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BANK OF INDIA

v.

KETAN PAREKH & ORS.

(Civil Appeal No.3652 of 2008)

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MAY 16, 2008

[A.K. MATHUR AND ALTAMAS KABIR, JJ.]

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Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992 – s. 3(3), 7, 9-A and 11 – Jurisdiction of Special Court – Attachment of property of Notified Party on 6.10.2001 – Confirmed by Custodian under 1992 Act – Application by Notified Party for impleading Custodian as necessary party – Dismissed by DRT as also Appellate Tribunal – However, High Court holding that as property of Notified Party stood attached by Custodian under 1992 Act,

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the Special Court would have jurisdiction regarding property of Notified party and not Appellate Tribunal – Interference with – Held: Not called for – Act of 1992 has over-riding effect on Act of 1993 – Act of 1992 as amended to include s.9-A in 1994 being a subsequent legislation would prevail over the Act of

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1993 – s. 9-A of 1992 Act specifically provided that only Special Court would have jurisdiction over the property of notified person attached u/s 3(3) of Act of 1992, pertaining to transactions in securities entered from 1.4.1991 to 6.6.1992 – Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

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Respondent No.1 was declared as a notified party on 6.10.2001 and all his movable and immovable properties stood attached under the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992. The Custodian confirmed the attachment. Bank filed original application against the respondent No.1. The respondent No.1 filed application for impleading the Custodian as a party. Respondent No.1 contended that the Custodian under the 1992 Act had to be joined as necessary party as the respondent No.1 had been declared as a no-

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tified party under the said Act; and that s. 9-A of the 1992 Act would be attracted. The Bank contended that the provisions of s. 9A of the Act of 1992 were not attracted as the respondent No.1 was being sued in his personal capacity as guarantor and not as a mortgagor or pledger of the movable or immovable properties. DRT dismissed the application. Aggrieved, respondent no. 1 challenged the order on the ground that the property of the respondent no. 1 stood attached by the Custodian under the Act of 1992, thus, DRT had no jurisdiction. The Appellate Tribunal also dismissed the appeal holding that the provisions of the Act of 1992 were not attracted. Meanwhile, in the application filed by the Bank before the DRT for recovery of its debts against respondent no. 1, temporary injunction was granted to disclose the assets. Thereafter, writ petition was filed challenging the order of the Appellate Tribunal. The Division Bench of the High Court set aside the order of the Appellate Tribunal. It held that since the respondent No.1 was declared as a notified party all the properties stood attached pursuant to s. 3 of the Act of 1992 and considering s. 9A of the said Act, the Special Court will have jurisdiction to grant a declaration that the properties of a notified person stood attached and not the Debts Recovery Appellate Tribunal. Hence, the present appeal.

Dismissing the appeal, the Court

HELD: 1.1 The analysis of s. s. 3(3), 9-A, 11 and 13 of the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992, clearly establishes that once the property of a notified person is attached by the Custodian and the same having been notified then the property of the notified person being movable or immovable shall be subject to the order passed by the Special Court and the manner in which properties for discharge of the liabilities would be dealt with has been mentioned in Section 11 of the Act of 1992 and lastly that the provisions of

A the Act will have the over-riding effect even on Tribunals
is clearly and categorically mentioned in Section 13 of the
Act of 1992. Therefore, in the scheme of things the Act
has been given priority over all Acts. In the instant case,
the property of the respondent stood attached under the
B orders of the Special Court on 6.10.2001 when the respon-
dent was declared a notified person under s. 3(3) of the
Act of 1992. [Para 5] [358-B-E]

1.2 The submission that Section 9-A of the Act of 1992
came by the amending Act 24 of 1994 on 25.1.1994 and it
C is specifically provided that after a person is notified un-
der section 3(3) of the Act of 1992, his property pertaining
to the transactions in securities entered after the 1st day
of April, 1991 and on and before 6th June, 1992 shall stand
attached and the Special Court will have the jurisdiction and
D none else; and that this provision having come subse-
quently after the Recovery of Debts Due to Banks and Fi-
nancial Institutions Act, 1993, Section 9-A of the Act of 1992
(came into force w.e.f. 25.1.1994) will have the over-riding
effect over the Act of 1993 is justified. [Para 5] [360-E-G]

E 1.3 It is provided in s. 3(3) of the Act of 1992 that the
transactions in securities entered into after 1st day of April,
1991 and on or before 6th June, 1992, the properties per-
taining to these securities shall vest with the Custodian
to be dealt with as directed by the Special Court. There-
F fore, the properties pertaining to these transactions dur-
ing the aforesaid period, will be subject to the jurisdiction
of the Special Court only. Furthermore, this Act was spe-
cially meant to deal with the fraudulent transactions which
has taken place from 1st of April, 1991 to 6th of June, 1992.
G Therefore, this Act has special purpose to deal with the
scam which has taken place in securities transactions
during this period. The special purpose behind this Act is
more than apparent from the Statement of Objects and
Reasons which amply clarifies this position. Therefore,
H this Act has a special task before it and that task has to be

dealt with in the parameters laid down by this Act. [Para 5 & 6] [360-G-H; 361-A-C; 362-A] A

1.4 The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was of comparatively general in nature pertaining to recovery of debts due to the Banks and Financial Institutions. The idea was that all the suits pertaining to recoveries of Banks and Financial Institutions spreading over the Civil Courts and this has resulted into great strain on the Banks and Financial Institutions. Therefore, in order to meet that contingency this Act was promulgated. Therefore, the purpose of the Act of 1993 was to expedite the recovery of the debts due to the banks and financial institutions. This Act also contains the over-riding effect. Section 34 of the Act of 1993 clearly says that this Act will have the over-riding effect for recovery of debts due to the Banks and Financial Institutions. [Paras 5 and 6] [362-A,B,D, 360-C,D] B C D

1.5 Incidentally, the purpose of both the Acts has separate area of operation. The subject matter appears to be the same under both the Acts. Both the two Acts i.e. the Act of 1992 and the Act of 1993 start with the non-obstante clause. Section 34 of the Act of 1993 starts with non-obstante clause, likewise Section 9-A of the Act of 1992. But incidentally, in the instant case, Section 9-A of the Act of 1992 was amended on 25.1.1994 whereas the Act of 1993 came in 1993. Therefore, the Act of 1992 as amended to include Section 9-A in 1994 being subsequent legislation will prevail and not the provisions of the Act of 1993. Section 9-A which has come subsequently in the Act of 1992 i.e. on 25.1.1994 deals with the over-riding effect on the Act of 1993. Therefore, the Act of 1992 is a subsequent legislation which will have the over-riding effect over the Act of 1993. But cases might arise where both the enactments have the non-obstante clause then in that case, the proper perspective would be that one has to see the subject and the dominant purpose for which the E F G H

A special enactment was made and in case the dominant purpose is covered by that contingencies, then notwithstanding that the Act might have come at a later point of time still the intention can be ascertained by looking to the objects and reasons. [Paras 6 and 8] [362-D, 365-F, 366-A]

1.6 In the instant case, both the Acts can be read harmoniously. Whatever dues are due to the Banks or the Financial Institutions can be claimed u/s.11(2) of the Act of 1992 which specially empowers that the liabilities can be adjusted out of the securities of the person notified in the manner provided u/s.11(2)(b). Therefore, the Bank can certainly make an application before the Special Court u/s. 11(2)(b) for discharge of their liabilities against the securities of the notified person. The view taken by the High Court is justified and there is no ground to interfere with the same. [Para 9] [366-C,D,E]

B.O.I. Finance Ltd. v. Custodian & Ors. (1997) 10 SCC 488; Tax Recovery Officer, Central Range-I v. Custodian & Ors. (2007) 7 SCC 461; Life Insurance Corporation of India v. D.J.Bahadur & Ors. (1981) 1 SCC 315; L.S.Synthetics Ltd. v. Fairgrowth Financial Services Ltd. & Anr. (2004)11 SCC 456; Allahabad Bank v. Canara Bank & Anr. (2000) 4 SCC 406 – referred to.

F CIVILAPPELLATE JURISDICTION : Civil Appeal No. 3652 of 2008

From the final Judgment and Order dated 17.1.2006 of the High Court of Judicature at Bombay in Writ Petition No. 6162 of 2005

G K.N. Bhatt, Gopal Jain, Jai Singh Brar, Abeer Kumar Manu Aggarwal and Manik Karanjawala for the Appellant.

H Kamini Jaiswal, Subramonium Prasad, S. Udaya Kumar Sagar, Bina Madhavan and Hemal K. Sheth (for M/s. Lawyer's Knit & Co.) for the Respondents.

The Judgment of the Court was delivered by

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A.K. MATHUR, J. 1. Leave granted.

2. This appeal is directed against the order dated 17.1.2006 passed by the Division Bench of the Bombay High Court whereby the Division Bench has held that since the property of the respondent No.1 has been seized under the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992 (hereinafter to be referred to as the Act of 1992), the Debts Recovery Tribunal had no jurisdiction to grant a declaration that the properties of a notified person stand charged and the certificate against such properties cannot be executed by the Recovery Officer under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter to be referred to as the Act of 1993) and the financial institution would have to move the Special Court in respect of the property attached.

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3. Brief facts which are necessary for disposal of this appeal are that the respondent No.1 was declared as a notified party on 6.10.2001. Pursuant to the said notification, considering section 3(3) of the Act of 1992, all properties, movable and immovable stood attached simultaneously. The Custodian confirmed the attachment on 1.11.2001. The respondent No.2 – Oriental Bank of Commerce (hereinafter to be referred to as the Bank) filed an application being Original Application No.233 of 2002 against the respondent No.1. The respondent No.1 took out Miscellaneous Application for impleading the Custodian as a party. That application came to be rejected by order dated 16.3.2005. Aggrieved against the said order the respondent No.1 preferred an appeal before the Debts Recovery Appellate Tribunal (hereinafter to be referred to as the Appellate Tribunal). That appeal came to be rejected by order dated 19.8.2005. Against the order passed by the Appellate Tribunal, a writ petition was filed before the High Court. It was contended by the respondent No.1 before the Debts Recovery Tribunal that the custodian under the Act of 1992 had to be joined as necessary party as the respondent No.1 had been declared as a no-

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A notified party under the said Act. This was opposed by the Bank
on the ground that the defendant No.2 has been sued merely as
a guarantor and therefore, the provisions of the Act of 1992 were
not attracted. It was submitted that Section 9A of the Act of 1992
would be attracted. This was opposed by the Bank on the ground
B that the provisions of Section 9A of the Act of 1992 were not
attracted as the respondent No.1 was being sued in his personal
capacity as guarantor and not as a mortgagor or pledger
of the movable or immovable properties. The D.R.T. accepted
the objection and rejected the petition of respondent No.1. Ag-
grieved against this order the matter was taken up before the
C Appellate Tribunal on the basis that the property of the respon-
dent No.1 stood attached by the Custodian under the Act of
1992. Therefore, the Debts Recovery Tribunal had no jurisdic-
tion to deal with the matter. The Appellate Tribunal held that the
D provisions of the Act of 1992 are not attracted and consequently,
dismissed the appeal. Aggrieved against this order the present
writ petition was filed before the Bombay High Court by respon-
dent No.1. The Division Bench of the Bombay High Court held
that since the respondent No.1 was declared as a notified party
all the properties stood attached pursuant to section 3 of the
E Act of 1992 and considering Section 9A of the said Act, it is the
Special Court which will have jurisdiction so far as the notified
party is concerned and as such the Division Bench of the High
Court reversed the order passed by the Appellate Tribunal and
held that the Special Court will have jurisdiction and not the Ap-
F pellate Tribunal. Hence, the present appeal against the order
passed by the Division Bench of the High Court of Bombay dated
17.1.2006.

4. Mr.K.N.Bhatt, learned senior counsel appearing for the
G appellant strenuously urged before us that since the Act of 1993
is a subsequent legislation which came into force in 1993 will
override the Act of 1992 which came in 1992. It was contended
that the decree passed by the Debts Recovery Tribunal will pre-
vail over the property attached under the provisions of the Act of
1992. Therefore, the short question for our consideration is
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whether the Act of 1992 will prevail or the Act of 1993. In order to better appreciate the controversy involved in the matter we may refer to necessary provisions of both the Acts. The Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992 came into force in 1992. Section 3 deals with the appointment and functions of the Custodian. Section 3 reads as under :

“3. Appointment and functions of Custodian.- (1) The Central Government may appoint one or more Custodian as it may deem fit for the purpose of this Act.

(2) The Custodian may, on being satisfied on information received that any person has been involved in any offence relating to transactions in securities after the 1st day of April, 1991 and on and before 7th June, 1992, notify the name of such person in the Official Gazette.

(3) Notwithstanding anything contained in the Code and any other law for the time being in force, on and from the date of notification under sub-section (2), any property, movable or immovable, or both, belonging to any person notified under that sub-section shall stand attached simultaneously with the issue of the notification.

(4) The property attached under sub-section (3) shall be dealt with by the Custodian in such manner as the Special Court may direct.

(5) The Custodian may take assistance of any person while exercising his powers or for discharging his duties under this section and Sec.4.”

Section 4 deals with the contracts entered into fraudulently may be cancelled. Section 5 deals with the establishment of Special Court. Section 6 deals with the cognizance of cases by Special Court. Section 7 deals with the jurisdiction of Special Court which is relevant for our purpose and it reads as under:

“ 7. Jurisdiction of Special Court.- Notwithstanding

A anything contained in any other law, any prosecution in respect of any offence referred to in sub-section (2) of Sec.3 shall be instituted only in the Special Court and any prosecution in respect of such offence pending in any Court shall stand transferred to the Special Court.”

B Section 9 lays down the procedure and powers of Special Court. Section 9-A deals with the jurisdiction, powers, authority and procedure of Special Court in civil matters. Section 9-A came into force subsequently by amending Act 24 of 1994 with effect from 25th January, 1994 which reads as under :

C “9-A. Jurisdiction, powers, authority and procedure of Special Court in civil matters.- (1) On and from the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act,1994, the Special Court shall exercise all such jurisdiction, powers and authority as were exercisable, immediately before such commencement by any Civil Court in relation to any matter or claim-

E (a) relating to any property standing attached under sub-section (3) of Sec.3;

F (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 sub-section (2) of Sec.3 is involved as a party, broker, intermediary or in other manner.

G (2) Every suit, claim or other legal proceeding (other than an appeal) pending before any Court immediately before the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act,1994, being a suit, claim or proceeding, the cause of action whereon it is based is such that it would have been, if it had arisen after such commencement, within the jurisdiction of the Special Court under sub-section (1), shall stand transferred on such commencement of the

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Special Court and the Special Court may, on receipt of the records of such suit, claim or other legal proceedings proceed to deal with it so far as may be in the same manner as a suit, claim or legal proceeding from the stage which was reached before such transfer or from any earlier stage or de novo as the Special Court may deem fit.

(3) On and from the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1994, no Court other than the Special Court shall have, or be entitled to exercise any jurisdiction, power or authority in relation to any matter or claim referred to in sub-section (1).

(4) While dealing with cases relating to any matter or claim under this section, the Special Court shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice, and subject to the other provisions of this Act and or any rules, the Special Court shall have power to regulate its own procedure.

(5) Without prejudice to the other powers conferred under this Act, the Special Court shall have, for the purposes of discharging its functions under this section, the same powers as are vested in Civil Court under the Code of Civil Procedure, 1908 (5 of 1908, while trying a suit in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of Secs. 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

- A (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing a case for default or deciding it ex parte;
- B (h) setting aside any order of dismissal of any case for default or any order passed by it ex parte; and
- (i) any other matter which may be prescribed by the Central Government under sub-section (1) of Sec.14.”

C Section 9-B deals with the powers of the Special Court in arbitration matters. Section 10 deals with appeal. Section 11 which deals with the discharge of liabilities and is relevant for our purpose, reads as under :

- D “ 11. Discharge of liabilities.-(1) Notwithstanding anything contained in the Code and any other law for the time being in force, the Special Court may make such order as it may deem fit directing the Custodian for the disposal of the property under attachment.
- E (2) The following liabilities shall be paid or discharged in full, as far as may be, in the order as under:-
- (a) all revenues, taxes, cesses and rates due from the persons notified by the Custodian under sub-section (2) of Sec. 3 to the Central Government or any State Government or any local authority.
- F (b) all amounts due from the person so notified by the Custodian to any bank or financial institution or mutual fund; and
- G (c) any other liability as may be specified by the Special Court from time to time.”

Section 13 deals with overriding effect which has relevance for our purpose, reads as under:

- H “ **13. Act to have overriding effect.**- The provisions of

this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any decree or order of any Court, tribunal or other authority.” A

The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 came into effect in 1993. The purpose of this Act was recovery of debts due to Banks or financial institutions or consortium of Banks less than ten lakhs rupees or such other amount being not less than one lakh rupees as the Central Government may by notification specify. Under this Act Tribunals were constituted. Section 17 lays down the jurisdiction that a Tribunal shall exercise on and from the appointed day, the powers and authority to entertain and decide application from the Banks and financial institutions for recovery of debts due to such banks and financial institutions. Appeal is provided against that to the appellate authority under Section 20 of the Act. Section 34 lays down that it has the overriding power. Section 34 reads as under : B
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“ 34. Act to have over-riding effect.- (1) Save as otherwise provided in sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. E

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporation Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), The Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), the Sick Industrial Companies (Special Provisions) Act, 1985 and the Small Industries Development Bank of India Act, 1989.” F
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5. The admitted facts are that the respondent No.1- Ketan H

- A Parekh was a notified party on 6.10.2001. Therefore, on 6.10.2001 all his movable and immovable properties stood attached. Under the Act of 1992, under Section 3(3), the Custodian may, on being satisfied on information received that any person has been involved in any offence relating to transactions in securities after the 1st day of April, 1991 and on and before 7th June, 1992, notify the name of such person in the official gazette and from the date when such party is notified all properties, movable or immovable or both belonging to any person notified shall stand attached simultaneously with the issue of the notification, notwithstanding anything contained in the Code and any other law for the time being in force. After attaching that property the Custodian will have the right to deal with such property in such manner as directed the Special Court. Therefore, an analysis of this section means that the moment a person is notified, his property stands attached and the Custodian is in authority of that property and he shall deal with the property in the manner as directed by the Special Court notwithstanding anything contained in the Code (Code means the Civil Procedure Code). Therefore, the property of the respondent herein stood attached under the orders of the Special Court on 6.10.2001 when the respondent was declared a notified person under sub-section (3) of Section 3 of the Act of 1992. Section 9-A which was introduced in 1994 gives full power from the date this amended provision came into force i.e. in 1994 that the Special Court alone will have the jurisdiction to deal with all the cases pending immediately before such commencement by any Civil Court in relation to any manner or claim relating to the property standing attached under sub-section (3) of Section 3. Sub-section (2) of Section 9-A says that every suit, claim or other legal proceeding (other than an appeal) pending before any Court immediately before the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1994, being a suit, claim or proceeding, the cause of action whereon it is based is such that it would have been, if it had arisen after such commencement, within the jurisdiction of the Special Court under sub-section

(1), shall stand transferred on such commencement of the Special Court and the Special Court may, on receipt of the records of such suit, claim or other legal proceedings proceed to deal with it so far as may be in the same manner as a suit, claim or legal proceeding from the stage which was reached before such transfer or from any earlier stage or de novo as the Special Court may deem fit. Sub-section (3) further says that no Court other than the Special Court shall have, or be entitled to exercise any jurisdiction, power or authority in relation to any matter or claim referred to in sub-section (1). Sub-section (4) further says that the Special Court shall not be bound by the procedure laid down by the Code of Civil Procedure. But it shall be guided by the principles of natural justice and subject to the other provisions of this Act and the Rules framed thereunder. Sub-section (5) further says that the Special Court shall have all powers as a Civil Court under the Code of Civil Procedure for trying such suits. Section 11 deals with the discharge of liabilities. It also starts with a non-obstante clause and says that notwithstanding anything contained in the Code or any other law for the time being in force, the Special Court shall direct the Custodian for disposal of the property under attachment and liabilities shall be discharged in the order i.e. (a) all revenues, taxes, cesses and rates due from the persons notified by the Custodian under sub-section (2) of Sec. 3 to the Central Government or any State Government or any local authority. (b) all amounts due from the person so notified by the Custodian to any bank or financial institution or mutual fund; and any other liability as may be specified by the Special Court. Therefore, by virtue of section 11, the first priority has been given to all dues of the revenues, taxes, cesses etc. The second priority has been given to any bank or financial institution or mutual fund and the last priority has been given as directed the Special Court. Section 13 clearly lays down that this Act will have over-riding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any decree or order of any Court, tribunal or other authority. The analysis of these necessary pro-

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A visions clearly establishes that once the property of a notified person is attached by the Custodian and the same having been notified then the property of the notified person being movable or immovable shall be subject to the order passed by the Special Court and the manner in which properties for discharge of the liabilities would be dealt with has already been mentioned in Section 11 of the Act of 1992 and lastly that the provisions of this Act will have the over-riding effect even on Tribunals as is clearly and categorically mentioned in Section 13 of the Act of 1992. Therefore, in the scheme of things this Act has been given priority over all Acts. The Act of 1993 came for recovery of debts due to the Banks and Financial Institutions. This Act also contains the over-riding effect. Section 34 of the Act of 1993 clearly says that this Act will have the over-riding effect for recovery of debts due to the Banks and Financial Institutions. Both the Acts have non-obstante clause. The Act of 1993 is a subsequent legislation and the Act of 1992 is a prior legislation. Therefore, it was contended by learned senior counsel for the appellant that since the Act of 1993 is a subsequent legislation, it should have the over-riding effect over the Act of 1992. As against this, learned senior counsel for the respondent No.1, contended that Section 9-A of the Act of 1992 came by the amending Act 24 of 1994 on 25.1.1994 and it is specifically provided that after a person is notified under section 3(3) of the Act of 1992, his property pertaining to the transactions in securities entered after the 1st day of April, 1991 and on and before 6th June, 1992 shall stand attached and the Special Court will have the jurisdiction and none else. Learned senior counsel for the respondent No.1 submitted that this provisions having come subsequently after the Act of 1993, Section 9-A of the Act of 1992 (came into force w.e.f. 25.1.1994) will have the over-riding effect over the Act of 1993. The contention of learned senior counsel for respondent No.1 appears to be justified. Apart from that it is provided in sub-section (3) of Section 3 that the transactions in securities entered into after 1st day of April, 1991 and on or before 6th June, 1992, the properties pertaining to these securities shall vest with the Custodian to be dealt with as directed by the Spe-

cial Court. Therefore, the properties pertaining to these transactions during the aforesaid period, will be subject to the jurisdiction of the Special Court only. There is another reason to come to this conclusion that in fact this Act was specially meant to deal with the fraudulent transactions which has taken place from 1st of April, 1991 to 6th of June, 1992. Therefore, this Act has special purpose to deal with the scam which has taken place in securities transactions during this period. The special purpose behind this Act is more than apparent from the Statement of Objects and Reasons and the Statement of Objects and Reasons amply clarifies this position. The Statement of Objects and Reasons reads as under :

“ Statement of Objects and Reasons.- (1) In the course of the investigations by the Reserve Bank of India, large scale irregularities and malpractices were noticed in transactions in both the Government and other securities, indulged in by some brokers in collusion with the employees of various banks and financial institutions. The said irregularities and malpractices led to the diversion of funds from banks and financial institutions to the individual accounts of certain brokers.

(2) To deal with the situation and in particular to ensure speedy recovery of the huge amount involved, to punish the guilty and restore confidence in and maintain the basic integrity and credibility of the banks and financial institutions the Special Court (Trial of Offences Relating to Transactions in Securities) Ordinance, 1992, was promulgated on the 6th June, 1992. The Ordinance provides for the establishment of a Special Court with a sitting Judge of a High Court for speedy trial of offences relating to transactions in securities and disposal of properties attached. It also provides for appointment of one or more custodians for attaching the property of the offenders with a view to prevent diversion of such properties by the offenders.

A 6. Therefore, this Act has a special task before it and that
task has to be dealt with in the parameters laid down by this
Act. The Act of 1993 was of comparatively general in nature
pertaining to recovery of debts due to the Banks and Financial
B Institutions. The idea was that all the suits pertaining to recover-
ies of Banks and Financial Institutions spreading over the Civil
Courts and this has resulted into great strain on the Banks and
Financial Institutions. Therefore, in order to meet that contin-
gency this Act was promulgated. The preamble in this Act clearly
reads as under :

C “ An Act to provide for the establishment of Tribunals for
expeditious adjudication and recovery of debts due to
banks and financial institutions and for matters connected
therewith or incidental thereto. “

D Therefore, the purpose of the Act of 1993 was to expedite
the recovery of the debts due to the banks and financial institu-
tions. Incidentally, the purpose of both the Acts has separate
area of operation. Application was filed by the Bank before the
Debts Recovery Tribunal for recovery of its debts against the
E same person i.e. Ketan Parekh and temporary injunction was
issued to disclose the assets and during the pendency of these
Original Applications the jurisdiction of the Tribunal was chal-
lenged. Therefore, the issue came up specially before the High
Court. The effect of Act of 1992 has special purpose and inci-
F dentally the subject matter appears to be the same under both
the Acts but the Act of 1992 clearly lays down the specific pur-
pose i.e. the scam which has taken place relating to the trans-
actions in securities from 1.4.1991 to 6.6.1992 to deal with such
scam only. Section 9-A which has come subsequently in the Act
of 1992 i.e. on 25.1.1994 deals with the over-riding effect on
G the Act of 1993. Therefore, the Act of 1992 has the over-riding
effect over the Act of 1993.

H 7. In this connection, our attention was invited to a deci-
sion of this Court in *B.O.I. Finance Ltd. v. Custodian & Ors.* [(1997) 10 SCC 488]. In this case, notification was issued un-

der the Securities Contracts (Regulation) Act, 1956 prohibiting all contracts for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery in any securities as permissible under the Act. The transaction was consisting of two interconnected legs i.e. ready leg consisting of sale of securities by the brokers and purchase thereof by the banks at market price and the forward leg consisting of sale back of the securities by the banks and purchase thereof by the brokers after a period of 14 days on a fixed date at a price determined on the first date. Their Lordships held that the ready- forward transaction is severable into two parts i.e. the ready leg and the forward leg. Ready leg transaction was not illegal, unlawful or prohibited under Section 23 of the Contract Act. Ready leg having been completed prior to the notified date, forward leg which is illegal being hit by the notification, the same has to be ignored. It was further held that once the payment of market price is made the title to the securities stood validly transferred to the banks under Transfer of Property Act and thereby the banks became owners and the ready leg having been performed illegally of the forward leg contained in the agreements cannot affect the transfers which had already taken place. The appellant banks had prior to 6.6.1992 entered into contracts with different brokers for the purchase and sale of certain securities which were not listed on any stock exchange. Therefore, such transactions were completed after the payment of agreed price and delivery of securities were received before 6.6.1992. Therefore, it was held that the order passed by the Special Court on application filed by the Custodian of the notified person was not correct and the order passed by the Special Court was set aside. This was a case in which the transaction was found to be valid. Therefore, this case cannot provide any assistance. Our attention was invited to another decision of this Court in *Tax Recovery Officer, Central Range-I v. Custodian & Ors.* [(2007) 7 SCC 461]. In that case it was held that that the property of any person notified under section 3(2) & (3) of the Act can be attached and the jurisdiction of the Special Court is confined to that property of

A the notified person only. It was found that the Company D which
was notified as a party under section 3(2) of the Act of 1992
and not the Company K. Company D owed money from Com-
B pany K and its subsidiaries and it was in execution of the de-
cree passed in the favour of Company D, the property of Com-
pany K was put to auction. Thus, the Special Court could not
have entertained the application moved by the Income-Tax De-
partment for realization of its income tax dues from the Com-
C pany K and therefore, it was held that the application moved by
the Income Tax Department was rightly rejected by the Special
Court. Our attention was invited to a decision of this Court in
Life Insurance Corporation of India v. D.J. Bahadur & Ors. [
(1981) 1 SCC 315]. In this case, the question was whether the
provisions of the Industrial Disputes Act will prevail or the provi-
D sions of the Life Insurance (Alteration of Remuneration and other
Terms and Conditions of Service of Employees) Order, 1957
framed under the Life Insurance Corporation Act, 1956. In that
context, their Lordships after dealing with the provisions of Life
Insurance Corporation Act and the Rules framed thereunder held
that the case will be covered by the Industrial Disputes Act. It
was observed per Krishna Iyer, J as follows:

E “ In determining whether a statute is a special or a general
one, the focus must be on the principal subject-matter
plus the particular perspective. For certain purposes, an
Act may be general and for certain other purpose it may
F be special. Vis-à-vis ‘ industrial vists’ at the termination of
the settlement as between the workmen and the
Corporation the ID Act is a special legislation and the LIC
Act a general legislation. So the ID Act, being a special
law, will prevail over the LIC Act which is a general law.”

G Pathak, J. concurring with Krishna Iyer, J observed as fol-
lows “

H “ Law declared by the court in respect of an award holds
true in the case of a settlement. Not only are the statutory
provisions pertaining to a settlement and an award

comparable in this regard but, if anything the observations
if read in respect of a settlement, which after all is a
voluntary agreement between the parties, would seem to
hold more strongly. “

Our attention was invited to a decision of this Court in
L.S.Synthetics Ltd. v. Fairgrowth Financial Services Ltd. & Anr.
[(2004)11 SCC 456]. In this case it was held that the contention
that only those properties belonging to the notified person which
are the subject-matter of the transactions in securities would
stand attached and for that purpose Section 9-A of the Act must
be read down was not sustainable. Our attention was also in-
vited to a decision of this Court in *Allahabad Bank v. Canara
Bank & Anr.* [(2000) 4 SCC 406]. In this case there was a ques-
tion of jurisdiction whether the Recovery of Debts Due to Banks
and Financial Institutions Act, 1993 will prevail or the provisions
of the Companies Act, 1956. In that context their Lordships ob-
served as follows:

“Alternatively, the Companies Act, 1956 and the RDB Act
can both be treated as special laws, and the principle that
when there are two special laws, the latter will normally
prevail over the former if there is a provision in the latter
special Act giving it overriding effect, can also be applied.
Such a provision is there in the RDB Act, namely Section
34. Therefore, in view of Section 34 of the RDB Act, the
said Act overrides the Companies Act, to the extent there
is anything inconsistent between the Acts.”

8. In the present case, both the two Acts i.e. the Act of
1992 and the Act of 1993 start with the the non-obstante clause.
Section 34 of the Act of 1993 starts with non-obstante clause,
likewise Section 9-A of the Act of 1992. But incidentally, in this
case Section 9-A came subsequently, i.e. it came on 25.1.1994.
Therefore, it is a subsequent legislation which will have the over-
riding effect over the Act of 1993. But cases might arise where
both the enactments have the non-obstante clause then in that
case, the proper perspective would be that one has to see the

A subject and the dominant purpose for which the special enactment was made and in case the dominant purpose is covered by that contingencies, then notwithstanding that the Act might have come at a later point of time still the intention can be ascertained by looking to the objects and reasons. However, so far as the present case is concerned, it is more than clear that Section 9-A of the Act of 1992 was amended on 25.1.1994 whereas the Act of 1993 came in 1993. Therefore, the Act of 1992 as amended to include Section 9-A in 1994 being subsequent legislation will prevail and not the provisions of the Act of 1993.

9. Apart from this, in the present case both the Acts can be read harmoniously. Whatever dues are due to the Banks or the Financial Institutions can be claimed under Section 11 (2) of the Act of 1992 which specially empowers that the liabilities can be adjusted out of the securities of the person notified in the manner provided under Section 11(2)(b). Therefore, in the present case, the Bank can certainly make an application before the Special Court under Section 11(2)(b) of the Act of 1992 for discharge of their liabilities against the securities of the notified person.

10. As a result of our above discussion, the view taken by the Division Bench of the High Court of Bombay appears to be justified and there is no ground to interfere with the same. Consequently, the appeal is dismissed with no order as to costs.

N.J. Appeal dismissed