

**“The Hon’ble Supreme Court passed an order in CA 6416 of 2005 and quashed and set aside the order of Special Court directing sale of properties of Gurukripa Trust by interpreting the judgment of Hon’ble Supreme Court in the case of Harshad Shantilal Mehta Vs Custodian reported as (1998) 5 SCC 1 by accepting the contentions of the Appellant that under the Torts Act only taxes are recoverable and not interest and penalty in terms of answer to Question No.5 in the above judgment. It is only in case penalty or interest is found to be recoverable, the Special Court can then examine whether out of the monies lying with the Custodian any amounts should be released towards penalty and interest. That even in case of Mehtas in violation of the above judgment the Custodian has been including all claims of interest or penalties in the liabilities of notified entities and thereafter on the basis of it has sold vast quantities of movable and immovable assets of Mehtas.”**

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL NO.6416 OF 2005**

**GURUKRIPA TRUST**

APPELLANT(S)

VERSUS

**THE CUSTODIAN & ORS.**

RESPONDENT(S)

WITH

CIVIL APPEAL NO.7234/2005

CIVIL APPEAL No.7185/2005

O R D E R

These appeals have been preferred by the appellants to assail the common impugned order dated 22.09.2005 passed by the Special Court (Trial of Offences Relating to Transactions in Securities) at Bombay in Miscellaneous Application No.370 of 2003, under the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992, (hereinafter referred to as the ‘Act’) to the extent that the appellants seek to put on sale the following properties :

- (1) Gurukripa, with outhouse No.20  
Arun Road, Kirkee, Pune.
- (2) Flat, Mehta Mahal, Mumbai.

Signature Not Verified  
Digitally signed by  
SANJAY KUMAR  
Date: 2016.04.16  
16:29:16 IST  
Reason:

An interim order interdicting the sale of properties was passed. Now when the appeals have come up for hearing,

undisputedly, much water has flown since the filing of the appeals.

It is submitted before us that the only dues which are now payable are of the Income Tax Department. The said Department has filed an affidavit before us stating that the net tax liability as on 31.07.2018 is Rs.135,201,495/-. The chart annexed to this affidavit shows that the total liability of tax as per the final assessment is Rs.80,520,740/- (according to Mr. Huzefa Ahmadi, learned Senior Counsel appearing for the appellant(s), this even includes a part of the period beyond the notified period but that issue for the time being is not being pressed). The remaining liability is towards the interest and penalty.

The aforesaid chart also shows that the taxes recovered by the Income Tax Department from the Custodian under the Act is Rs.247,881,768/-. Therefore, the next tax liability inclusive of penalty and interest is said to be Rs.135,201,495/- .

We are also informed by the learned counsel appearing for the Custodian appointed under the said Act/Respondent No.1 that the amount lying with the Custodian, the Income Tax Authority being the only claimant, is Rs.11.71 crore (approx.).

Mr. Ahmadi, learned Senior counsel for the appellant(s) has drawn our attention to the judgment of this Court in *Harshad Shantilal Mehta vs. Custodian & Ors.*

- (1998) 5 SCC 1, most specifically paragraphs (37) and (38) which are reproduced as under :

“Question 5

37. One other connected question remains: whether "taxes" under section 11(2)(a) would include interest or penalty as well? We are concerned in the present case with penalty and interest under the income Tax Act. Tax, penalty and interest are different concepts under the income Tax Act. The definition of "tax" under section 2(43) does not include penalty or interest. Similarly, under section 157, it is provided that when any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer shall serve upon the assessee a notice of demand as prescribed. Provisions for imposition of penalty and interest are distinct from the provisions for imposition of tax. Learned Special Court Judge, after examining various authorities in paragraphs 51 to 70 of his judgment, has come to the conclusion that neither penalty nor interest can be considered as tax under section 11(2)(a). We agree with the reasoning and conclusion drawn by the Special Court in this connection.

Question 6

38. The Special Court has, in the impugned judgment, also dwelt at some length on the question whether it can absolve a notified person from imposition of penalty or interest after the date of the notification. Since the liabilities covered under section 11(2)(a) are only liabilities arising during the period 1.4.1991 to 6.6.1992. and do not cover penalty and interest, this question does not really arise. In any case, interest or penalty for any action or default after the date of the notification, are not covered by the Act. However, we must reiterate that a taxing statute is a code in itself for imposition of tax, penalty or interest. The remedy of a notified person who is assessed to penalty or interest, after the notified period, would be to move the appropriate authority under the taxing statute in that connection. If it is open to him under the relevant taxing statute to contend that he was unable to pay his taxes on account of the attachment of all his properties under the Special Court Act, and that there is a valid reason why penalty or

interest should not be imposed upon him after the date of notification, the authorities concerned under the taxing statute can take notice of these circumstances in accordance with law for the purpose of deciding whether penalty or interest can be imposed on the notified person. The Special Court is required to consider this question only from the point of view of distributing any part of the surplus assets in the hands of the Custodian after the discharge of liabilities under section 11(2)(a) and 11(2)(b). The Special Court has full discretion under section 11(2)(c) to decide whether such claim for penalty or interest should be paid out of any surplus funds in the hands of the Custodian."

It is the contention of Mr. Ahmadi, learned Senior Counsel that what is recoverable under the said Act is only the taxes and not interest and penalty in view of answer to question no.5 in the aforesaid judgment.

On the other hand, Mr. Vikramjit Banerjee, learned Additional Solicitor General appearing for the respondent no.3/Department, seeks to draw strength from the answer to question no.6 in the last few lines of paragraph 38. This is so as the observations made are that the Special Court has full discretion to decide whether such claims, penalty or interest should be paid out of any surplus fund in the hands of the Custodian.

On analysis of the aforesaid judgment, we are inclined to accept the contentions of Mr. Ahmadi, learned Senior Counsel for the appellant(s).

This is so as it has been clearly stated that penalty or interest cannot be considered as taxes under section 11(2) of the said Act. For convenience of reference, we are

reproducing the said sections as under :

"11. Discharge of liabilities -

(1) Notwithstanding anything contained in the Code and any other law for the time being in force, the Special Court may make such order as it may deem fit directing the Custodian for the disposal of the property under attachment.

(2) The following liabilities shall be paid or discharged in full, as far as may be, in the order as under :-

(a) all revenues, taxes, cesses and rates due from the persons notified by the Custodian under sub-section (2) of Sec.3 to the Central Government or any State Government or any local authority

(b) all amounts due from the person so notified by the Custodian to any bank of financial institution or mutual fund; and

(c) any other liability as may be specified by the Special Court from time to time."

The Legislature in its wisdom has thus referred to "all revenues, taxes, cesses and rates" in clause (a) of sub-section (2) of section 11, while in clause (b) of sub-section (2) of section 11 where it is so desired the reference is to "all amounts".

The reading of paragraph 38 of *Harshad Shantilal Mehta (supra)* also supports the aforesaid contentions as it has been observed that the interest or penalty for any action or default after the date of the notification are not covered by the Income Tax Act. What the latter portion of the paragraph refers to is that the tax liability as such is not extinguished so far as penalty or interest is concerned for which purposes the competent authority under the Taxing Statute has to be approached. For completion of

facts, we may add that an appeal has been filed by respondent no.2 before the appellate authority in respect of the penalty and interest, based on plea that on account of attachment of the properties under the said Act, the liability could not be met. The appeal is still pending and needs now urgent disposal.

What the Special Court is really required to do is that in case such penalty or interest is found to be recoverable, the Special Court would examine whether out of the moneys lying with the Custodian, the amount should be released towards the penalty and interest to the competent authority.

In view of the aforesaid legal position and the recovery of tax having been already made by the Income Tax Department, or in fact, beyond that as substantive part of penalty and interest also stands recovered while the remaining amount of penalty and interest is covered by the amount lying with the Custodian except to the extent of Rs.1.8 crore (approx.), no part of the tax amount under section 11(2)(a) of the said Act would remain as existing liability.

The only plea raised before us by the learned Senior Counsel appearing for the appellant(s) is that the sale of the property should not take place in the aforesaid facts and circumstances of the case.

We accept the aforesaid plea. Accordingly, we allow these appeals and set aside the impugned order passed by

the Special Court (Trial of Offences Relating to Transactions in Securities) at Bombay, to the extent that the sale of aforesaid property was directed. Parties to bear their own costs.

We make it clear that we are not commenting on the aspect whether the beneficial interest of the notified party in the Trust can be sold of which respondent no.2 - B. C. Dalal, is the sole beneficiary. That point does not survive of consideration in view of the subsequent developments.

.....J  
[S.A. BOBDE]

.....J  
[SANJAY KISHAN KAUL]

.....J  
[INDIRA BANERJEE]

NEW DELHI;  
APRIL 09, 2019.

ITEM NO.2

COURT NO.2

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.6416/2005

GURUKRIPA TRUST

Appellant(s)

VERSUS

THE CUSTODIAN &amp; ORS.

Respondent(s)

WITH C.A. No.7234/2005 (IX)

C.A. No.7185/2005 (IX)

Date : 09-04-2019 These appeals were called on for hearing today.  
CORAM :HON'BLE MR. JUSTICE S.A. BOBDE  
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL  
HON'BLE MS. JUSTICE INDIRA BANERJEEFor Appellant(s) Mr. Huzefa Ahmadi, Sr. Adv.  
Mr. Aravindh S., AORFor Respondent(s) Mr. Arvind Kumar Tewari, AOR  
Mr. Percy Billimoria, Adv.  
Mr. Abhishek Tewari, Adv.Mr. Vikramjit Banerjee, ASG  
Mr. Arijit Prasad, Adv.  
Mr. H.R. Rao, Adv.  
Mrs. Anil Katiyar, AORUPON hearing the counsel the Court made the following  
O R D E R

These appeals are allowed in terms of the signed order.

Pending interlocutory applications, if any, stand disposed  
of.(SANJAY KUMAR-II)  
COURT MASTER (SH)(INDU KUMARI POKHRIYAL)  
ASSISTANT REGISTRAR

(Signed Order is placed on the file)