

"The Hon'ble Special Court passed an ex-parte decree against the estate of late HSM in favour of SBI for Rs.706.98 Crores together with interest @ 15% p.a. SBI had pleaded that the 3 legal heirs viz. Smt Jyoti Mehta, Smt Rasila Mehta and Shri Aatur Mehta would be liable only to the extent of inheritance from the estate of HSM."

IN THE SPECIAL COURT [CONSTITUTED UNDER THE TRIAL OF
OFFENCES RELATING TO TRANSACTIONS IN SECURITIES ACT 1932] AT
BOMBAY.

MISC PETITION NO 63 OF 1992

1. State Bank of India, a Corporation)
incorporated under the provisions of)
The State Bank of India Act, 1955 and)
having its local head office at State Bank)
Bhavan, Madame Cama Road, Bombay -)
400 021 and a branch office at Bombay)
Samachar Marg, Bombay 400 023)
2. National Housing Bank, a wholly owned)
subsidiary of the Reserve Bank of India,)
incorporated under The National Housing)
Bank Act, 1987, having its Registered office)
at Bombay life Building, 3rd floor, 45, Veer)
Nariman Road, Bombay - 400 023) ... Petitioners

Versus

- 1 (a) Mrs. Jyoti Harshad Mehta, Indian inhabitant,)
residing at 32, Madhuli, Dr. Annie Besant)
Road, Worli, Mumbai 400 018 and having)
her office at 1205/6, Maker Chamber V, 221)
Nariman Point, Mumbai - 400 021)
- 1 (b) Mr. Aatur Harshad Mehta, Indian inhabitant)
residing at 32, Madhuli, Dr. Annie Besant)
Road, Worli, Mumbai 400 018 and having)
his office at 1205/6, Maker Chamber V, 221)
Nariman Point, Mumbai - 400 021)
- 1(c) Mrs. Rasila Shantilal Mehta Indian Inhabitant,)
residing at 32, Madhuli, Dr. Annie Besant)
Road, Worli, Mumbai 400 018 and having)
her office at 1205/6, Maker Chamber V, 221)
Nariman Point, Mumbai - 400 021)
2. Mr. A.K. Menon, the Custodian, appointed)
under the Special Court (Trial of Offences)
Relating to Transactions in Securities Act,)
1932, having his Bombay office at 27th floor,)
Stock Exchange, Dalal Street, Bombay 400 001) ... Respondents

Mr. K S Cooper, senior counsel with Mr. Janak Dwarkadas, senior counsel and
Mr. T.K. Cooper i/b Little & Co., for State Bank of India / Petitioner No.1

Petitioner No.2 and advocates absent

Respondent Nos. 1(a) to 1(c) absent though served.

Mr. G.R. Joshi i/b M/s. P.M. & Mithl & Co. for the Custodian

CORAM : S.H. KAPADIA J.
JUDGE, SPECIAL COURT

ORAL JUDGMENT:

1. This is a Petition/Suit under the special Court (Trial of Offences relating to Transactions in Securities) Act, 1992 for recovery of an amount of Rs.774,90,52,482.17 with further interest on principal sum of Rs 706,97,73,179.68 from the date of filing of the Petition/Suit till payment

PLEADINGS:

2. The Petition was filed on 28/11/1992. Petitioner No.1 is SBI. Petitioner No.2 is NHB. Original Respondent No.1 - Harshad S. Mehta expired on 31/12/2001. His legal heirs and representatives have been brought on record. They are Respondent Nos. 1 (a) 1(b) and 1 (c). They are liable to the extent of their inheritance. It is alleged that during October, 1991 to March, 1992, late Harshad Mehta gave to SBI for realization 13 cheques drawn on RBI where SBI was stated to be the payee. These were account payee cheques. Full particulars of these cheques are given in Ex.A to the petition. In all, there are 13 cheques totalling rs. 707,56,38,633.19. According to SBI, the said cheques had no connection to any contract between SBI and NHB. That, in accordance with the directions of late Harshad Mehta, who had brought those cheques, SBI realized the said cheques and gave late Harshad Mehta credit for Rs.707,56,38,633.19 and allowed him to utilize the said amount which he did.

According to NHB (Orig. Respondent No.2), the said cheques were delivered in respect of securities transactions between SBI and NHB and, therefore, Harshad Mehta was not authorized to give directions for disposal of the same. According to NHB, there were entries in their Register of Transactions which indicated that the cheques were delivered in respect of security transactions between SBI and NHB. That, in May and June, 1992, correspondence was exchanged between SBI and NHB in relation to the said cheques and in the said correspondence, SBI did not accept the contention of NHB that the said cheques were given in respect of

securities transactions. That, correspondence was also exchanged between SBI and RBI in respect of the said cheques.

SBI ultimately recovered the amounts from Harshad Mehta but, RBI directed and called upon SBI to pay the said amount to NHB as according to RBI the suit cheques could not have been credited to the account of Harshad Mehta and, therefore, SBI was liable to pay the said amounts to NHB. This was the stand taken by RBI. All the aforesaid circumstances were considered by the Board of Directors of SBI. By a resolution dated 11/6/1992, SBI decided to act in accordance with the directions of RBI. Consequently, SBI paid the said sum of Rs. 706,97,73,179.68 to NHB without prejudice to their rights. This was on 13/8/92. Consequently, the current account of late Harshad Mehta bearing No.4/8710 was debited, Consequently, the credits in respect of 13 cheques made in the said account stood reversed.

In the circumstances, the present Petition/Suit is filed by SBI. The present Petition/Suit was originally filed by SBI against NHB and Harshad Mehta on 26/11/1992 for recovery of the aforesaid amount of Rs.706,97,73,179.68.

3. After filing of the petition, SBI filed Suit No.35 of 1995 against NHB for refund of an amount of Rs.707,56,39,00/-. In that Suit, Harshad Mehta was joined as Defendant No.2, however, no reliefs were claimed against him. In the said Suit, NHB had filed its Written Statement on 2/3/1996 where NHB reiterated that the said cheques were account payee cheques which were drawn by NHB only in favour of, SBI and, therefore, Harshad Mehta was not entitled to the proceeds thereof and that the credit to and utilization by Harshad Mehta of the proceeds of the said cheques constituted conversion. Without prejudice to their aforesaid case, NHB had also pointed out that there were no security transactions between it and SBI relating to the said account payee cheques. That, two of its officers had fraudulently handed over the said cheques to late Harshad Mehta while making it appear that they were related to security transactions between SBI and NHB. That, there was no contract note, delivery order or BR regarding the said cheques. After the above Suit No.35 of 1995 came to be filed and pursuant to the directions passed by the Special Court on

4/6/2002 and consequent upon the order passed by the Apex Court on 29/7/2002, the disputes between SBI and NHB were referred to the Ministry of Finance, Government of India, New Delhi and, consequent upon which, the disputes between SBI and NHB were amicably resolved vide Memorandum of

Settlement dated 30/10/2002. Under the said Settlement, SBI and NHB have withdrawn all allegations and counter allegations made against each other. Hence, those allegations and counter allegations in the original Petition do not survive. Under the said Settlement, SBI and NHB agreed to jointly pursue their claim against Harshad Mehta. Accordingly, the Petition came to be amended and NHB, who were original Respondent No.2 in this Petition have been transposed as Petitioner No.2. Therefore, by way of amended Petition, both SBI and NHB now submit that a Decree may be passed against heirs of original Respondent No.1 (late Harshad Mehta) and in favour of either SBI or in favour of both SBI and NHB. At this stage, it may be mentioned that the Memorandum of Settlement became part of the order of the Supreme Court dated 1/11/2002.

Although the Petition/Suit has been served on the heirs of late Harshad Mehta, who are Respondent Nos. 19a), 1(b) and 1(c) to the Petition, the only Reply filed by the mother of late Harshad Mehta and his son is that they have no personal knowledge about the issues involved in the Petition/Suit and that they are not having any share in the estate of late Harshad Mehta. His wife Mrs. Jyoti S. Mehta, who is also a Notified Party under the Special Court Act, 1992, has not filed her Reply. The Affidavit of service of Mrs. Jyoti S. Mehta is taken on record and marked as "X".

FINDINGS:

4. Under Rule XII, Rule 6 of the Civil Procedure Code, the Court is empowered to give judgment on admission. Under Rule 6, where admissions of fact have been made either in the Pleadings or otherwise, the Court may at any stage of the suit, on the application of any party and without waiting for determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions. Moreover, under Order VIII, Rule 5 of Civil Procedure Code, it is, inter alia, laid down that

every allegation of fact in the plaint, if not denied specifically or by necessary implication shall be taken to be admitted provided that the Court may at its discretion require any fact so admitted to be proved otherwise than by such admission. In my view, in this case, there is a categorical admission of late Harshad Mehta of having received the aforesaid amount of Rs. 706,97,73,179.68 from SBI. That admission is borne out by the relevant extract of Misc. Application No. 215 of 1993 filed by Harshad Mehta and Others against the Custodian, SBI and others. Vide para 13 of Misc. Application No.215 of 1993, late Harshad Mehta has stated that SBI has claimed Rs. 706,97,73,179.68 from him. In that Application, late Harshad Mehta has admitted the factum of receipt of Rs. 706,97,73,179.68 from SBI. However, he has stated that he had advanced loans to SBI under Double Ready Forward transactions against 11.5% Central Loan 2010 and that he had paid an excess amount of Rs. 21.5 crores to SBI in April, 1992 for which, he claimed credit as against SBI's claim for Rs. 706,97,73,179.68. In other words, in Misc. Application No. 215 of 1993, late Harshad Mehta admits having received the said amount from SBI but he prays for deduction of the amount to Rs.461,23,09,586.57 on the basis of his counter-claims. To complete the chronology, late Harshad Mehta thereafter, moved the Special Court against SBI vide Petition No.72 of 1995 on the basis of the above counter-claims. However, vide order dated 7/5/1997 passed by Variava, J. (as he then was) that Misc. Petition No.72 of 1995 came to be dismissed. Hence, SBI has succeeded in proving the factum of receipt of the aforesaid amount of Rs. 706,97,73,179.68 by late Harshad Mehta on the basis of categorical and unequivocal admission of late Harshad Mehta vide Misc. Application No.215 of 1993. Moreover, there is no denial to the said admission. There is no denial from the heirs of late Harshad Mehta to the claim made by the Petitioners on merits. Therefore, the Court is fully satisfied that in this case Decree on admission is required to be passed in favour of SBI.

5. Apart from this admission, this Court has taken the view recorded in the judgment in the case of SCB vs. Andhra Bank Financial Services Limited & Ors. In Suit No. 11 of 1996 decided on 17/1/2002 that the findings of JKR and JPC have corroborative value. In this connection, the relevant extract from the Report of JKR is given to Ex-L to the Affidavit dated 15/3/2003. This extract gives

findings of JKR. These findings clearly show receipt of an amount of Rs.707,56,38,633.19 from SBI by late Harshad Mehta. In fact, the decree sought is for a lesser amount of Rs. 707,97,73,179.68 in view of the adjustments in the current account of late Harshad Mehta of Rs. 58,65,820/- as mentioned in para 6 of the Petition. Similarly, in the Report of JPC, extracted in Ex-M to the said Affidavit dated 15/3/2002, there is a clear finding that late Harshad Mehta has received Rs.707,56,38,633.19 from SBI. Therefore, both on the ground of admission by late Harshad Mehta and on the basis of the findings given by JKR and JPC, the following order is passed.

5. Before concluding, it may be mentioned that pursuant to the directions given by RBI vide letter dated 26/5/1992, Rs. 707,56,38,633.19 was paid by SBI to NHB on 13/6/1992. In the circumstances, SBI would be entitled to interest at 15% per annum from 13/6/1992 till payment. Further, it needs to be clarified that in this case, admissions have been made by late Harshad Mehta to SBI and the Petitioners have, therefore, submitted that the Decree may be passed in favour of SBI to which NHB has no objection. Learned counsel for the Custodian has stated that the Custodian has no objection if the Petition of SBI is allowed. Taking into account all the above facts, the following order is passed:

ORDER

- (a) There shall be Decree on admission in favour of SBI – Petitioner No.1 in the sum of Rs. 706,97,73,179.68 with interest at the rate of 15% per annum from 13/6/1992 (i.e. the date on which SBI paid the amount to NHB under the direction of RBI) till payment.
- (b) No order as to costs.

Accordingly, the above Petition is disposed of.

Sd/-

(S.H. KAPADIA, J.)