**SUPREME COURT OF INDIA**

State Bank of Saurashtra

Vs.

P. N. B.

C.A.No.7373 of 1996

(B. N. Kirpal, Mrs. Ruma Pal and Brijesh Kumar JJ.)

26.04.2001

**JUDGEMENT**

**B.N.Kirpal, J.:-**

1. This is an appeal filed against the judgment of the Special Court constituted under the *Special Court (Trial of Offences relating to Transactions in Securites) Act, 1992* whereby the suit filed by the respondent was decreed and it was inter alia ordered that the appellant herein should purchase units which had been agreed to be sold to the respondent and deliver the same to it.

2. Briefly stated the facts are that the respondent paid Rs. 26,82,00,000 /- to the appellant on 10th September, 1991 for purchase of 2 crore units of the Unit Trust of India at the rate of Rs. 13.41p. per unit. Subsequently, on 23rd October, 1991 it paid further sum of Rs. 75,83,12,500 /- as consideration for the purchase of 5.50 crore units at the rate of Rs. 13. 7875 per unit.

3. In respect of the aforesaid two transactions the appellant issued to the respondent two bankers receipts - one bearing No. 53 D /- 10th September, 1991 and the other being No. 81 D/- 23rd October, 1991. According to the said bankers, receipts the units were to be delivered by the appellant to the respondent against the discharge in the said receipts.

4. It is an admitted case of the parties that the units in respect of which payment was received by the appellant were never delivered to the respondent. Considerable correspondence was exchanged between the parties but what is of relevance is a letter D/- 1st July, 1992 whereby the respondent asked the appellant to pay to it a sum of Rs. 134.42 crores by 3rd July, 1992. It was further stated that any delay in payment would then attract interest at the rate of 24 per cent per annum or call money rate whichever was higher. Prior to the issuance of this letter, correspondence between the parties showed that the appellant was promising to give the delivery of the units but by this letter of 1st July, 1992 the respondents claimed compensation as calculated in the annexure to this letter. The computation of the claim was given according to which the respondent treated the breach of the contract to have taken place on 30th May,

1992 and on that basis it claimed difference in price between the rate what was paid and the rate of the Unit Trust of India as on 30th of May, 1992.

5. No amount was paid by the appellant, whereupon the respondent filed a suit inter alia claiming the delivery of the units in respect of which the payment had been made. An alternative prayer which was made was for damages for a sum of Rs. 249, 19,00, 549 plus further interest at the rate of 17.5 per cent per annum on the said sum till the date of payment. As already indicated herein-above by the impugned judgment D/11th March, 1996 the Special Court, Bombay granted the relief of specific performance which required the appellant to buy 7. 5 crore units for which payment had been made and in addition thereto it was also required to purchase and sell to the respondent the units representing the right issue which the respondent was deprived of availing of because of the non-delivery of the units. Costs of Rs. 27,87,000/- were also awarded. Hence this appeal.

6. We have heard the counsel for the parties at length. During the pendency of the appeal at the time of admission an interim order was passed on 8th May, 1996. By this order the appellant was directed to pay to the respondent-bank Rs. 182 crores or in the alternative it was required to transfer units of the Unit Trust of India worth Rs. 182 crores calculated on the repurchase price. In addition thereto the appellant was directed to transfer units worth Rs. 30 crores. It is an admitted case of the parties that pursuant to the aforesaid direction between May and June 1996 units worth about Rs. 210 crores were handed over to the respondent and in addition thereto an amount of Rs. 2 crores was also paid by the appellant. According to the appellant, the amount payable by it came to about Rs. 182 crores.

7. It is not necessary for us to go into the correctness of the various issues decided by the Special Court. The appellant admit that the respondent, to whom delivery of the units was not made, would be entitled to the refund of the money plus damages thereon calculated in accordance with the principles contained in Section 73 of the Indian Contract Act, 1872.

8. Considering the fact that there was an alternative plea for damages, on the facts of the present case it would have been appropriate for the Special Court to have computed and awarded the damages in addition to ordering refund rather than requiring the appellants to purchase the units and give the same to the respondent. In other words, a decree for specific performance in the manner in which it was passed was probably not appropriate especially when the respondent could be compensated with the return of money and award of reasonable damages.

9. As, now there is no dispute on the principle applicable namely, that the amount of Rs. 102, 65, 12, 500 /- which was paid by the respondent had to be refunded to it and the respondent was also entitled to get reasonable amount of compensation or damages, what is now required to be done is only to quantify the same. This is what we propose to do.

10. The aforesaid letter D/ -1st July, 1992 written by the respondent when read along with the computation sheet accompanying the said letter clearly shows that the respondent regarded that the appellant had committed the breach of contract on 30th May, 1992. It is on

this basis that it claimed, in addition to the return of money, damages being the difference between the price of the units paid and the price as on 30th May, 1992. It appears to us that what the respondent would be entitled to, in addition to the refund of Rs. 102,65,12,500/-, is interest at the lending rate on the aforesaid amount from the date of payment till the date of filing of suit i.e. 8th September, 1994. In addition thereto, the respondent would also be entitled to pendente lite and future interest calculated at the rate of 17.5 per cent per annum, as claimed by it in the plaint. We have got the calculation done from the representatives of the parties and it appears that calculated in this manner and also keeping in view the difference in the price per unit as on 30th May, 1992 and the rate at which the units had been agreed to be purchased, the total sum payable by the appellant to the respondent would be about Rs. 212 crores. Inasmuch as units worth Rs. 210 crores have been given by the appellant to the respondent in addition to payment of about Rs. 2 crores in cash, no further amount would now be payable.

11. We, accordingly, modify the decree passed by the Special Court and direct that a sum of Rs. 212 crores was payable by the appellant to the respondent and as we value the said amount has already been received by the respondent the decree stands satisfied. We make it clear that the disposal of this appeal does not in any way approve or disapprove the reasoning of the Special Court.

12. The appeal is disposed of in the aforesaid terms. Cross appeal of the respondent and Interlocutory Application also stated disposed of. Parties to bear their own costs.

Order accordingly.