

"The Hon'ble Special Court passed an ex-parte decree against the estate of late HSM for Rs.189.11 Crores with interest @ 15% p.a. specifying that the Custodian will make the payment out of the assets, properties and funds of HSM as per Sec.11 of the Torts Act."

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

AT BOMBAY.

SUIT NO. 41 OF 1995

State Bank of India

... Plaintiffs

Vs.

Harshad Mehta & Ors.

.... Defendants

Mr. K.S. Cooper, Sr. Counsel with Mr. T.K. Cooper i/by Little & Co. for
Plaintiffs.

None for Defendants 1(a) to (c)

Mr. Milind Jadhav i/by M/s. P.M. Mithi & Co. for Defendant No.2/Custodian

Mr. A.C. Mahimkar for Defendant No.3

Coram: A.B. PALKAR, J.

Dated: 3.3.2003

P.C.:-

1. This is a suit for recovery of the amount of Rs. 189,10,77,578.98 with interest which is claimed at 23.25% from the date of filing of the suit till payment or realisation. Direction is sought by the Custodian to make the payment to above respondent No.1, Original Defendant No.1 is notified party and even some of the heirs who have been brought on record, specially wife of original defendant No.1 Jyoti Harshad Mehta is also a notified party. Original Defendant No.1 did file Written Statement and did deny the allegations of the Plaintiffs on which the suit claim is based. However, he has expired. His heirs are brought on record. The heirs were called upon to state whether they want to file separate Written Statement or adopt the written statement filed by the deceased defendant. However, on 4/3/2002 his heirs Jyoti Mehta, who was present stated that she would be accepting the order of this Court as she does not understand the

repercussions of making any Statement. In spite of this she was given time in order to enable her to take appropriate legal advice. Even after that she has not filed Written Statement and she is not present today.

2. Plaintiffs have made a statement in Misc. Petition No. 185 of 1993 at the time of passing the decree that as per the statement contained in para No.19 of the plaint of this Suit (41 of 1995) Plaintiff Bank is ready to abide by the statement in para 19. Plaintiffs have made following statement.

Para 19.

The Plaintiffs say that the 2nd Defendant has filed Misc. Petition No 185 of 1993, which is pending in this Hon'ble Court on the basis of the original 1st defendant alleged claim to 3.70 crores unit. The 3rd defendant have stated that they are holding the monetary value of the said unit (Rs. 51.99 crores) to the credit of the Plaintiffs herein as the same belongs to the Plaintiffs. The Plaintiffs say and submit that said 3.71 crores units and/or the monetary value thereof belong to the Plaintiff and the Defendant Nos. 1(a), 1(b) and 1(c) have right, title, interest in respect thereof. The Plaintiffs crave leave to refer to the papers and affidavits in the said Petition. The Plaintiffs say and submit that upon it being held that the Defendant Nos. 1(a), 1(b) and 1(c) are not entitled to the said 3.71 crore units or the monetary value thereof and the Plaintiffs are entitled thereto, then the amount of debit made to the original 1st Defendants said account by the Plaintiffs would stand reduced to that extent. In such event the amount of the claim herein will stand reduced by such amount.

As stated in the above para, the plaintiffs are ready and willing to give credit the aforesaid amount of Rs. 51.99 crores to defendant No.1. In

view of this and the fact that the present defendants on record, the heirs of Harshad Mehta have not filed written statement inspite of being given repeated opportunities and have infact declined to file any Written Statement.

4. It was also brought to my notice that a contrary stand was taken by the Harshad Mehta in another matter. However, provision of Order VIII. Rule V(2) of CPC are clear. Suit is decreed in terms of prayer clause (a) with modification in the rate of interest in prayer clause from 23.25% to 15% per annum from the date of suit till realisation. Decree is also granted in terms of prayer clause (b) as ultimately it is the Custodian who has to make payment to notified party. However, the payment shall be made in accordance with provisions of Section 11 of Special Court Act.

Prayer clauses (a) to (b) read as under :

"(a) that the Defendant Nos. 1(a), 1(b) and 1(c) be ordered and decreed to pay to the Plaintiffs a sum of Rs. 189,10,77,578.98 as per the particulars of claim Exhibit 'D' hereto, with further interest thereon at the rate of 23.25% per cent per annum from the date of the filing of the suit till payment or realisation. (In that rate reduced to 15% p.c.p.a.).

(b) that the 2nd Defendant as a Custodian appointed under the said Act, be ordered and directed to pay to the Plaintiffs the amount and interest mentioned in prayer (a) above out of the asses properties and funds of the original 1st Defendant.

5. It is made clear that on the basis of statement made by the Plaintiffs in Misc. Petition No. 185 of 1993 an statement made by the learned counsel today, the suit is decreed and shall be subject to credit being given to deceased Harshad S. Mehta and heirs of

decreased Harshad S. mehta to the extent Rs. 51.99 Crores. No
order as to costs.

TRUE COPY
[Handwritten Signature]
LITTLE & CO