

CANCELLED

IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING
TO TRANSACTIONS IN SECURITIES) AT BOMBAY
CHAMBER SUMMONS NO.35 OF 1999

IN

SUIT NO.35 OF 1995

CANCELLED

State Bank of India ... Plaintiffs
Vs.
National Housing Bank & Ors. ... Defendants

Mr. H.N. Salve, Solicitor General of India with Mr. Janak Dwarkadas, Mr. T.K.Cooper and Mr. D.Khambhatta i/b Little & Co. for the plaintiffs in support.

Mr. Aspi Chinoy i/b Desai & Diwanji for defendant No.1 to show cause.

Mr. A.D. Chougule for defendant No.2 to show cause.

Mr. G.R. Joshi i/b P.M. & Mithi & Co. for defendant No.3 to show cause.

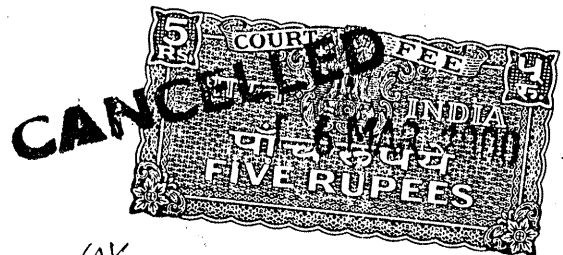
CORAM : S. H. KAPADIA, J.
JUDGE, SPECIAL COURT.

DATED : 17TH FEBRUARY 2000.

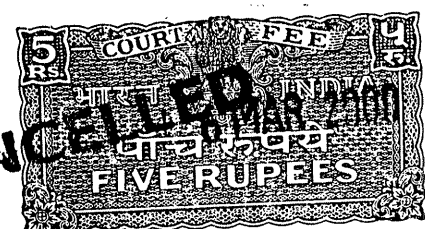
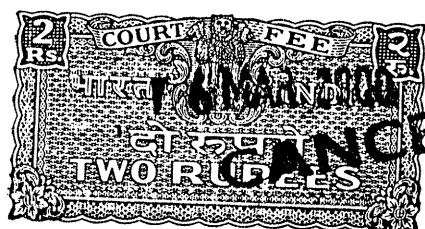
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1. This chamber summons has been taken out by State Bank of India (SBI) - the plaintiffs in Suit No.35 of 1995.

2. The facts giving rise to the chamber summons are as follows :



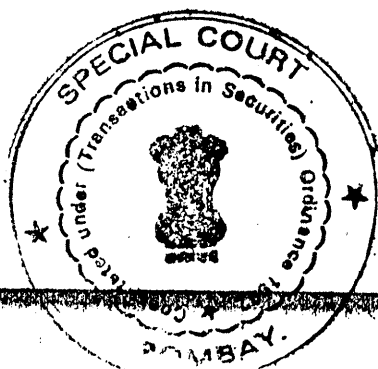
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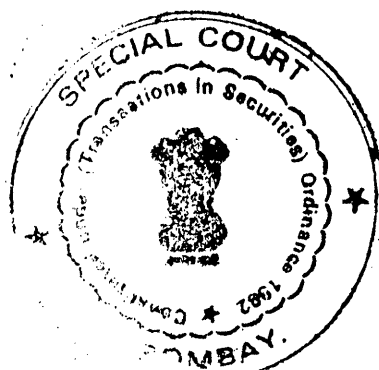
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SBI has filed the present suit on 8th June 1995 seeking recovery from National Housing Bank (NHB) - defendant No.1 of Rs.707 crores paid by SBI to NHB on 13th June 1992 along with interest thereon. On the basis of information and documents available with the plaintiffs at the relevant time, the said suit came to be filed in which it has been alleged by SBI that during the period October, 1991 to March, 1992, Harshad Mehta - defendant No.2 herein brought 13 cheques to SBI with a request to collect the proceeds thereof on his behalf and credit the proceeds to his account with SBI. In the plaint, it is further alleged that at the relevant time, there was a regular practice in existence followed by banks dealing in securities and money markets under which cheques, which were intended for the benefit of private parties, were drawn not in the name of a private party as a payee but in favour of the bank as a payee although, the payee bank was not beneficiary entitled to the proceeds of the cheque. This practice came to be evolved so that credit could be secured against the cheque on the same day. According to SBI, this practice was known to and accepted by NHB. In the suit, it is specifically averred by SBI that there were no transactions between SBI and NHB in respect of the 13 cheques. The suit is essentially, therefore, based on the above practice followed by the banks at the relevant time. At this stage, it may be mentioned that prior to



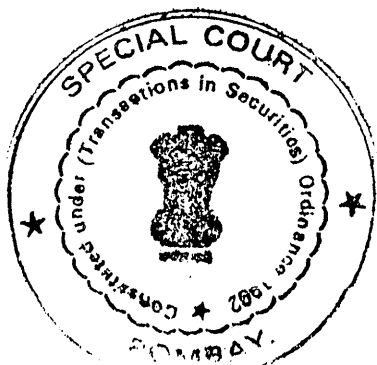
the filing of the present suit on the basis of the information available with SBI, it has also filed Misc. Petition No.63 of 1992 against Harshad Mehta - defendant No.2 herein on the ground that a fraud had been perpetrated by the officer of SBI (Sitaraman) conniving and colluding with Harshad Mehta. It is for this reason that in the plaint, it is averred that if SBI fails to realise its claim in Misc. Petition No.63 of 1992 against Harshad Mehta then, the decree that may be passed in this suit may be permitted to be executed. By written statement in the present suit filed by NHB on 2nd March 1996, it has been averred that when according to SBI there were no transactions between it and NHB, the plaintiffs ought to have made enquiries with NHB before crediting the proceeds of the said cheques to the account of Harshad Mehta without any authority from NHB. According to the written statement, SBI was negligent in discharge of its duties. According to the written statement, the payments made by NHB vide the above cheques in favour of SBI were the consequences of the fraud perpetrated on NHB by its own employees and, therefore, the payments were not on account of any security transactions with SBI, but they were made on account of a fraud by the officers of NHB, who had allegedly entered in the above security transactions, which were fictitious and non-existent. In other words, according to NHB, there were no security transactions



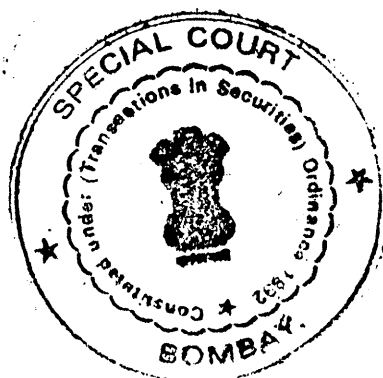
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with SBI and yet payments were made on account of a fraud perpetrated on NHB by its officers, who had shown fictitious security transactions in the records. At this stage, it may be mentioned that before the RBI, initially, the case put up by NHB allegedly was that by 10 cheques of an amount aggregating to Rs.707.75 crores had been issued by NHB by way of consideration in respect of purchase transactions and no delivery, however, was effected by SBI either by way of SGL, BR or physicals. RBI, accordingly, directed the SBI to make payment, which has been done on 13th June 1992. However, having received the payments it is alleged that NHB took up the plea that payments effected in favour of SBI were the consequences of the fraud perpetrated on NHB by its own employees and that the payments were not on account of any security transactions with SBI.

3. With the above factual matrix the amendment application may now be seen. The amendment application has been moved by SBI on the ground that the suit was filed on the basis of certain information and records available to SBI at the time of filing of the suit. However, thereafter, further information and documents, which were in exclusive possession of NHB have come to light on account of judgment of this Court dated 4th February 1998 in the case of NHB vs. ANZ Grindlays Bank in Arbitration Petition No.1 of 1997 and also in view of

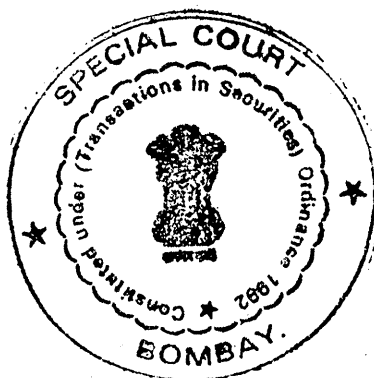


the judgment of this Court dated 3rd April 1978 in Misc. Petition No.79 of 1974 in the case of State Bank of Saurashtra vs. NHB. It is alleged that several material statements and submissions made in the written statement by NHB in the present suit are not only factually incorrect, but to the knowledge of NHB the said facts are false. It is further alleged that NHB has with mala-fide and ulterior motive suppressed the facts both from SBI as well as this Court. Hence, the amendment alleges fraudulent suppression. According to the amendment application, it has now been discovered by SBI that NHB, at the relevant time, did enter into transactions in securities with private parties other than banks and financial institutions. That these security transactions even though shown in the records of NHB have been with the payee bank, the same were in fact transactions between NHB and a private party. That even in cases where there were no contract notes, delivery orders, sale memos, etc. pertaining to the transactions in question, NHB had acted without considering the transactions as fictitious. In this connection, the amendment application recites certain facts which it seeks to bring on record. Firstly, that NHB entered into ready forward transactions in securities on a back-to-back basis whereby it earned huge profits without deploying of its own funds. Secondly, it adopted a practice of recording security

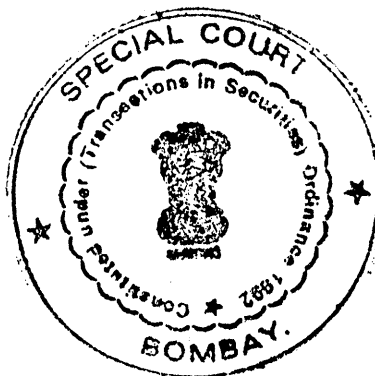


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transactions entered into with private parties in its record as being with payee banks/drawer banks. In the circumstances, it is alleged that the identity of the real counter party came to be suppressed. Thirdly, in the present case, it is alleged that NHB was aware of the identity of the real counter party with whom it has entered into the huge transactions although the records disclosed by NHB do not show the name of the real counter party and, therefore, if the records are ordered to be produced before the Court, SBI can prove in the suit that the real counter party was Harshad Mehta, with whom there was a security transaction entered into by NHB. Forthly, it is alleged by the amendment application that although NHB was aware of the identity of the real counter party it has fraudulently taken a stand that payments were made by NHB on the basis of fraud committed by its officers, who entered the fictitious security transaction in the record. According to the amendment application, therefore, there was a transaction between NHB and Harshad Mehta and therefore, SBI rightly gave credit to defendant No.2. It is also alleged in the amendment application that NHB even misrepresented its case with RBI. RBI ordered SBI to make payments to NHB on the basis of representation made by NHB to the effect that monies were given to SBI under the purchase transactions. On receipt of the amounts NHB pleaded that they had paid on the basis of

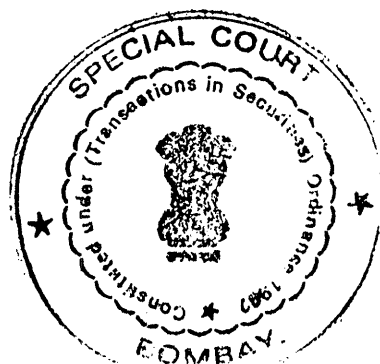


fictitious security transactions, which according to the amendment application constitutes misrepresentation. The amendment application, therefore, contends that in the above circumstances, NHB was estopped from pleading that there were no dealings between the 1st and the 2nd defendants and/or that the cheques were issued without any consideration. By amendment application, it is alleged that in respect of two cheques the amount claimed is in excess of the amount of the cheques which demonstrates that the payments made in respect of the suit cheques are not based on the cheques but they were based on the underlying transactions with Harshad Mehta and therefore, NHB was estopped from pleading the absence of the existence of any transactions and/or that the suit cheques were issued for no consideration. Apart from above, the amendment application further brings on record new facts regarding NHB having received from Harshad Mehta securities belonging to his group company i.e. Growmore Research & Assets Management Limited. It is alleged in this connection that NHB appropriated some of the securities to their own use and for their benefit. Accordingly, it has been submitted that receipt of securities demonstrated that there was relationship between the 1st and the 2nd defendants and to the knowledge of NHB security transactions were entered into between NHB and Harshad Mehta. In any event, it is contended in the amendment application that



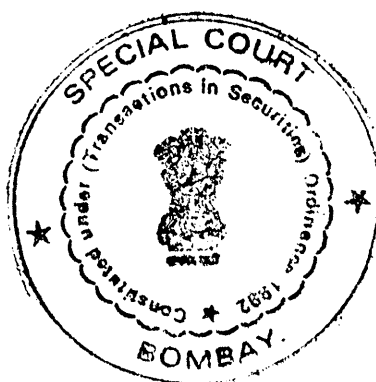
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SBI were entitled to the benefit of the value of the securities because on receipt of the value of the securities, the claim of NHB against the plaintiffs stood correspondingly reduced and the amount recovered by NHB from SBI to the extent of the value of the securities was ex-facie wrong and SBI was accordingly liable to be restituted to the extent of the value of the said securities. Similarly, a new point has now been brought on record by this amendment application viz. that a Bankers Cheque dated 14th March 1992 in the sum of Rs.44.97 crores drawn by State Bank of Patiala on itself favouring SBI was a cheque in respect of which NHB did not have cause of action whatsoever against SBI inasmuch as NHB was neither the payee nor the endorsee and therefore, NHB was neither the holder nor the holder in due course and was therefore, not entitled to claim the amounts of the said cheques and, therefore, the recovery of the said amount by NHB from the plaintiffs was also illegal. Similarly, by the amendment application, it is now further brought on record that a cheque dated 30th March 1992 for Rs.90.45 crores drawn by NHB favouring SBI represented the consideration for the sale of securities viz. 17% NTFC bonds sold by SBICAPS to NHB on 30th March 1992. However, according to the plaintiffs, the record of SBICAPS now shows that this transaction as a transaction with NHB and proceeds of the said cheques of Rs.90.45 crores (approximately)



were, on the instructions of Harshad Mehta, credited to the account of SBICAPS. Accordingly, by the amendment application, it is submitted that NHB was not entitled to recover Rs.90.45 crores from SBI. Under the above circumstances, it is the case of SBI that the facts now revealed by the documents show that SBI was entitled to recover from NHB the said amount of Rs.707 crores or at least in any event a part of the amount wrongly received by NHB pursuant to the directions given by RBI.

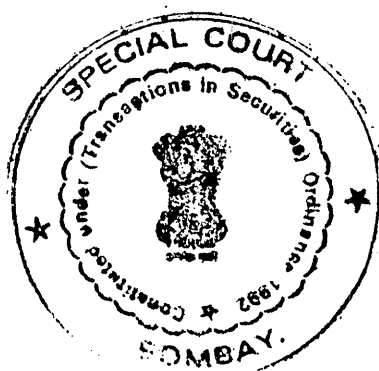
4. This amendment application was vehemently opposed by NHB. By affidavit in reply, NHB had contended that the amendment should not be allowed as they seek to introduce a totally new and inconsistent cause of action/case. In the reply, it has been urged that a totally new case based on alleged suppression, misrepresentation and fabrication of records is now being put up and, therefore, the amendment should not be allowed. According to NHB, the only case of SBI in the suit was on the basis of alleged market practice which entitled the plaintiffs to give credit to Harshad Mehta of the account payee cheques drawn by NHB in favour of SBI whereas for the first time, SBI now seeks to introduce the allegations of suppression, misrepresentation and fabrication of records and, therefore, it should not be permitted. It is further pointed out by way of affidavit in reply that even in



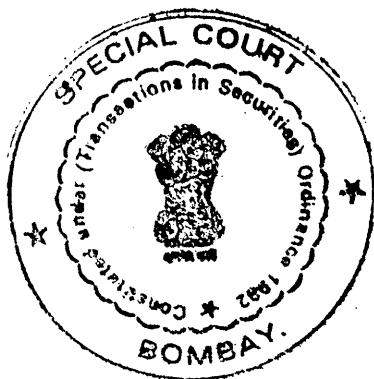
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Misc. Petition No.63 of 1992 SBI has confirmed that a fraud has been perpetrated by their officer (Sitaraman) colluding with Harshad Mehta and, therefore, by the amendment application the plaintiffs are in the guise of seeking to place the additional facts on record are in effect seeking to introduce a totally new case, which is inconsistent with their existing case.

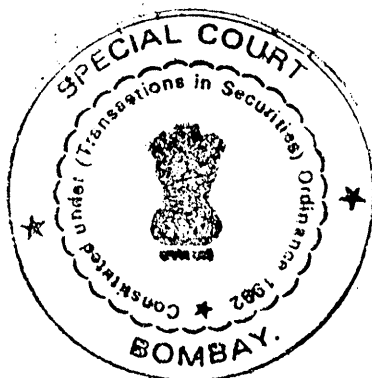
5. Mr. H. N. Salve, learned Solicitor General of India, contended that the suit was filed for recovery of an amount of Rs.707 crores on 8th June 1995. That prior to the said suit, SBI had also filed Misc. Petition No.63 of 1992. That both the proceedings are pending in this Court. He contended that in security transactions of a huge magnitude Banks and Financial Institutions have often instituted proceedings on basis of information available at a given point of time. He contended that, however subsequently information came to light in view of certain proceedings which circumstances has enabled the plaintiffs to substantiate the case against NHB. He pointed out that at one point of time, the plaintiffs had proceeded in the present suit on the basis of the practice followed by various banks of crediting the amounts in the account of private parties although the cheques were drawn in the names of payee banks. It is for this reason that SBI had instituted Misc. Petition No.63 of 1992 against defendant No.2



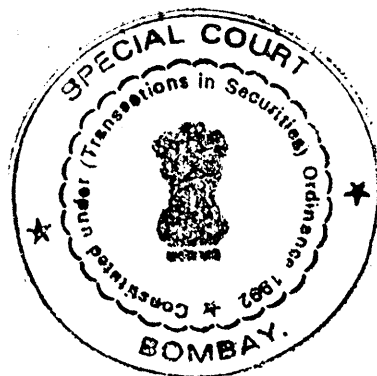
herein - Harshad Mehta on the ground of fraud being perpetrated by him in collusion with the officers of SBI. However, Mr. Salve pointed out that in subsequent proceedings being Arbitration Petition No.1 of 1997 and Misc. Petition No.79 of 1994 it has been revealed that the stand of NHB in the present suit is factually incorrect. In this connection, Mr. Salve contended that the suit proceeds on the basis that there were no transactions between SBI and NHB. He contended that even according to NHB, there were no transactions between SBI and NHB. However, in the written statement a defence was put up by NHB that they made payments to SBI pursuant to a fraudulent/fictitious transaction entered into in the records by the officers of NHB. Mr. Salve states that however, now in view of the factual data available with SBI, it is clear that there was a transaction between NHB and a private party viz. Harshad Mehta. That the said transaction was not a fictitious transaction as alleged by NHB in the written statement. That NHB was fully aware of the identity of the private party viz. Harshad Mehta and yet, in order to suppress the true facts from emerging, it has been pleaded by NHB that payments were made by NHB pursuant to a fictitious transactions. In this connection, he also urged that NHB even misrepresented its case to RBI by suppressing the material record. Hence, Mr. Salve contended that by this amendment application, the SBI has alleged fraud,



misrepresentation as also fraudulent suppression. Mr. Salve contended that by suppressing the material facts with ulterior motive, NHB recovered Rs.707 crores from SBI. He contended that the present suit is for recovery of the said amount. He contended that the facts now being brought on record are merely to show that there was a transaction in securities with Harshad Mehta pursuant to which payment has been credited to the account of Harshad Mehta by SBI and, therefore, it is alleged that there is no merit in the case of NHB when it states that payment was made on account of fictitious transactions fraudulently entered in the records. Mr. Salve accordingly contends that there is no question of introducing a new case as alleged by NHB. Mr. Salve further contended that in the amendment application, SBI has also claimed benefit of the value of the securities admitted to have been received by NHB from Harshad Mehta and accordingly, SBI has claimed restitution to the extent of the value of the said securities. Mr. Salve pointed out that however, a new point has been introduced in the suit as indicated in para 5(a) viz. that NHB was not entitled to claim from SBI a sum of Rs.44.97 crores covered by Bankers Cheque dated 14th March 1992 drawn by State Bank of Patiala on itself favouring SBI as the said cheque was in respect of an amount over which the NHB has no claim. NHB was not the holder of the said Bankers Cheque. To this extent also



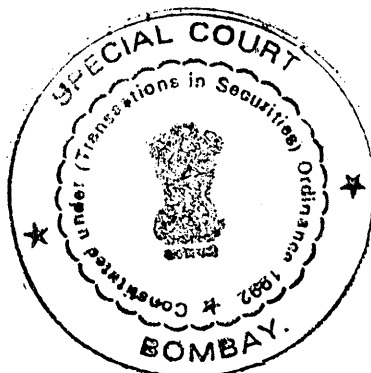
therefore, it was not entitled to claim the amount from the SBI. Similarly, by this amendment, it has also been brought on record for the first time, that the proceeds of the cheque of Rs.90.45 crores (approximately) were credited on the instructions of Harshad Mehta to the account of SBICAPS and, therefore, NHB was not entitled to recover the said amount from SBI. Mr. Salve therefore, contended that on reading the amendment application as a whole, firstly no new case is sought to be introduced, secondly, one has to read the amendment application in the light of the relief claimed by the plaintiffs viz. for recovery of the amounts and if so read, even assuming that there was some amount of inconsistency in the matter, the amendment application should be allowed as the said application does not alter the structure of the plaint. The learned counsel for the plaintiffs further contended that it is true that Misc. Petition No. 63 of 1992 proceeds on the basis that a fraud has been perpetrated by the officers of SBI in collusion with Harshad Mehta and that the claim in the said petition is against Harshad Mehta. However, this Court is required at this stage, to consider only the amendment application to the present suit. In the circumstances, he contended that the amendment application cannot be denied on the ground that the claim in the suit is inconsistent with the claim in Misc. Petition No.63 of 1992. In fact, he points out



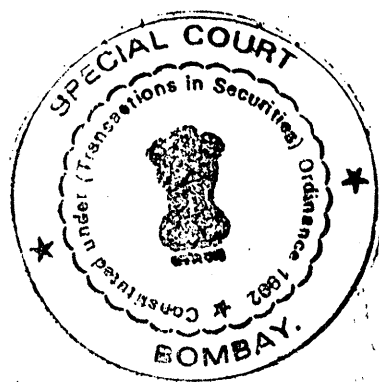
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that in the suit, SBI has categorically mentioned that in the event of SBI failing to realign its claim in Petition No.63 of 1992 against Harshad Mehta, then the decree that may be passed in this suit against NHB should be permitted to be executed. He contends that this averment has been made in the suit vide para 10A on the ground that SBI does not seek to recover the said amount twice over. Mr. Salve contends that in the present matter, under section 9(4) of the Special Court Act, 1992, this Court is required to know the truth. He contends that this Court is not bound by the procedure laid down by Civil Procedure Code. He contended that looking to the nature and volume of transactions the legislature intended that this Court shall be guided by rules of natural justice and if that test is applied, then in that event, a liberal view of the amendment application should be taken and accordingly the amendment application should be allowed.

6. Mr. Chinoy, learned Sr. Counsel appearing on behalf of NHB, vehemently contended that by amendment application, for the first time, a new cause of action is sought to be introduced. Mr. Chinoy contended that the suit was filed in 1995 and after five years, a fraud and misrepresentation is alleged against NHB. Mr. Chinoy contends that it is well settled that a new case of fraud and misrepresentation cannot be introduced at



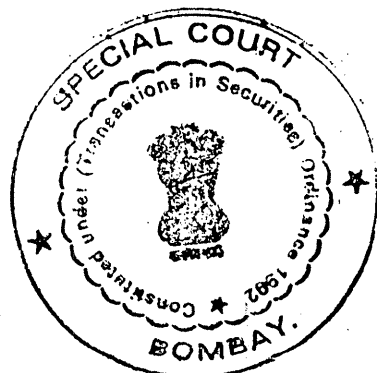
this stage because these are the pleas which are raised for the first time almost after five years. He contends that fraud/misrepresentation is a cause of action which if permitted to be introduced in the present suit would amount to introducing a new case. He contends that by this amendment application SBI is trying to circumvent proving that they were not aware of the facts which are now sought to be brought on record. He further contends that in the present matter, SBI is required to prove that they were not aware of the facts now sought to be introduced. He contended that in such case even question of limitation would arise. Mr. Chinoy fairly contended that if SBI only seeks to amplify its original plea that there was no transaction between SBI and NHB then he has no objection to the amendment application being granted. However, he seriously objects to the plea of fraud, misrepresentation and fabrication of records being taken by an amendment application, which according to him, completely changes the structure of the existing suit. Mr. Chinoy contends that a large portion of the amendment application is only repeating the facts which have been stated in the plaint and which do not warrant any amendments to the suit. He vehemently urged that if one reads the amendment application, it is clear that it merely seeks to rebut the defences raised by NHB in the written statement. He, therefore, contends that the amendment application



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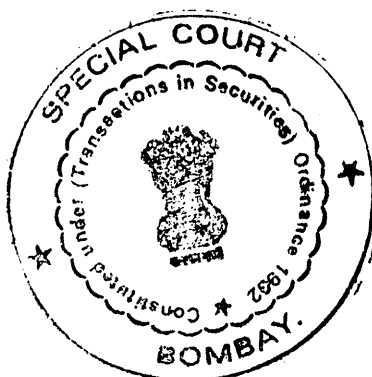
should not be granted. He contends that in the original written statement, SBI has already pleaded the practice of crediting the proceeds of the cheque in the account of the private party and, therefore, the transaction between the NHB and Harshad Mehta as alleged already forms part of the initial plea of SBI in the plaint. He accordingly contends that amendment application should not be allowed. He has also relied upon various judgments of the Supreme Court and Privy Counsel in support of his contention that a new case of fraud and misrepresentation should not be permitted.

7. In rejoinder, Mr. Salve contends that although NHB was fully aware of the facts that it had dealings with private party, it has taken up the plea that payments were made to SBI on account of a fictitious transaction entered into the records by the officers of NHB. Mr. Salve contended that SBI would like to prove ultimately that this plea of fictitious transaction was deliberately taken by NHB although it was fully aware of the fact that payment was made pursuant to the transaction between Harshad Mehta and NHB. It is for this reason that a contention has been raised by SBI of fraudulent suppression of facts in record. He contended that if this amendment application is granted, then a foundation would be laid enabling SBI to call upon NHB to produce the relevant



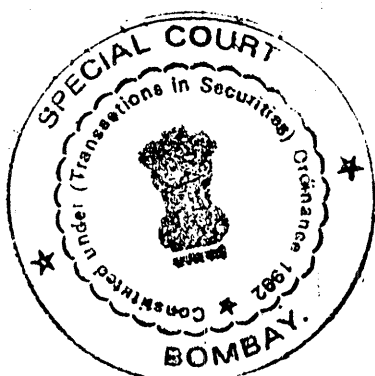
records which would show that NHB had security transactions with private parties like Harshad Mehta and that the payment was made in the present matter pursuant to the said transaction, which was not fictitious as falsely alleged by NHB. It is for this reason that SBI had contended in the amendment application that NHB was estopped from contending that there were no dealings between NHB and Harshad Mehta and/or that the cheques were issued without any consideration. In the circumstances, he has submitted that the amendment application should be permitted.

8. I find merit in the amendment application. The suit was filed on the footing that there was a practice followed by the banks of crediting the amounts received by the payee bank in the account of the private party. The suit proceeded on the footing that there was no transaction between the two banks. In the written statement, NHB also contended that there were no transactions between the two banks. However, NHB contended that payment was made by the suit cheques pursuant to fictitious transactions being recorded. In the written statement a defence was taken that NHB did not deal with the private parties. Now by this amendment application certain facts are brought on record to show that there were transactions between NHB and the private party viz. Harshad Mehta. If



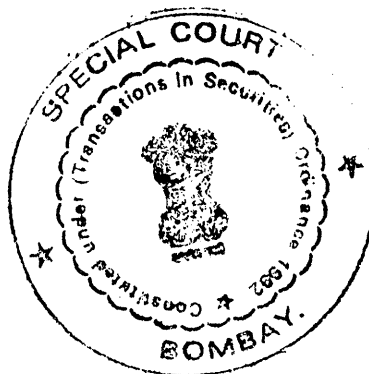
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ultimately, it is so proved, then it would show that the suit cheques were drawn pursuant to the transactions between NHB and Harshad Mehta and not pursuant to fictitious transactions as alleged by NHB. If SBI succeeds in proving that the said transactions between NHB and Harshad Mehta were not fictitious, then it follows that SBI rightly credited the amounts under the suit cheques to the account of Harshad Mehta. In the circumstances, no new case or cause of action is being introduced by this amendment application. Even on the above two points, regarding the cheques drawn by State Bank of Patiala on itself and the amounts credited to the account of SBICAPS on the instructions of defendant No.2 it cannot be stated that a new case is sought to be introduced so as to alter the suit structure. By these two new points SBI seeks to prove that even out of Rs.707 crores paid to NHB at the instance of RBI the plaintiffs are entitled to get back the amounts covered by the said two items. Hence, there is no merit in the contention of defendant No.1 that a new cause of action is being introduced by way of amendment application. In the present case, SBI would like to prove that NHB was deliberately keeping back the records from the Court. That although NHB was aware of its dealing with Harshad Mehta NHB has falsely pleaded that payment was made pursuant to fictitious transaction being introduced in its records by its own officers/department. SBI would



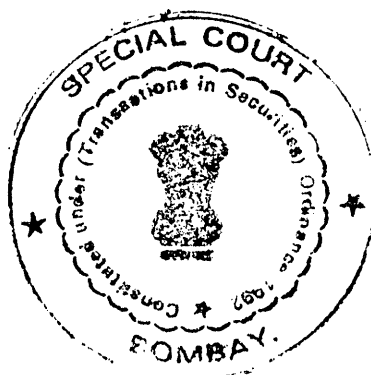
like to prove that this plea has been falsely taken in view of the fact that NHB was fully aware of its dealings with the notified party. These facts have come on record in view of certain subsequent facts which have taken place after filing of the suit. Ultimately, this Court will have to ascertain as to whether the payments were made pursuant to a fictitious transaction as contended by defendant No.1 or whether it was paid pursuant to the transaction between defendant No.1 and Harshad Mehta, which was known to the defendant No.1 when it took up the plea of payment being made pursuant to a fictitious transaction. Hence the amendment application stands granted.

9. Before concluding it may be mentioned that Mr. Chinoy cited before this Court numerous judgments in cases where the amendment applications have been rejected by the Supreme Court and Privy Counsel where a new case is sought to be introduced particularly where the plea of fraud was sought to be introduced by way of an amendment application. The legal position is very clear. It is true that a new case/cause of action cannot be introduced for the first time, if it alters the structure of the plaint. However, in cases where the Court finds that the structure of the suit is not changed even inconsistent pleas can be permitted particularly in cases where the alleged fraud or

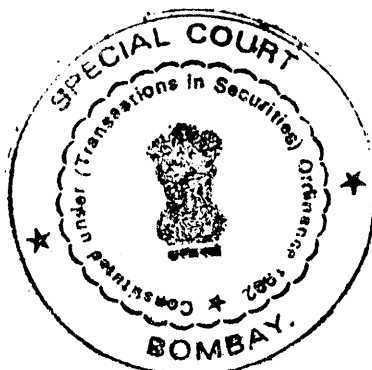


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misrepresentation has nexus with the case made out in the plaint. In the case of Bombay Corporation vs. Pancham reported in AIR 1965 SC pg. 1008, the Court found that a new case has been made out in the amendment which was made at the suggestion of the Court. It was a new case of fraud which was sought to be introduced by the amendment application. The Supreme Court found that there was not even the slightest basis in the plaint so as to warrant introduction of the case of a fraud in the existing suit. Therefore, the amendment application came to be rejected. Ultimately the court has to see the facts of each case. As stated hereinabove, in this matter, SBI wants to prove that defendant No.1 was fully aware of its transaction with Harshad Mehta and yet, it has suppressed the relevant facts and it has taken up the plea that payments were made under a fictitious transaction. In the circumstances, on facts, it cannot be stated that a new case is sought to be made out. In the present matter, the ultimate relief also remains the same even after the amendment application. The amendment application only refers to allegations which are necessary for sustaining the claim for recovery of the amounts. Hence the amendment application is being allowed. In the case of Mohan Lal vs. Anandibai reported in 1971 (1) SCC pg. 813 on facts the Supreme Court found that there was no basis in respect of the new pleas sought to be raised by the amendment. In the



present matter as stated hereinabove, if ultimately it is shown by SBI that there was a transaction between NHB and Harshad Mehta to the knowledge of NHB and yet NHB had pleaded that it had never entered into a transaction with private party then certainly the Plaintiffs deserves an opportunity to prove fraudulent suppression of facts. In the circumstances, it is not necessary to multiply the authorities and burden the judgment on this point. However, it may be mentioned that the Special Court under the Act is required to ascertain the truth of the matter. The security transactions run into crores. Practically every suit/applications have some nexus/linkage with other proceedings as is illustrated by the facts of the present case. It is for this reason that the Special Court is not bound by the procedure laid down by Civil Procedure Code and that it is guided by the principles of natural justice. Ultimately, the court is required to ascertain as to whether the monies had been paid under a particular transaction or whether monies have been paid on account of fraud being perpetrated by the officers of the bank as contended by defendant No.1. In the circumstances, therefore, it cannot be stated that a new cause of action is being introduced by the amendment application. Even otherwise, the Court as a Special Court, would like to know the status of the payment, the status of the transaction, the nature of the transaction and the



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nature of the securities dealt with in the present suit.

10. The reasons given hereinabove are only in support of my finding allowing the amendment application. The reasoning will not bind the parties at final hearing of the suit.

11. In the circumstances, the following order is passed :-

O R D E R

The amendment application stands granted in terms of prayer clause (a) with costs to be costs in the cause. Prayer clause (a) reads as under:

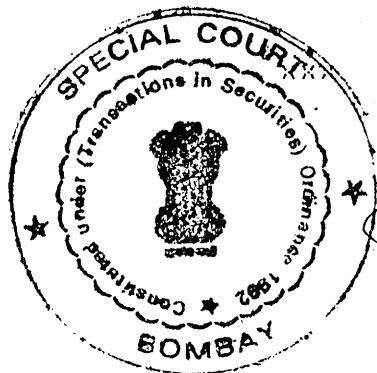
"(a) that liberty be granted to the Plaintiff to amend the plaint in terms of the Schedule annexed hereto;"

Amendment to be carried out within four weeks.

Filed on 14/2/2000
22
By Mr. T. K. K.
Ms. K. K.
Filed on 21/2/2000
6/3/2000

S. K. Kapadia
17/2/2000

JUDGE, SPECIAL COURT.



Certified to be a true copy

M. K. K.
21/2/2000
OFFICER ON SPECIAL DUTY
Office of the Special Court
Bombay. *2/2*

Y. K.