

RAHUL SUBODH WINDOORS LTD.

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v.

A.K. MENON AND ANR.

APRIL 6, 1999

[G.B. PATTANAIK AND S. RAJENDRA BABU, JJ.]

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Special Court (Trial of Offences Relating to Transactions In Securities) Act, 1992 :

Ss. 3(2) & (3), 7 and 9-A—Attachment of property—Jurisdiction of special court—Person notified for offences under S.3(2) of the Act—Company receiving certain amount for issuing share certificates—No allotment of shares—Custodian informing the company not to transfer shares as the money subscribed for shares is liable to be attached—Application by custodian before special court for return of money—Allowed along with interest—Validity of—Held, special court is the only court to deal with matters relating to transaction under S.9A or for attaching property under S.3(3) of the Act—Jurisdiction of special court not limited to offences under S.3 of the Act—Thus, special court justified in directing the company to repay the amount along with interest.

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Allotment of shares—Names of share-holders not entered in share certificate—No application by share holder for being member of the company—Special court holding that there was no allotment of shares—Validity of—Held, special court justified in its holding.

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Respondent No.2 was notified as person involved in offences under S.3 (2) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. He sent a cheque for Rs. 20 lakhs to appellant-company for purchase of shares for certain unknown persons. Respondent No. 1, Custodian appointed under S. 3 (1) of the Act, informed the appellant not to transfer the shares as the money subscribed towards shares were liable to be attached as property of respondent no. 2. Thereafter, the Custodian filed an application before the Special Court for return of the said amount alongwith interest which application was allowed. Hence, the present appeal.

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On behalf of appellant-company it was contended that the Special Court had no jurisdiction to entertain the application of respondent No. 1, the

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A Custodian, since the matter did not relate to any offence contemplated under S. 3 of the Act; the shares were granted and, therefore, on the allotment of shares the money does not belong to respondent No. 2 but to the appellant.

Dismissing the appeal, this Court

B HELD : 1.1. The Special Court is justified in entertaining the application of respondent No. 1, the Custodian and directing the appellant to repay the amount alongwith interest. [450-F-G]

C 1.2. The Special Court is the only court which can inquire into and deal with the matters of the transaction covered by Section 9A of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 or property standing attached under S. 3 (3) of the Act is involved. S.7 of the Act provides for the jurisdiction of the Special Court in respect of transaction for any offence referred to in S. 3(2) of the Act and bars the jurisdiction of any other court. Sub-section (3) of S. 9A bars the jurisdiction of other courts in respect of these matters. [451-B-D]

D 2. The Special Court was justified in holding that there was no allotment of shares. There can be no allotment of shares to unknown person; secondly, Allotment can be made to a person who becomes a member of the company when an application is made to that effect, and thirdly no application to the company by the second respondent in that regard was forthcoming. Cloud of doubts was cast upon the entries in the Register of members and the distinctive members of the shares and, therefore, the finding of fact recorded by the Special Court that there had been no allotment at all and it was sought to be made only after the second respondent was notified under the Act to avoid payment of money of a sum of Rs. 20 Lakhs cannot be seriously disputed. [451-F-H]

F 3. The Special Court was also justified in its finding that even if the sale/purchase of shares was on a 'buy-back basis' and only an arrangement for financing, still the appellant is liable to repay the money with interest to the Custodian. [452-A-B]

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 552 of 1995.

From the Judgment and Order dated 9.2.95 of the Special Court at Bombay, in Misc. Application No. 513 of 1994.

H M.D. Adkar and Ejaz Maqbool for the Appellant.

A. Subba Rao, Y.P. Mahajan and P. Parmeshwaran for the Respondents. A

The Judgment of the Court was delivered by

RAJENDRA BABU, J. The second respondent was notified under Section 3(2) of the Special Court (Trial of Offences Relating To Transactions In Securities) Act, 1992 [hereinafter referred to as 'the Act'] as a person involved in offences relating to transactions in securities during the period mentioned therein. Respondent No. 1, who is the Custodian appointed under Section 3(1) of the Act, on inquiry with the appellant, came to know that they had received a cheque for a sum of Rs. 20 lakhs from the second respondent for purchase of certain shares, without, however, mentioning the names of the ten shareholders to whom the shares were to be issued. The appellant claimed that they had allotted and sent the necessary share certificates to the second respondent and they also sent photocopies of the share certificates thereof to the Custodian. The Custodian, by letter dated March 28, 1994, informed the appellant that the share certificates would be the property of the second respondent and would stand attached and there should be no transfer in respect of these shares. The Custodian on September 27, 1994 filed an application before the Special Court under the Act for return of a sum of Rs. 20 lakhs along with interest. B
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It was brought out in the proceedings before the Special Court that by a letter dated November 5, 1991 the appellant informed the second respondent that shares of their company worth Rs. 20 lakhs were to be sold. On November 13, 1991 the second respondent sent a cheque for a sum of Rs. 20 lakhs and on November 15, 1991 the appellant forwarded to the second respondent 15 applications for purchase of shares on buy-back basis. A resolution was made on November 15, 1991 at the meeting of the Board of Directors of the appellant to allot and issue shares to the investors and to complete formality and physical allotment in due course. On November 23, 1991 the appellant sent to the second respondent application forms so that they may be filled up by its clients. The claim put forth by the appellant is that they had allotted shares to the second respondent and that they had forwarded to the second respondent the certificates for 2 lakh shares. But the second respondent claimed that no such share certificates were ever forwarded by the appellant to them and their claim is that no allotment had been made at all. It was argued before the Special Court that in the background that the allotment had been accepted by the Custodian in letter dated March 28, 1994 and, therefore, the only claim of the Custodian can now be in respect of the share certificates and that Rs. 20 lakhs have been paid towards subscription for shares, the E
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A Custodian cannot now claim back the same. The Special Court rejected this contention. The Special Court came to the conclusion that there has been no allotment of shares at all inasmuch as there can be no allotment of shares in blank and in the copies of the share certificates produced before the Special Court no names have been entered. No application had been filed by the second respondent in terms of Section 41(2) of the Companies Act agreeing to become a member of the company and his name be entered in the Register of Members. On examination of the Register of Members, the Special Court found that there were certain suspicious circumstances which clearly indicated the fact that the second respondent had never made an application in writing for allotment of shares. The Special Court further examined the matter with reference to the distinctive numbers of the shares which revealed a lot of suspicion to the effect that their names in the Register of Members were made sometime after the letter was sent by the Custodian only to over-come the difficulty of an application being made by him and long after the second respondent was notified. Therefore, the allotment is purportedly to be made in his name without any application in writing and only with a view not to return the money belonging to the notified party. Further, there is no intimation to the Registrar of Companies either for filing a return of the statement stating the number, the nominal amount of the shares, the names, addresses, occupation of the allottees and the amounts, if any, paid or due and payable on each share.

E Thus on the basis of these circumstances and certain other attendant circumstances, the Special Court came to the conclusion that there was no allotment of shares and it is not now open to the appellant to make such an allotment of shares and, therefore, it directed the repayment of the sum of Rs. 20 lakhs with interest. Alternatively, the Special Court held that the sale/purchase of shares was on a 'buy-back basis' and it was only an arrangement for financing and even on that basis the price must be the original price plus some amount for interest at a reasonable rate and that must be repaid. In conclusion, the Special Court directed the appellant to pay the Custodian for and, on behalf of the second respondent a sum of Rs. 20 lakhs together with interest thereon @ 18% per annum from November 13, 1991 till payment.

G Challenging this order several grounds have been raised in the appeal but at the time of hearing only two contentions are put forth before us by the learned counsel for the appellant. In the first place, he contended that the Special Court had no jurisdiction to entertain the application of respondent H No. 1, the Custodian, since the matter did not relate to any offence

contemplated under Section 3 of the Act. The learned counsel drew our attention to the scheme of the Act to impress upon us that the Special Court does not have any jurisdiction to entertain an application for declaration to the effect that a sum of Rs. 20 lakhs in question belong to the second respondent. Section 7 of the Act provides for the jurisdiction of the Special Court in respect of transaction for any offence referred to in Section 3(2) of the Act and bars the jurisdiction of any other court. If the matter stood thus, the contention put forth on behalf of the appellant perhaps needs further examination. Now after the insertion of Section 9A with effect from 25 January, 1994 the Special Court exercises the jurisdiction of a civil court in relation to any matter or claim "(a) relating to any property standing attached under Section 3(3) of the Act, and (b) arising out of transactions in securities entered into after the 1st day of April, 1991 and on or before the 6th day of June, 1992, in which a person is notified under Section 3(2) is involved as a party, broker, intermediary or in other manner". Sub-section (3) of Section 9A bars the jurisdiction of other courts in respect of these matters. Therefore, the Special Court is the only court which can inquire into and deal with the matters of this nature where the transaction covered by Section 9A or property standing attached under Section 3(3) is involved and, therefore, we think the first contention urged on behalf of the appellant is plainly misconceived and stands rejected.

The second contention put forth on behalf of the appellant is that the shares are granted and, therefore, on the allotment of shares the money does not belong to respondent No. 2 but to the appellant. In the narration of facts made earlier while referring to the proceedings in the Special Court out of which this appeal arises we have stated the various circumstances taken note of by the Special Court in not accepting that there had been any allotment of shares. A few of these circumstances are firstly, there can be no allotment of shares to unknown persons; secondly, allotment can be made to a person who becomes a member of the company when an application is made to that effect, and thirdly, no application was made to the company by the second respondent in that regard was forthcoming. Cloud of doubts was cast upon the entries in the Register of Members and the distinctive numbers of the shares and, therefore, the finding of fact recorded by the Special Court that there had been no allotment at all and it was sought to be made only after the second respondent was notified under the Act to avoid payment of money of a sum of Rs. 20 lakhs cannot be seriously disputed. We find no good reason to interfere with the said finding and the second contention urged also stands rejected.

A The Special Court was also justified in noticing that the transaction between the parties was really a financial arrangement with the 'buy-back agreement' and even on that basis a sum of Rs. 20 lakhs with interest can be ordered to be paid to the Custodian. We cannot take any exception to this view either.

B Inasmuch as the appellant has failed in both these contentions, there is no merit in the appeal and the same shall stand dismissed.

S.V.K.I.

Appeal dismissed.