

“The Hon’ble Special Court passed an ex-parte decree of Rs.16.25 Crores with interest @ 15% p.a. in favour of SBI Caps in MP 61 of 1992 and it was clarified that it was executable only against the estate of late HSM.”

BEFORE THE SPECIAL COURT CONSTITUTED UNDER THE SPECIAL
COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN
SECURITIES) ACT, 1992

MISC. APPLICATION NO. OF 2003

IN

MISC. PETITION NO.61 OF 1992

SBI Capital Markets Limited ... Petitioners

Versus

Harshad S. Mehta and Ors. ... Respondents

Mr V.R. Dhond i/b M/s Little & Co. for Petitioners. Mr J.-Chandran i/b M/s P.M.
& Mithi and Co. for Respondent No.2/Custodian.

CORAM : D.K. DESHMUKH J.

JUDGE, SPECIAL COURT

DATE : 25TH JUNE 2003

P.C.:

1. The petitioner – SBI Capital Markets Ltd., by this petition, seeks a decree against the estate of the deceased respondent No.1 -- Harshad Mehta. The relevant facts are that the original respondent No.1 offered to sell units of Unit Trust of India's 1965 scheme to the petitioners. He also agreed to

repurchase the same from the petitioners at predetermined rate. Pursuant to that contract, contract notes dated 30th March 1992, 3rd April 1992, 20th April 1992 and 21st April 1992 were executed. The purchase was to take place on 29th April 1992, 4th May 1992, 20th May 1992 and 6th May 1992 respectively.

Towards the first contract note, the petitioners issued a cheque in favour of the original respondent No.1 for an amount of Rs.16,25,00,000/-.

The amount was credited to the account of the original respondent No.1 with the State Bank of India, Bombay Main Branch, Fort, Bombay 400 023. However, according to the petitioners, though the respondent No.1 received the money, he never handed over the units which he had agreed to sell to the petitioners. Thereafter, there was correspondence between the parties, in the sense that the petitioners wrote to the original respondent No.1 for units or for refund of the money, but there was no reply. Ultimately, after the respondent No.1 was notified under the Special Courts Act, the present petition was filed for decree against the original respondent No.1. During the pendency of the petition, the original respondent No.1 has been served with the petition and he has filed an affidavit dated 14th June 1993. The only defence that was raised was as he is being prosecuted in criminal court, he cannot be forced to file his reply in the present proceedings as it amounts to forcing him to disclose his defence in the criminal proceedings.

He also claimed that he has counter claim against the petitioners, but no counter claim has actually been filed.

After the death of the original respondent No.1, the legal representatives of the deceased respondent No.1 were brought on record. The present respondent No.1(b) – Mr Aatur Harshad Mehta has filed an affidavit dated 8th October 2003 stating therein that his is not claiming any share in the estate of the original respondent No.1. He has further stated that according to the will of the original respondent No.1, the entire estate of the respondent No.1 has been bequeathed to his mother Smt Jyoti, the present

respondent No.1(a). An affidavit has also been filed by the respondent No.1(c) – Smt Rasila on 18th October 2002. She has also stated that she does not claim any estate left behind by the original respondent No.1 and as per his will, his entire estate has been bequeathed to respondent No.1(a). The respondent No.1(a) though served, has neither appeared nor filed any reply. The learned counsel appearing for petitioners, however, stated that the property of the original respondent No.1 has been attached by the Custodian and therefore, the petitioners will be satisfied if for the decree that may be passed in favour of the petitioners, only the estate left behind by the deceased respondent No.1 is considered. So far as the affidavit filed by the deceased respondent No.1 that he cannot be forced to file any reply on merits is concerned, that contention cannot be accepted in view of the judgment of this Court dated 29th/30th September 1994 and 3rd October 1994 in miscellaneous petition No.27 of 1994 (Standard Chartered Bank v/s A.K. Menon and others). It is clear from the documents produced on record that the amount was paid by the petitioners to the respondent No.1 and it was credited in his account with the State Bank of India. In the present petition, the petitioners are seeking only a decree for the amount which was paid by the petitioners to the respondent No.1 and interest on that amount. In these circumstances therefore, this petition is granted in terms of prayer clause (a) with the modification that the rate of interest shall be 15% p.a. instead of 25% p.a. as claimed in this prayer. It is clarified that for execution of the decree, only the estate left behind by the deceased respondent No.1 can be considered.

True copy
Advocate

Certified copy expedited.
