondent inspection of all documents and materials so that he could comply with the Order. In the said Order it has also been clarified that if the 2nd Respondent still did not disclose any assets it would amount to disobedience of the Order of the Court and would amount to his having made false statement on oath.

17. The 2nd Respondent then files an Affidavit dated 8th October, 1993 disclosing some assets. The Custodian finds out that still a large number of assets have not been disclosed. It must be mentioned that the amount recoverable in this Petition was not disclosed till this stage. The Custodian, therefore, takes out a Contempt Petition. In the Contempt Petition an unconditional apology is tendered and the Court is assured that now all the assets would be disclosed. The apology is accepted and a further opportunity is granted to disclose all assets. The 2nd Respondent now files another Affidavit dated 3rd October, 1994. Again it is found that all assets are not disclosed even in this Affidavit. Again thanks to the Income Tax Department it is learnt that a loan in a sum of Rs. 76,81,000/- given to his daughter-in-law has not been disclosed till date. It is also found that a loan given to a Company in which, at the relevant time, the 2nd Respondent was Director, in the sum of Rs.1.42 crores, has also not been disclosed. Therefore, the Court now issues a Suo Motu Contempt Notice. The 2nd Respondent now files a further Affidavit dated 16th October, 1995. In this Affidavit for the first time the transaction in question is disclosed. Thus it

took Orders after Orders to get the 2nd Respondent to disclose all his assets.

18. The 1st Respondent also never gave any limitation to the Custodian. After all parties got notified, the Custodian had issued a Public Notice calling upon all debtors to inform the Custodian whether they owed any monies or properties to notified parties or whether they are in possession of any properties belonging to the notified parties. In India the law is that the debtors must find the creditor. Thus all debtors were bound to come to Court of their own or inform the Custodian on Notification. In any case all these debtors became bound to inform the Custodian after the Public Notice. The 1st Respondent also never sent any intimation to the Custodian. As stated above, these monies would have remained secreted and siphoned away had it not been for the Income Tax Department.

19. It is thus that the said Act lays down a responsibility on the Court to recover the properties. So far as monies are concerned, undoubtedly the particular coin or particular currency note given to a debtor would no longer be available. That however does not mean that the lender does not have any right to monies. What is payable is the loan i.e. the amount which has been lent. The right which the creditor has is not a "right to recover" the money. The creditor has the title/right in the money itself. An equivalent amount is recoverable by him and title in an equivalent amount remains in the lender. Thus the property which a notified party would have is not the "right to recover" but the "title in the money itself". Thus under section 3(3) what would stand attached would be the title/right in the money itself. Of course what would be recoverable would be an equivalent of that money. Once the money stands attached then no application is required to be made by any parties for recovery of that money, it is then

the duty of the Court to recover the money. No period of Limitation can apply to any act to be done by a Court. Therefore, in all such Applications the only question which remains is whether on the date of the Notification the right in the property existed. If the right in the property existed then irrespective of the fact that the right to recover may be barred by Limitation there would be a statutory attachment of that property. Once there is a statutory attachment of that property the Court is duty bound to recover it for the purposes of distribution. There can be no period of Limitation for acts which a Court, is bound to perform. In this case since the Court is compulsorily bound to recover the money there can be no limitation to such recovery proceedings.

To be remembered that Section 3(3) as well as Section 13 provide that provisions of the said Act would prevail over any other law. This would include the Limitation Act.

20. In this view, it becomes unnecessary to decide whether or not this was a loan or a deposit. Therefore, in this Petition I do not decide this question.

21. After the Court has expressed the above view, Mr. Sancheti after taking instructions from the 1st Respondent, who is present in Court, states that the 1st Respondent is now willing to submit to a Decree or admission in a sum of Rs. 3,30,000/- with interest at 15% per annum from the date of the Notification till payment. He applies for installments to enable the decretal amount to be paid within a period of three years from today. Accordingly, there will be a Decree in a sum of Rs. 3,30,000/- alongwith interest thereon at the rate of 15% per annum from 2nd July, 1992 till payment. The decretal amount, alongwith the interest thereon, to be paid in equal quarterly installments so as to complete all installments within a period of three years

from today. The first of such quarter, installment to be paid on or before 31st October, 1996. Each and every subsequent installments to be paid at the end of each succeeding quarter. In the event of any single default the entire decretal amount or the balance then remaining due to become payable forthwith and the Decree to be executable forthwith. The installments amounts to be adjusted first towards interest and then towards the principal, if any. Respondent No.1 to pay to the Custodian and the Income Tax Department costs fixed at Rs.5,000/- each.

Petition allowed.

2002(1) ALL MR 185

IN THE HIGH COURT OF JUDICATURE AT
BOMBAY

**N.J.PANDYA, SMT.RANJANA
DESAI & SHRI.V.C.DAGA, JJJ.**

Romila Jaidev Shroff
Vs.

Jaidev Rajnikant Shroff

Notice of Motion No.3254 of 1999
IN Suit No.5885 of 1999.

5th May, 2000.

Mr.C.U.SINGH with Mr.SANJAY UDESHI i/b SANJAY UDESHI & Co. for the Plaintiff.
Mr.SHEKHAR NAPHADE with Mr.J.S.SALUJA i/b M/s.MAHIMKAR & MAHIMKAR for the Defendant in support of the Reference.
Mr.ANAND GROVER with Ms.F.MOOSA for Intervenors.
Mr.R.KUMAR for the Inventors.

**Family Courts Act (1984), S.8 - Expression
"District Court" - Expression would include**