

PREMANAND R. SHENOY

v.

CUSTODIAN AND ORS.

(Civil Appeal No. 5524 of 2004)

MAY 26, 2009

[DR. MUKUNDAKAM SHARMA AND DR. B.S.
CHAUHAN, JJ.]

Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992: s.5 – Respondent company was declared notified person of which appellant became the director immediately after demise of his father – Custodian concluded that respondent company financed Rs.2.83 lacs for purchase of a jeep for appellant – Custodian came to finding that appellant, being director of respondent company was aware that jeep was purchased in his name for which, consideration was paid by respondent company – On application filed by Custodian, Special Court directed appellant to pay Rs.2.83 lacs with interest @ 18% p.a. from date of purchase of vehicle – Held: Documents on record indicate that the jeep was ordered in the name of appellant and it was purchased for him and financed by respondent company – Therefore nexus between purchase of jeep and involvement of appellant in deal was clearly established – No infirmity in the order of Special Court – Order of Special Court is upheld however since appellant himself informed Custodian about the jeep, order on interest is modified and reduced from 18% to 9% p.a.

The father of appellant was the Chairman and Incharge of second respondent-company. He died on 2.2.1992. Thereafter, appellant became the Director of the said company. An order was placed for purchase of a jeep by making payment by cheque dated 22.7.1991 for Rs. 2.83 lacs. As per the original delivery receipt and a

A letter addressed to the appellant, the vehicle was delivered to the appellant on 15.4.1992.

In terms of Section 53 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, the respondent company was declared notified person.

The first respondent, the Custodian issued a public notice dated 10.9.1992 calling upon all the persons who were dealing with the Company to inform him about the same. The appellant informed the Custodian that a jeep belonging to second respondent was parked at a Panchasheel Park house and that the said vehicle was under a hire purchase/lease agreement. The opined that the second respondent financed the purchase of the vehicle for the appellant. He Custodian filed an application before the Special Judge, which was allowed and the appellant was directed to pay to the Custodian Rs. 2.83 lacs with interest @ 18% p.a. from 22.7.1991. Aggrieved by the order of Special Court, appellant filed present appeal.

Disposing of the appeal, the Court

HELD: 1.1. The office note of respondent company indicated that the hire purchase finance was made available to the appellant by respondent company and the said amount for purchase of the Jeep vehicle was sanctioned by the Chairman verbally. The cost of the said vehicle was Rs. 2,83,192/- and payment for the said vehicle was to be made on 22.7.1991 and, therefore, after taking approval of the Vice President, a cheque for the said amount was released. There was another letter dated 11.1.1992 available on record which referred to the subject of the Mahindra Jeep to be sold to the appellant. In the said letter, respondent company made reference to proforma invoice dated 22.7.1991 intimating further that the cheque dated 22.7.1991 for Rs. 2,83,192/- was sent for

supply of the jeep which was subject to a hire purchase agreement between respondent company and the appellant. The letter dated 12.4.1992 was also addressed to the appellant at the address of respondent company intimating that the jeep was lying ready for the last five months and was also duly registered temporarily in the name of the appellant. It is an admitted position that subsequent thereto the jeep was delivered along with Temporary Registration. The name of the appellant appears against the name of the registered owner. In fact, these documents were sent by the appellant himself to respondent No. 1 (the Custodian) under his letter dated 4.8.1998 informing the Custodian that Jeep is parked at Panchasheel Park house. The appellant also stated that the ex-officials of respondent company informed him that the vehicle was supposed to be under hire purchase/ lease agreement. [Paras 10 and 11] [607-H; 608-A-G]

1.2. On appreciation of these documents, the Custodian came to a finding that the appellant, being a Director of the respondent company of which his father was Chairman and Managing Director, was aware that the jeep was purchased in his name for which, consideration was paid by the respondent company. The premises at Panchasheel Park was previously occupied by the father of the appellant. Having found all those facts against the appellant, it was concluded that the vehicle in question was purchased by the appellant through respondent company on hire purchase agreement and, therefore, the amount was paid by respondent company. The temporary registration of the vehicle was taken on 3.3.1992 and the delivery of the vehicle was taken by the notified party. The appellant was the Director of the notified party. Consequent thereto, a categorical finding was recorded that the aforesaid transaction was known and authorised by the appellant who was aware that the vehicle was ordered by his father on his behalf for which

- A consideration was paid by the notified party. In that view of the matter, the direction was issued for payment of the amount in accordance with the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. All the documents which were sent
- B by the appellant himself to the Custodian clearly indicated that the vehicle was ordered in the name of the appellant. Therefore, it is clear that the appellant was the owner of the vehicle in question and that it was purchased on hire purchase and that it was financed by
- C respondent company after the amount was sanctioned by the father of the appellant who was the Chairman towards hire purchase finance for the appellant. Therefore, the nexus between the purchase of the vehicle and the involvement of the appellant in the deal is clearly
- D established. There is no infirmity in the order passed by the Special Court. The said order is upheld but in the peculiar facts and circumstances of the case and taking into consideration the fact that the appellant himself informed the Custodian about the aforesaid vehicle the order for payment of interest @ 18% per annum is
- E modified. The interest would be payable @ 9% per annum from 22.7.1991 to 29.2.1992. [Paras 12, 14 and 15] [608-H; 609-A-E; H; 610-A-E]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5524 of 2004.

From the Judgment & Order dated 5.3.2004 passed by the Special Court (Trial of Offences Relating to Transactions in Securities), at Bombay in Misc. Application No. 409 of 2000.

G Amar Dave E.C. Agrawala for the Appellant.

Subramonium Prasad, Tarun Mehta and Jay Kishore for the Respondents.

H The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. By filing the present appeal the appellant has challenged the judgment and order dated 5.3.2004 passed by the Special Court established under sub-section (1) of Section 5 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (hereinafter referred to as 'the Act') whereby and whereunder the Special Court allowed the application filed by the Custodian (respondent No. 1 herein) thereby directing the appellant to pay to the Custodian an amount of Rs. 2,83,192/- with interest at the rate of 18% per annum from 22.7.1991 to 29.2.1992 which amount the Custodian would receive for and on behalf of respondent No. 2.

2. Shri B. Ratnakar, the father of the appellant was the Chairman and Managing Director of M/s. Fair Growth Financial Services Limited (for short the 'Company') which is respondent No. 2 herein. There is no dispute with regard to the fact that the father of appellant was the Chairman and also In-charge of the aforesaid Company. He died on 2nd February, 1992. The appellant became the Director of the aforesaid Company immediately after the demise of his father. An order was placed for purchase of a Mahindra Jeep by making payment of a cheque dated 22.7.1991 for Rs. 2,83,192/-. The said order was placed with M/s. Tirupati Balaji Motors, New Delhi. As per the original delivery receipt and letter addressed to the appellant, the vehicle was delivered to the appellant on 15.4.1992. In this connection, reference may be made to the letter dated 12.4.1992 (Annexure R-5 in the paper book) which is addressed to the appellant herein. The subject of the said letter was with respect to the delivery of his vehicle. By the said letter M/s. Tirupati Balaji Motors, New Delhi informed the appellant that despite repeated reminders for the last five months regarding delivery of the aforesaid vehicle, the delivery was not taken. As per the order placed, the said jeep was lying ready for the last five months and was duly registered temporarily in the name of the appellant. Copy of the temporary registration and the bill of the receipt were also enclosed with

A the said letter.

B 3. Before dwelling further, it would be relevant here to
 C mention that the Reserve Bank of India, in the course of its
 D investigation, found large scale irregularities and malpractices
 E in the transactions in both the Government and other securities
 F indulged in by some brokers in collusion with the employees
 G of the various banks and financial institutions. The said
 H irregularities and malpractices led to the diversion of funds from
 banks and financial institutions to the individual accounts of
 certain brokers. To deal with the aforesaid 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 was constituted for trial
 of offences relating to transactions in securities and in that
 regard an Act was enacted called "the Special Court (Trial of
 Offences Relating to Transactions in Securities) Act, 1992".
 Section 3 of the said Act reads as follows

E "3. *Appointment and functions of Custodian* – (1) The
 F Central Government may appoint one or more Custodian
 as it may deem fit for the purposes of this Act.

F (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 6th June, 1992,
 notify the name of such person in the Official Gazette.

G (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.

H (4) The property attached under sub-section (3) shall

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be dealt with by the Custodian in such manner as the Special Court may direct. A

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

4. In terms of the aforesaid provision, M/s. Fair Growth Financial Services Limited was declared as a notified person. Sub-section 3 of Section 3 empowers the Custodian to attach any property which could be either movable or immovable, or both, belonging to the notified person. The said property which is attached under sub-section 3 could be dealt with by the Custodian in such a manner as the Special Court direct in that regard. In order to comply with the statutory provisions, the Custodian (respondent No. 1 herein) issued a public notice dated 10.9.1992 calling upon all the persons who had dealings with M/s. Fair Growth Financial Services Limited to inform him about the same. The appellant, however, after a long period, for the first time, by his letter dated 4.8.1998 informed the Custodian that one Mahindra Jeep belonging to respondent No. 2 was parked at S-25, Panchasheel Park, New Delhi-110001, at the residence of one Mr. Vijay Sachadev. It was also informed by the appellant in that letter that the said vehicle was supposedly under a hire purchase/lease agreement. The appellant also enclosed with the aforesaid letter dated 4.8.1998 five original letters pertaining to the said vehicle which are of the following nature : C
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1. Letter dated 11.1.1992 from respondent No. 2 to M/s. Tirupati Balaji Motors, New Delhi.
2. Original invoice for Rs. 2,90,200/- in the name of the appellant. G
3. Original C.M. Form dated 3.3.1992.
4. Original letter dated 12.4.1992 addressed to H

A respondent No. 1.

5. Original delivery receipt dated 15.4.1992.

5. All the aforesaid letters and documents are addressed to the appellant. After receipt of the aforesaid documents alongwith the letters annexed therewith and after making necessary enquiries, the Custodian came to the conclusion that respondent no. 2 had financed the purchase of the said vehicle for the appellant. According to the respondent No. 1 (the Custodian), respondent No. 2 had placed an order for the said vehicle on behalf of the appellant to M/s. Tirupati Balaji Motors, New Delhi by issuing a cheque for-Rs. 2,83,192/- dated 22.7.1991. It was also found that respondent No. 2, thereafter by letter dated 10.3.1992, informed the said Ms/. Tirupati Balaji Motors, New Delhi that they were constrained to cancel the order of the said vehicle due to non-delivery thereof and demanded back the amount of Rs. 2,83,192/- along with interest at the rate of 22% per annum for the period from 22.7.1991 to 29.2.1992. It transpires from the original delivery receipt that the said vehicle was delivered to respondent No. 2 on behalf of the appellant on 15.4.1992 and, therefore, it was concluded that there was an agreement between respondent No. 2 and the appellant to enter into a hire purchase agreement in respect to the said vehicle. On enquiry made, the Custodian found the said vehicle to be in a dilapidated and rusty condition parked at S-25, Panchasheel Park, New Delhi-110001. On further enquiry being made by the Custodian, it was found that the registration number found on the body of the vehicle was a fake one and, in fact, the same belonged to a Maruti Van registered.

6. Consequent thereto and pursuant to the statutory responsibility placed on the Custodian under the Act, the Custodian filed an application before the Special Judge. The appellant was served. The Special Court thereafter considered the said application. In the light of the submissions made on behalf of both the parties and on consideration of the records,

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it was found that the entire transaction was authorised by the appellant and that he was all along aware of the aforesaid transaction. Consequently, the application filed by the Custodian was allowed and the appellant was directed to pay to the Custodian the amount of Rs. 2,83,192/- with interest at the rate of 18% per annum from 22.7.1991. The amount of Rs. 10,00,000/- was also deposited by the appellant during the course of hearing of the aforesaid application and the amount was directed to adjusted from the said deposit.

7. Being aggrieved by the aforesaid order passed by the Special Court, the present appeal is filed.

8. We have heard the learned counsel appearing for the appellant as also the learned counsel appearing for the respondents. We have also perused the documents placed on the records.

9. The father of the appellant, who was the Chairman of the notified party, expired on 2.2.1992. Order for purchase of the aforesaid vehicle was placed on 22.7.1991. Office note of the said debt of M/s. Fair Growth Financial Services Limited is annexed as Annexure R-2 with paper book and relevant portion thereof reads as follows :

"1.0. Chairman has verbally sanctioned H.P. Finance for Mr. Premanand R. Shenoy Ms. Fairgrowth Agencies Ltd. for a Mahindra Jeep. The cost of the said good is RS.2,83,192, to be supplied by M/s Tirupati Balaji Motors.

2.0. The payment for the vehicle is to be made to day (prior to the announcement of the Budget on 24.7.91). hence after taking approval from Mr. Rajagopalan, Vice President, on phone a cheque for the said amount is being released today."

10. The aforesaid office note clearly indicates that the hire purchase finance was made available to the appellant by

A respondent No. 2 and the said amount for purchase of the said Mahindra Jeep vehicle was sanctioned by the Chairman verbally as stated in paragraph 1.0 of the office note mentioned hereinabove. The cost of the said vehicle is Rs. 2,83,192/-. It is also mentioned in that note that payment for the said vehicle

B was to be made on 22.7.1991 and, therefore, after taking approval of Mr. Rajagopalan, Vice President, a cheque for the said amount was released. There is another letter available on record annexed as Annexure R-3 which is dated 11.1.1992. The said letter refers to the subject of the Mahindra Jeep to be

C sold to Mr. Premanand R. Shenoy, the appellant herein. In the said letter, respondent No. 2 has made reference to proforma invoice No. 791 dated 22.7.1991 intimating further that the cheque dated 22.7.1991 for Rs. 2,83,192/- was sent for supply of the jeep which was subject to a hire purchase agreement between respondent No. 2 and the appellant. Reference is

D already made to letter dated 12.4.1992 which again relates to the delivery of the aforesaid vehicle. The said letter is also addressed to the appellant at the address of respondent No. 2 intimating that the aforesaid jeep is lying ready for the last five months and is also duly registered temporarily in the name

E of the appellant.

11. It is an admitted position that subsequent thereto the jeep was delivered along with Temporary Registration No. HRU 4413 AT which is annexed as Annexure R-4. The name of the

F appellant appears against the name of the registered owner. In fact, the aforesaid documents were sent by the appellant himself to respondent No. 1 (the Custodian) under his letter dated 4.8.1998 informing the Custodian that one Mahindra Jeep is parked at S-25, Panchasheel Park, New Delhi-110001.

G The appellant, in that letter, had also stated that the ex-officials of M/s. Fair Growth Financial Services Limited informed him that the vehicle was supposed to be under hire purchase/lease agreement.

H 12. On appreciation of the aforesaid documents, the

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Custodian has come to a finding and conclusion that the appellant, being a Director of the M/s. Fair Growth Financial Services Limited of which his father was Chairman and Managing Director, was aware that the jeep had been purchased in his name for which consideration was paid by the M/s. Fair Growth Financial Services Limited. The premises S-25, Panchasheel Park, New Delhi-110001 was previously occupied by the father of the appellant. Having found all those facts against the appellant, it was concluded that the vehicle in question was purchased by the appellant through respondent No. 2 on hire purchase agreement and, therefore, the amount was paid by respondent No. 2. Therefore, the vehicle was registered in the name of the appellant. When the temporary registration of the vehicle was taken on 3.3.1992, the delivery of the vehicle was taken by the notified party. The appellant was the Director of the notified party. Consequent thereto, a categorical finding was recorded that the aforesaid transaction was known and authorised by the appellant who was aware that the vehicle was ordered by his father on his behalf for which consideration was paid by the notified party. In that view of the matter, the direction was issued for payment of the amount in accordance with the provisions of the aforesaid Act.

13. Learned Counsel appearing for the appellant, however, submitted that the aforesaid conclusions arrived at by the Special Court are perverse for when the order was placed for purchase of the vehicle and when the payment was made, that is, on 22.7.1991, he was nowhere connected with the business of respondent No. 2. Therefore, the appellant had no knowledge of the aforesaid transaction. This submission, however, in our considered opinion, is misplaced in view of the findings and conclusions recorded hereinbefore on the basis of the documents on record.

14. All those documents which were sent by the appellant himself to the Custodian clearly indicate that the vehicle was ordered in the name of the appellant. Order for purchase of the

A vehicle was placed in the name of the appellant. Respondent No. 2 has also sanctioned hire purchase finance for the appellant who is the Chairman of M/s. Fair Growth Financial Services Limited for a Mahindra Jeep. The name of the appellant was also registered as a registered owner in the temporary registration. Therefore, despite the dispute raised by the appellant, it is clear that the appellant was the owner of the vehicle in question and that it was purchased on hire purchase and that it was financed by respondent No. 2 after the amount was sanctioned by the father of the appellant who was the Chairman towards hire purchase finance for the appellant. The vehicle was delivered on 15.4.1992 when he was the Director and In-charge of respondent No. 2 which is quite evident from the delivery note referred to hereinbefore. Therefore, the nexus between the purchase of the vehicle and the involvement of the appellant in the deal is clearly established.

15. In view of the aforesaid discussion, we find no infirmity in the order passed by the Special Court. We uphold the said order but in the peculiar facts and circumstances of the case and taking into consideration the fact that the appellant himself informed the Custodian about the aforesaid vehicle we modify the order for payment of interest at the rate of 18% per annum by directing that interest on the aforesaid amount of Rs. 2,83,192/- shall be paid at the rate of 9% per annum from 22.7.1991 to 29.2.1992. An amount of Rs. 10,00,000/- is already lying deposited in terms of order passed which was deposited by respondent No. 1. The amount payable by the appellant, therefore, shall now be calculated in terms of this order and the said amount shall be adjusted out of the amount lying deposited. So far paragraph No. 21 of the judgment and order of the Special Court is concerned, we find no infirmity in the same and, therefore, the same is upheld.

16. In terms of the aforesaid order, this appeal is disposed of with modification with regard to the interest payable.