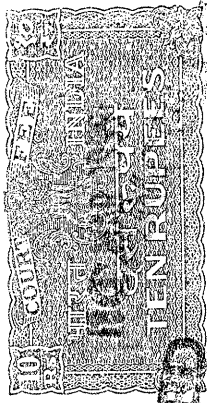




Certified Copy Charges Rs. 19.50

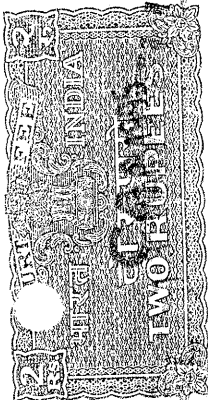


IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO
TRANSACTIONS IN SECURITIES) AT BOMBAY

MISC. APPLICATION NO. 198 OF 1993

PNB Capital Services Ltd. Applicants.

Vs.



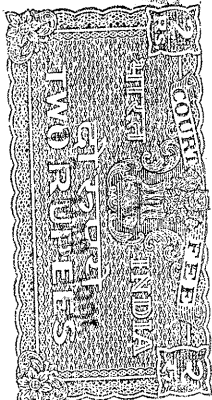
1. The Custodian,
2. ANZ Grindlays Bank p. l. c.,
3. Harshad S. Mehta,
4. Growmore Leasing & Investment Pvt. Ltd.,
5. Indian Railway Finance Corpn. Ltd. Respondents.

Mr. Jai Chinai with Mr. Kumar Desai i/b Desai
Diwanji for Applicants.

Mr. A. M. Setalwad with Mr. G. R. Joshi i/b P. M.
Mithi & Co. for Respondent No. 1.

Mr. C. S. Balsara i/b Little & Co. for Respondents
No. 2.

Mr. M. R. Jethmalani i/b Kanga & Co. for
Respondents Nos. 3 and 4.
Respondents No. 5 absent.



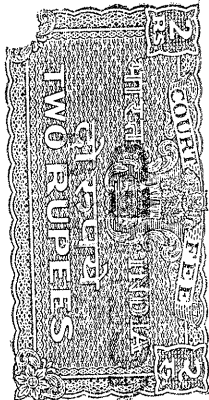
ALONG WITH

MISC. APPLICATION NO. 315 OF 1994

Harshad S. Mehta. Applicant.

Vs.

1. PNB Capital Services Ltd.,
2. The Custodian. Respondents.



Mr. M. R. Jethmalani with Mr. Anand Desai i/b
Mahimtura & Co. for Applicant.

Mr. Jai Chinai with Mr. Kumar Desai i/b Desai
Diwanji for Respondents No. 1.

Mr. A. M. Setalwad with Mr. G. R. Joshi i/b P. M.
Mithi & Co. for Respondent No. 2.

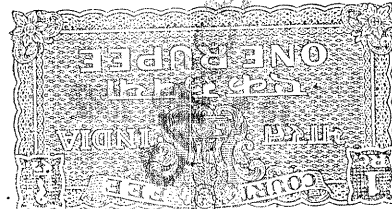
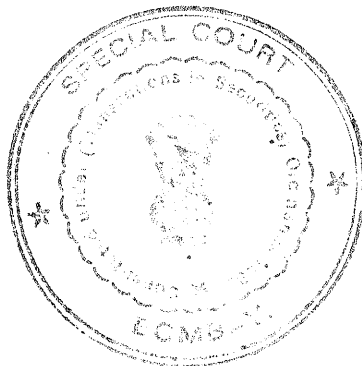
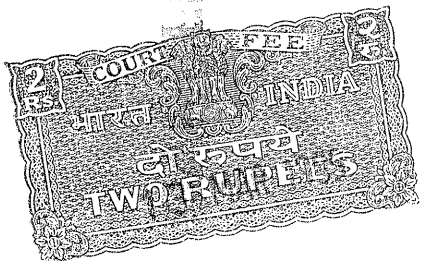
CORAM: HON'BLE MR. JUSTICE
S. N. VARIAVA.
3rd February 1995.

ORAL ORDER:

1. These two Applications can be disposed

CANCELLED

✓



off by a common Order.

2. Misc. Application No. 198 of 1993 is by the PNB Capital Services Ltd. for specific performance of a Ready Forward Contract and for a declaration that 9% IRFC Bonds of the face value of Rs. 8 crores do not stand attached. The Applicants claim that they are the sole and absolute owners of these Bonds. Misc. Application No. 315 of 1994 has been filed by Harshad S. Mehta against PNB Capital Services Ltd. for a declaration that 9% IRFC Bonds of the face value of Rs. 30 crores along with the tax benefits and approved tax free interest should be handed over by PNB Capital Services Ltd. to the Custodian.

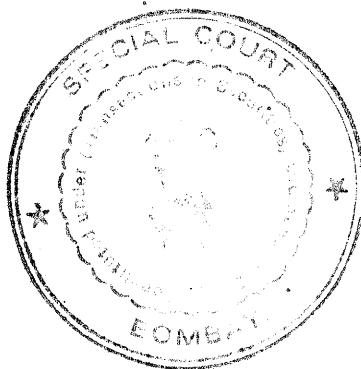
3. For the sake of convenience in this Order the parties are referred to in their capacity in Misc. Application No. 198 of 1993.

The facts are as follows:

4. On 24th April 1992 a Ready Forward Contract was entered into by which Applicants purchased 9% IRFC Bonds of the face value of Rs. 30 crores. The same were to be re-sold on 25th May 1992.

5. That the Applicants have entered into a Ready Forward Contract is an admitted position. The only dispute is whether the Ready Forward Contract had been entered with 3rd and 4th

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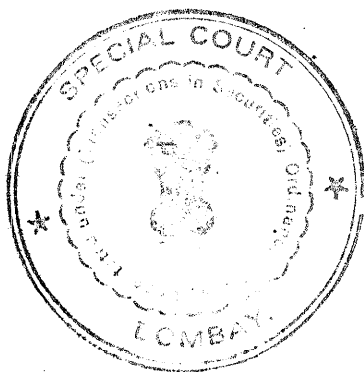


Respondents i.e., Harshad Mehta and Growmore Leasing and Investment Pvt. Ltd. or whether the Ready Forward Contract was entered into with the 2nd Respondents i.e., the ANZ Grindlays Bank.

6. The Applicants rely upon the Contract Notes which are at Exs. A1 and A4. They also rely upon the Cost Memo which is at Ex. A2. They further rely upon the cheque for payment of the Ready Leg which is at Ex. A7. This cheque is made out in favour of the 2nd Respondents, ~~and which is at Ex. A7.~~ Based on these documents, the Applicants claim that the contract was only between them and the 2nd Respondents. To be immediately noted that the name of the 2nd Respondents appears only in this cheque. In the other documents, there is no name of any counter-party.

7. The Applicants by their letter which is annexed as Ex. A10 forwarded all the Bonds to the Indian Railway Finance Corporation Ltd. for transfer into their name. Pursuant to this, Bonds of the face value of Rs. 22 crores have been transferred into the name of the Applicants. This transfer has however taken place after 15th June 1992.

8. Bonds of the face value of Rs. 8 crores stood in the name of the 4th Respondents. As 4th Respondents had already been Notified, the Indian



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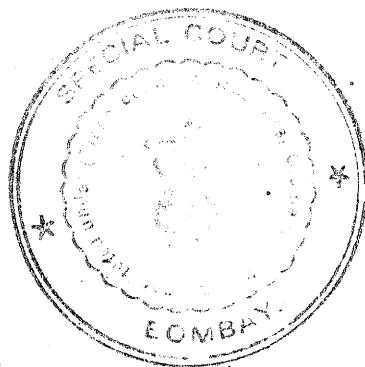
Railway Finance Corporation Ltd. refused to transfer these Bonds.

9. The Applicants filed Misc. Application No. 198 of 1993 on 22nd September 1993. This Court has held by Judgments dated 14th December 1993 in M. A. No. 11 of 1993 along with M. P. No. 23 of 1993 held that Ready Forward Transactions are illegal. The 2nd Respondents filed their reply to this Application on 9th March 1993. The 3rd and 4th Respondents filed their reply to this Application on 29th March 1994. Thereafter, on 6th July 1994 the 3rd Respondent filed Misc. Application No. 315 of 1994.

10. As stated above, the short question for consideration is whether the Ready Forward Contract was between the Applicants and 2nd Respondents or whether it was between the Applicants and 3rd/4th Respondents.

11. Mr. Chinai has submitted that the Contract Notes, Cost Memo and the Delivery Order all indicate that the contract is only between the Applicants and the 2nd Respondents. He submits that these are the documents evidencing the contract. He submits that a contrary position cannot be allowed to be taken. He submitted that the Contract Note clearly shows that 3rd Respondent merely acted as a broker in the transaction. He

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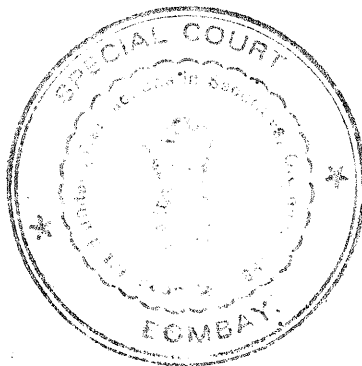


submits that the cheque has been issued by the Applicants in favour of the 2nd Respondents. He submits that the cheque is a crossed cheque which is also an account payee cheque. He submits that this clearly establishes that the Contract was only between the Applicant and the 2nd Respondents.

12. I am afraid that things are not as simple as Mr. Chinal seeks to make them out to be. This Court was established only because Banks and Financial Institutions indulged in large scale irregularities which led to diversion of public funds into private pockets. This Court has, during the last two years seen that one of the methods has been that the transaction, supposedly in name of a Bank or Financial Institution, was in fact a transaction of the Broker. The Court has seen that Brokers have entered into transactions in Securities through the medium of Banks and Financial Institutions. The Court has seen that the Contract Notes would only bear the names of Banks and/or Financial Institutions. Cheques would be issued in names of Banks and/or Financial Institutions. Yet the transaction has been the transaction of the Brokers. The Bank/Financial Institution has merely acted for and on behalf of the Broker.

13. In this case the 2nd Respondents have,

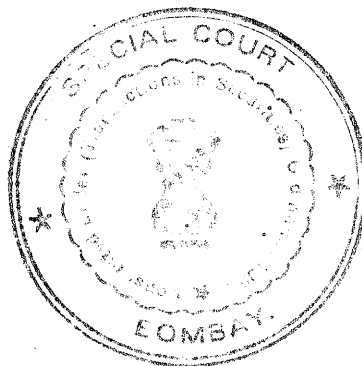
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on Affidavit, stated that on 24th April 1992 they have had no transaction with the Applicant in respect of 9% IREC Bonds of the face value of Rs. 30 crores. The 2nd Respondents have disclosed on Affidavit a pay-in-slip whereby the cheque issued by the Applicants has been deposited into the account of the 3rd Respondent. This in spite of the fact that the cheque was in the name of the 2nd Respondents and it was a crossed cheque. The 2nd Respondents have also disclosed Current Account of the 3rd Respondents for the relevant period. The Current Account bearing No. 01CBM8537700 shows that the cheque issued by the Applicants has been credited into this account. It is not disputed by the 2nd Respondent that Securities belonged to the 3rd and 4th Respondents.

14. The 2nd Respondents have, in their Affidavit dated 9th March 1994, also disclosed a letter dated 13th April 1993 addressed by the Applicants to them whereunder a claim is made for some interest warrants and in respect of balance Bonds of the face value of Rs. 8 crores. The 2nd Respondents have annexed their reply to this letter. They have annexed a letter dated 22nd April 1993 wherein they have informed the Applicants that they never had any transaction in respect of these 9% IREC Bonds of the face value of

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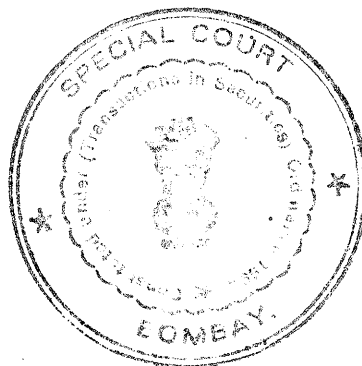
Rs. 30 crores with the Applicants. No rejoinder has been filed by the Applicants till date. There is thus no denial of any of these facts.

15. That is not all. The Applicants have, in the Petition, annexed as Ex. A8 a letter dated 24th April 1992, ~~as Ex. A8~~. This letter is from 3rd Respondent to the Applicants. This letter reads as follows:

"We confirm that the reversal of the above mentioned deal with you is due on 25th May, 1992, through ANZ Grindlays Bank".

16. That this letter is received is an admitted position. This letter clearly shows that the 3rd Respondent is confirming that the Ready Leg would be falling due on 25th May 1992. If as now claimed the 3rd Respondent was merely a Broker, there was no question of his so confirming. Not only that 3rd Respondent is confirming that the Ready Leg would be completed "through the 2nd Respondents". If Contract was with the 2nd Respondents, where is the question of completing "through 2nd Respondents". Admittedly no reply is sent by the Applicants claiming that there was no question of the 3rd Respondent confirming the Contract or that there was no question of the transaction being through 2nd Respondents. No

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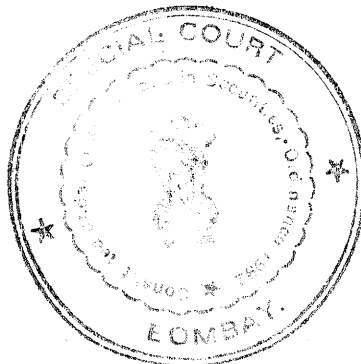
reply is sent claiming that the transaction is with the 2nd Respondents. On the contrary, on the 3rd Respondent's copy of this letter, an Officer of the Punjab National Bank has made the following endorsement:

"Received. Please note that the above deal is direct with you. Sd/- 24-4-92".

17. On Affidavit the authority of this Officer, to deal on behalf of Applicants is not denied. There is no denial that such an endorsement is made. This shows that to the knowledge of the Applicants, the transaction was between the Applicants and 3rd/4th Respondents. But due to Reserve Bank of India Regulations, it had been routed through the 2nd Respondents and in the name of the 2nd Respondents.

18. Before the final Order is passed, certain other facts must be stated. These two Applications were argued before me by Mr. Dhond (who then appeared on behalf of the Applicants) some time in September 1994. At that time, it was orally sought to be submitted that this Officer of the Punjab National Bank had no authority on behalf of the Applicants. The Court had then enquired whether there was any such denial on Affidavit. It was fairly admitted that no Affidavit had been filed denying that this Officer had an authority to

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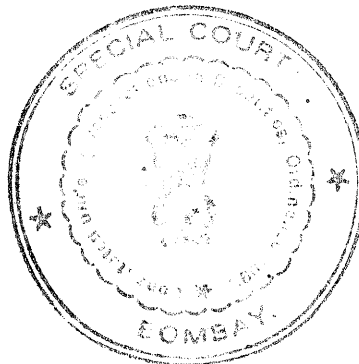


act on behalf of the Applicants. It was also fairly admitted that the Applicants were a wholly owned subsidiary of the Punjab National Bank. This Application was then adjourned. Till date no Affidavit is filed denying that this Officer had an authority to act on behalf of the Applicants. This Officer is still available. No Affidavit has been filed by him also. This in spite of fact that the matter has been adjourned on numerous occasions after that.

19. What is worse is that in Misc. Application No. 315 of 1994, the Applicant (Harshad S. Mehta) has specifically averred that this Contract was with him. There is no denial of averments made in Misc. Application No. 315 of 1994.

20. Mr. Chinai submitted that it is for the Respondents to show that the Officer of Punjab National Bank had an authority to act on behalf of the Applicants. He submitted that it was not at all necessary for the Applicants to file any Affidavit denying this position. I am unable to accept this submission. It is an admitted position that at that time the Applicants had no office in Bombay. In respect of this very Contract the Delivery Order (Ex. A3) was handed over to the Punjab National Bank. They took delivery of the

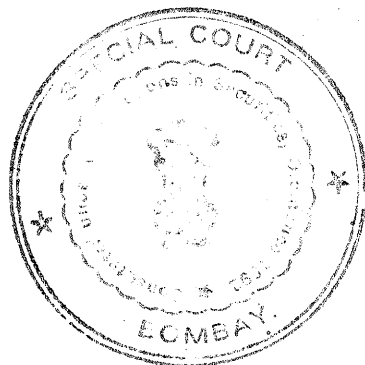
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Securities from the 2nd Respondents at Bombay. This shows that in Bombay, Punjab National Bank was acting for and on behalf of the Applicants. The Delivery Order even though it is addressed to the Applicants bears a stamp of the Punjab National Bank at Bombay. It is not denied that the Delivery Order was delivered to Punjab National Bank in Bombay. It is not denied that the Punjab National Bank collected these Bonds from the 2nd Respondents. Not only that the cheque (Ex. A7) has been issued by the Punjab National Bank at Bombay. In face of this, it was absolutely necessary for the Applicants to deny that the Officer of the Punjab National Bank did not have an authority to act on their behalf. In the absence of any such denial, the specific averments must be deemed to have been admitted.

21. Mr. Chinai next submitted that even if the Officer of the Punjab National Bank had authority, he could not change the terms of the contract. He submitted that the contract was between the Applicants and the 2nd Respondents. He submitted that the Officer of Punjab National Bank could never change that contract into a contract between the Applicants and the 3rd Respondent. This argument proceeds on the footing that the contract was between the Applicants and the 2nd

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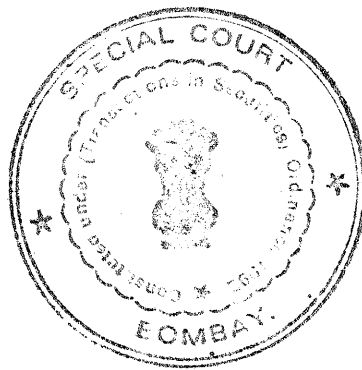


Respondents. As stated above, in the two Contract Notes the name of the counter-party is not indicated. Similarly in the Cost Memo the name of the counter-party is not indicated. The only document in which the counter-party is indicated is the cheque. The cheque admittedly has been deposited into the account of the 3rd Respondents. Also as stated above, even without the endorsement, the letter dated 24th April 1992 clearly indicates that to the knowledge of the Applicants, the transaction was between them and the 3rd Respondent. There is thus no change in nature of this contract by the Officer of the Punjab National Bank. He has merely confirmed what was true and original contract between the parties.

22. Under these circumstances, I hold that the Contract was between the Applicants and the 3rd/4th Respondents. As admittedly it is a Ready Forward Transaction, the Judgment dated 14th December 1993 in M. A. No. 11 of 1993 along with M. P. No. 23 of 1993 applies to this case also.

23. As stated above, the Applicants have managed to get transferred into their name bonds of the face value of Rs. 22 crores. Mr. Chinai submits that this is a completed contract. He submitted that being a completed Contract, there is no question of return of these Bonds. He submitted

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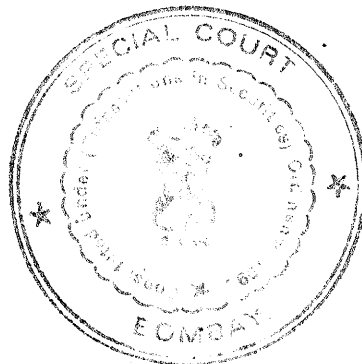


that the Order, if any, can only be passed in respect of the Bonds of the face value of Rs. 8 crores.

24. I am unable to accept this submission also. The 3rd and 4th Respondents were Notified on 8th June 1992. The moment that they were Notified, all their assets stood attached. After the date of attachment, there could be no transfer. If any transfer has taken place after that date, such transfer is an illegal transfer. It would create no rights in favour of the third party. In this case, admittedly the transfer has taken place after 15th June 1992. There is thus no valid transfer. There is thus no completed contract.

25. There is another reason also why this argument cannot be accepted. To accept the argument that there was a completed contract would necessitate a breaking up of original Ready Forward Contract into two parts - one part being ready part and the other part being the forward part. As set out in detail in the Judgment dated 14th December 1993 in M. A. No. 11 of 1993 along with M. P. No. 23 of 1993, this cannot be done. The original contract remains one composite contract. For these reasons also, there could never have been any completed contract of merely only the ready part.

Qm



26. For the above reasons, Misc. Application No. 198 of 1993 stands dismissed. Misc. Application No. 315 of 1994 is made absolute in terms of prayer (a), except the bracketed portion, i.e., "..... along with loss of tax benefit and accrued tax-free interest of Rs. 5,40,00,000/- which works out to an equivalent taxable interest of Rs. 12,70,58,820/- together with an appropriate interest thereon;". Applicants PNB Capital Services Ltd. (i.e., Respondents No. 1 in Misc. Application No. 315 of 1994) to comply with this Order within a period of 16 weeks from today.

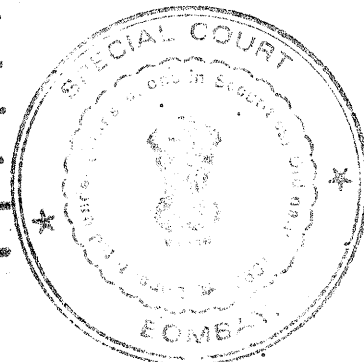
27. Mr. Jethmalani says that for the present he is not pressing prayer (b).

28. The Applicants at liberty to apply for restitution. The question whether they are entitled to restitution is left open to be decided in such application, if made.

29. At this stage Mr. Chinai applies for time till Monday, 6th February 1994 to consider the question of interest payable. On this limited point, adjourned till Monday, 6th February 1995.

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Applied on 10.2.95
 Pages (13)
 Examined by R.M. Kybal
 Compared with P.V. Sohoni
 Ready on 20.2.95
 Delivered on 13.3.95



Certified to be a true copy
 [Signature]
 OFFICER ON SPECIAL DUTY
 Office of the Special Court
 Bombay.