SUPREME COURT OF INDIA

HITEN P. DALAL

Vs.

STARDARD CHARTERED BANK AND OTHERS

18/04/2000

(R.P.Sethi, B.N.Kirpal)

JUDGMENT

KIRPAL, J.

The Reserve Bank of India noticed large-scale irregularities and mal-practices 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 mal-practices had led to the diversion of fund from banks and financial institutions to the individual accounts of certain brokers.

With a view to deal with this situation and in particular to ensure speedy recovery of the huge amounts involved, the Special Court (Trial of Offences relating to transactions in securities) Ordinance, 1992 was promulgated on 6th June, 1992. The said Ordinance has now been replaced by an Act known as Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (hereinafter referred to as the Act). Section 3 of the Act enables the Central Government to appoint one or more Custodian for the purposes of the Act. The Custodian has power under sub- section 2 of Section 3 to notify the name of any person in the official gazette, who has been involved in any offence relating to transactions in securities after the first day of April, 1991 and on/or before 6th June, 1992. The effect of a person being so notified was that according to sub-section 3 of Section 3, notwithstanding anything contained in the Code of Criminal Procedure or any other law for the time being in force, any property, movable or immovable or both, belonging to any person notified under that sub-section stands attached simultaneously with the issue of the notification. The property so attached is to be dealt with by the Custodian in such manner as the Special Court may direct.

The Special Court is established under Section 5 of the Act to be presided over by a sitting Judge of a High Court. The Special Court is to take cognizance of or to try such cases as are instituted before it or transferred to it. It is this Court which, under Section 9A, has the jurisdiction to exercise such power and authority which was exercisable before the commencement of the Act by a Civil Court in relation to any property standing attached under sub- Section 3 of Section 3 or in relation to any matter or claim arising out of transactions in securities entered into after first day of April, 1991 and on/or before 6th day of June, 1992, in which a person notified under Section 3(2) is involved as a party, a broker, intermediary or in any other manner.

On 8th June, 1995, respondent No. 1 the Custodian, who had been appointed under the Act, notified Hiten P. Dalal (respondent no. 2 in Civil Appeal No. 762 of 1999 and appellant in Civil Appeal No. 1878 of 1999) under Section 3(2) of the said Act. The Custodian then got to know that some shares and securities, which belonged to respondent no. 2, were in the possession of the appellant bank. It

also came to the knowledge of the Custodian that the appellant bank had got some of the shares transferred to its name. Correspondence was then exchanged between the Custodian and the appellant bank whereunder the appellant bank was called upon by the Custodian to either hand over the shares and securities to the Custodian or the bank should obtain an appropriate direction from the Court in case the appellant bank was claiming any title to the said shares

The demand of the Custodian requiring the appellant bank to hand over the said shares which it had obtained from the notified party led the appellant bank, which is incorporated under the laws of England and Wales and has its Head Office at 1, Aldermanbury Square, London, and the second appellant which is an existing company under the Companies Act, 1956 and is a wholly owned subsidiary of the Ist appellant, to file a suit No. 1958 of 1993 in the Bombay High Court. On transfer to the Special Court, the suit was numbered as Suit No. 3 of 1994. On 29th June, 1994, the appellants withdrew suit No. 3 of 1994 with liberty to file a fresh suit. It is thereupon that the appellants filed suit No. 17 of 1994 from where the present appeal arises.

The case of the appellants in the plaint, inter alia, was that on 30th April, 1992, one Mr. Arvind Lal, an employee of the Bank, informed one Mr. R. Iyer, a Director of the Local Currency Group, Investment Banking Division in the bank, that approximately Rs. 800 crores of investments made by the appellant bank appellant through Hiten Dalal were not backed by securities or banker receipts. How this shortfall happened, was not known to the higher officials of the appellant bank till 10th May, 1992. Thereafter enquiries were made by the appellant bank to ascertain the short- fall and efforts were made to recover the same. According to the appellants the shortfall was ascertained to be in the region of approximately Rs. 1300 crores. It was alleged that there were meetings between the officials of the appellants and Hiten Dalal wherein the said notified party admitted and acknowledged his liability and he had given various proposals for re-payment and delivery of various stocks in which there was a short-fall. According to the appellants Hiten Dalal did not fulfill his commitments to deliver cash or stock. Hiten Dalal is alleged to have agreed to and deliver, between 11th May 1992 and 13th May, 1992, various shares, securities, bonds and debentures (hereinafter referred to for the sake of convenience as shares). On 14th May, 1992 the Manager, Legal Services of the Bank, advised that a letter should be obtained from Hiten Dalal in order to eliminate the possibility of his subsequently claiming that the said shares had been delivered by way of safe custody. A letter containing the understanding between the parities was drafted by the in-house lawyer of the appellant bank and was given to have it transcribed on his note paper. On 18th May, 1992 Hiten Dalal brought the draft to the office of the Bank where it was typed and signed by the Hiten Dalal. It is an admitted fact that though the letter was signed on 18th May, 1992, the said letter, however, bears the date of 11th May, 1992.

Alternative claims were put forth by the appellants in the said suit. In the first instance it was claimed that the shares, the details of which were mentioned in the annexure to the said letter dated 11.5.1992 and worth approximately Rs. 145 crores, were delivered by Hiten Dalal in partial discharge of his liability to the appellant Bank in pursuance to the aforesaid agreement which was recorded in a note dated 18th May, 1992. The case of the appellants was that the bank is entitled to exercise ownership right in respect of the said shares and to the accretions thereon which may have been received by the appellants. The appellants also sought a declaration that Hiten Dalal had no right, title or interest in the said shares and the same did not belong to him on the date of the notification. It may here be noted that the counsel for the appellants did not press this claim of ownership before the Special Judge.

The second alternative claim by the appellants was that the said shares were validly pledged in

favour of the appellant bank under the letter dated 11th May, 1992. In exercise of its rights as pledgees, the appellant bank claimed that the said shares had been adjusted against the admitted liability of the second respondent to the appellant bank. It thus claimed ownership over the said shares. This plea also was not pressed by the appellants before the Special Court inasmuch as it conceded that in law no such right existed in a pledgee.

The third alternative put forth in the plaint by the appellants was that the letter dated 11th May, 1992 created a valid and existing pledge of the shares and that the rights, bonus and the dividends received by the appellants formed part of the pledge and constituted security for the appellants. The appellant bank claimed that it was entitled to retain possession of the shares and accretions thereon until the second respondent satisfied his liability towards the appellants. The appellants claimed a right to sell the pledged shares and appropriate the sale proceeds towards partial satisfaction of the outstanding liability of Hiten Dalal of Rs. 1253 crores. The appellants thus claimed that as pledgees they were entitled to have the shares transferred in their names without the process of certification. By an amendment in 1996, another alternative claim put-forth by the appellants was that the said shares, debentures, bank receipts, bonds and securities and the rights and bonus received by the appellant bank stood mortgaged to it. The appellants claimed that a sum of Rs. 30040885.00 expended by the appellant bank on purchase of right shares and for preservation of the mortgaged security formed part of the mortgage debt. The appellants thus claimed that they were entitled to retain the mortgaged shares and securities and the accretions received in respect thereof.

The custodian in its written statement did not admit the correctness of the facts stated in the plaint. According to the custodian, Hiten Dalal was a notified party and the shares worth Rs.145 crores which were in the custody of the appellants were the property of the said notified party. By virtue of the provisions of the Act these shares stood attached as on the day when the name of Dalal was notified and the said shares could not be dealt with by the appellants except by and under the directions of the court. The custodian denied that the appellants were entitled to any of their claims.

In his written statement the defence which was, inter alia, taken by Hiten Dalal was that he was acting as a broker in securities and as such was dealing with the appellants for the last four years. He did not admit that there was any shortfall in respect of the transactions, which had taken place through him. He specifically denied that the purchases approximating Rs.1253 crores were not supported by delivery of stocks or acceptable bank receipts. On the contrary Dalal averred that the appellants had committed several irregularities and were attempting to transfer the burden on him. He denied having accepted any liability to pay any amount to the appellant bank or having admitted to the appellants having suffered any loss as alleged or at all. With regard to the stocks and shares worth Rs.145 crores which were lying with the appellants, the case of Dalal was that two employees of the appellants, namely, Ravi Iyer and Siva Kumar had forcibly taken away those stocks which had been lying in his office and which belonged not only to him but also to his wife and some of his customers. Dalal claimed that these officers threatened him that if he did not cooperate they would prosecute and ruin him. Dalal further alleged that his signatures were taken on blank documents and the appellants had wrongfully used those documents with blank signatures in order to foist a false claim against him. He further alleged that on 18th May, 1992 under threat of physical torture, criminal prosecution and threat to that his life and that he would be ruined the appellants made him sign a letter dated 11th May, 1992. In short he denied that he had voluntarily admitted any liability towards the appellants.

On the basis of the pleadings the Special Court framed sixteen issues as between the appellants and respondent no.1 and another seventeen issues between the appellants and respondent no.2. It is not

necessary, for deciding these appeals, to refer to the said issues inasmuch as the Special Court itself observed that though a number of issues had been raised there were only four questions which arose for consideration and they were; [I] whether the appellants herein had suffered a loss as claimed or at all; [ii] whether respondent no.2 had given the said shares as securities and/or the same were taken from him forcibly; [iii] if the said shares were given as securities then the question would also be as to whether it was by way of pledge or mortgage; and [iv] whether rights and bonus shares, dividend and interest on the said shares formed part of secured assets.

It may here be noted that before the Special Court counsel for the appellants stated that he was not pressing the plea of pledge with right of appropriation. He contended that the appellants were only pressing that in respect of the shares in question which they had in their possession there was either a mortgage or pledge in respect thereof.

When the Special Court was framing issues relating to the question as to how the appellants had been able to prove the loss caused to them by Dalal and if so to what extent, the counsel for the appellants had contended that Dalal had admitted his liability in the said letter of 11th May, 1992 and other documents and, therefore, it was not necessary for him to prove the loss. The Special Court over-ruled this submission but no speaking order was passed inasmuch as the counsel for the appellants informed that if the court so desired the appellants would prove the loss. The court then proceeded with the trial of the case on the basis that the loss stated to have been suffered by the appellants was not to be attempted to be proved only on the basis of the admissions of Dalal. The appellants proceeded with the trial claiming that loss had been caused to them by their having paid moneys in purchase transactions and their not having received deliveries of stocks/bankers receipts.

The appellants led evidence in support of their case. On behalf of Dalal the court was given to understand that he will enter the witness box in order to substantiate his plea of physical torture, threat of criminal prosecution, coercion etc. Ultimately Dalal chose not to give evidence before the court. On 24th December, 1998, the Special Court delivered its judgment and, inter alia, held that;

[1] the appellants had been able to prove loss totalling Rs.280.80 crores and that other losses alleged by the appellants were disproved; [2] no coercion had been exercised by the appellants on Dalal; [3] the letter dated 11th May, 1992 addressed by Dalal to the appellants created a pledge in favour of shares and said debentures, particulars of which were given in annexure to the said letter. The claim of mortgage of the said shares was not accepted; [4] the appellants were entitled to sell the original and right shares pledged to them in reduction of Dalals liability to the appellants; [5] bonus shares and dividend and interest accrued on the original shares pledged were not themselves the subject matter of the pledge and must be handed back by the appellants to the Custodian; [6] Cantriple Units, referred to in the letter dated 11th May, 1992, received by the appellants from Dalal must be handed back by the appellants to the custodian as the appellants had not succeeded in showing that they had any right, title or interest in respect thereto and nor had it been proved that the said units had been pledged with the appellants. [7] Costs of Rs.30 lacs were awarded against respondent no.2 and in favour of the appellants.

Aggrieved by the findings of the Special Court in relation to the quantum of loss suffered, the rights of the appellants in regard to bonus shares and dividend and interest which had accrued on the original shares, which had been pledged, as well as the direction to hand over Cantriple Units to the custodian and lastly the strictures passed against certain employees of the appellants, appeal No. 762 of 1999 has been filed.

Hiten P. Dalal has filed appeal No.1878 of 1999 challenging the judgment of the Special Court which had accepted the appellants claim regarding loss amounting to Rs.280.80 crores. He also challenged the directions regarding handing over of the Cantriple Units by Standard Chartered Bank to the custodian and lastly the challenge is to the costs of Rs.30 lacs that had been awarded against him.

The four questions, which were considered by the Special Court, are what arise for consideration in these appeals before us. We will first deal with the issue relating to the loss claimed to be suffered by the appellant bank and its right to retain the securities, which were the to it.

In the suit, which was filed, it was inter alia stated in the plaint that the appellant bank had suffered a loss of about Rs. 1253 crores on its dealing with Dalal. It is on this basis that it sought to retain and appropriate securities worth Rs. 145 crores which, admittedly, had been delivered by Dalal to the appellant bank between 11th and 15th, May, 1992. The claim of the appellant bank was based on the letter dated 11th May, 1992 (Ex. G) in the suit. It has come in the evidence and it is not disputed that this letter was prepared by the officials of the appellant bank and was signed by Dalal on 18th May, 1992. This letter, however, was ante dated to 11th May, 1992. This letter addressed to the Standard Chartered Bank, Bombay reads as follows:

Dear Sirs,

Re: Transactions in Government and other securities

1. In the past 4 years I have been acting as your broker for transactions in Government and other securities.

2. I am aware that you are in the process of reconciling your purchases/sales through me of Government and other securities and whilst the reconciliation is yet to be completed, you have ascertained as of date that the following purchases aggregating Rs. 1258 crores are not supported by deliveries of stocks and/or bank receipts of banks acceptable to us.

Type of Security Transaction Value 15 Crores units Rs. 200 crores (Karad B.R.) 9% IRFC (1/1) Rs. 385 Crores (Metro B.R.) 9% IRFC (1/4) Missing B.Rs. Rs. 45 crores (various B.Rs) 12.5% GOI 2 007 Rs. 80 crores (Karad SGL) 6% GOI 1994 Rs. 50 crores (Metro SGL) 11% IDBI 2002 Rs. 20 crores (Metro B.R.) 11.5% IDBI 2011 Rs. 47 crores (Karad B.R.) 8.75% IDBI 2000 Rs. 23 crores(Karad B.R.) 6 crore units Rs. 90 crores (Metro B.R.) 12% ICICI 2011 Rs. 50 crores (Metro B.R.) Cantriple Rs. 205 crores(Physical) Cantriple (Expected) Rs. 58 crores Rs. 1253 crores

The letter further goes on to say that Dalal had delivered to the bank stocks, shares, deposits etc. as listed in the annexure to the said letter by way of securities towards the short-fall and/or any further short-falls which may be ascertained. The stocks and shares which were listed in the annexure to this letter were the one which were handed over by Dalal to the appellant bank between 11th and 15th May, 1992 and were stated to be worth Rs. 145 crores, in respect of which, the present suit was filed. By this letter Dalal further agreed to keep the appellant bank indemnified against any loss which it might have incurred and/or suffered upon the appellant bank completion of final re-conciliation of its account with Dalal and he undertook to make good any such losses either by payment in cash or by physical delivery of such other assets as the bank might require. The letter also postulated that if on the completion of the re-conciliation, aggregate of the cash paid and the value of the assets delivered exceeded the amount of loss identified, then the Bank was to refund

such excess to Dalal. He further confirmed and agreed that the appellant bank was authorised to sell the stocks, shares, debentures etc. which were handed over to the bank and to appropriate the proceeds thereof to partly liquidate his liabilities to the bank. If there was any short fall after such appropriation, Dalal held himself to be personally responsible to pay to the bank such balance as was outstanding.

At this stage, we may notice that Dalal did not deny the execution of this letter. His case in the written statement was that this letter and other documents were got signed by the bank officials under threat or coercion. He had contended that the shares, securities etc. which were listed in Exhibit G had been forcibly taken away by the appellant bank officials.

The Special Court, after taking all the evidence into consideration, came to the conclusion that the said shares etc. had not been forcibly taken away from Dalal but he had, on the contrary, handed over these shares as security. In arriving at this conclusion, the special court held that it was unbelievable that the shares would be forcibly taken away from Dalal between 11th and 13th May, 1992 and for a period of three days at least he would make no complaint or try to stop the appellants from taking away the said shares forcibly. Admittedly, there had been a meeting between Dalal and the Advocate of the appellants and the Special Court found it inconceivable that force had been used at the time of taking away all the shares forcibly.

We have gone through the evidence and we agree with the aforesaid conclusion of the Special Court to the effect that the contention of Dalal that the said shares were taken away from him forcibly is not correct. In the issues which were framed the onus of proof that the letter dated 11th May, 1992 had been executed under threat of physical terror and criminal prosecution was on Dalal. Hiten Dalal however chose not to enter the witness box in support of this plea. Not only did he not lead any evidence in order to prove coercion, the appellant bank on the other hand examined witnesses who clearly proved that Dalal had not only signed the letter dated 11th May, 1992 but he also signed other documents to which we will presently refer. As Dalal had failed to step into the witness box or lead any evidence on his behalf, the Special Court rightly drew an adverse inference against him.

We must, therefore, proceed on the basis that Ex. G even though prepared by the employees of the appellant bank had been voluntarily and willingly signed by Hiten Dalal. We also proceed on the basis that the shares, securities etc. had been delivered by Dalal to the appellant bank valued at Rs. 145 crores between 11th and 15th May, 1992. It is in this background that we must examine the claim of the appellant bank with regard to the loss stated to have been suffered by it.

On the basis of the evidence which was led before it, the Special Court observed that out of items of securities mentioned in Ex. G, items 2,3,4,6,11,12 and 13 were dis-proved. It held that it is proved that in respect of these items, there is no loss. The claim for Rs. 795 crores thus stands disproved.

Having held that the claim for loss of Rs. 1253 crores was an exaggerated claim, the Special Court further came to the conclusion that items 5,7,8 & 9 were also dis-proved or in any event, they could not be relied upon and used for the purpose of calculating loss. It upheld the case of the appellants with regard to items 1 and 10. Lastly, the Special Court, came to the conclusion that on the basis of the evidence produced before it, the appellants had made a payment of Rs. 201 crores for the purchase of units of U.T.I. of the face value of Rs. 15 crores but had not received the said securities. It also accepted the claim of loss of Rs. 79.80 crores which was evident by statement Ex. 19 which was produced in the court by the counsel for the appellants. The Special Court held that this statement Ex. 19 was tendered under Section 163 of the Evidence Act and the facts stated therein

must be regarded as having been proved or binding on Dalal.

It was submitted by Mr. K.K. Venugopal and Mr. K.S. Cooper, learned counsel for the appellants that for this case it was not necessary for the appellants to have established loss of more than Rs. 145 crores. Mr. K.K. Venugopal submitted that the appellants were not contending in these appeals that the shares worth Rs. 145 crores had been given to the appellants by way of mortgage. It was submitted that the said shares were pledged to the bank. He however submitted that the evidence on record would show that the appellants had been able to prove that the liability of Hiten Dalal towards the appellants was Rs. 1253 crores. In any event, the Special Court had accepted the claim of loss of the appellants to the extent of Rs. 280.80 crores which was much more than the value of the pledged shares. It was submitted that with regard to the balance claim the Special Court ought not to have given a positive finding that the same stood dis-proved.

Hiten Dalal, in the appeal filed by him, has challenged the acceptance by the Special Court of the loss of Rs. 280.80 crores stated to have been suffered by the appellant bank in its dealing with him. So far as the Custodian is concerned, Mr. Shiraz Rustamjee, learned counsel for the Custodian, submitted that it accepted the loss of Rs. 201 crores which was more than sufficient to cover the value of the pledged shares of Rs. 145 crores but he submitted that the decision of the Special Court in invoking the provisions of Section 106 of the Evidence Act and in holding that the loss of Rs. 79.80 crores has been proved was not correct. In this respect he supported the submissions of Shri S. Ganesh, learned counsel on behalf of Dalal.

Before dealing with the correctness of the findings of the Special Court it will be appropriate to analyse the said letter dated 11th May, 1992 Ex. G. As has already been observed, this letter was admittedly prepared by the officials of the appellant bank on the basis of inspection which had been carried out. Para 2 of the said letter states in no uncertain terms that as on that date the bank had ascertained that the following purchases aggregating Rs. 1258 crores are not supported by deliveries of stocks and/or bank receipts of banks acceptable to us. The purchases which are referred to are the thirteen types of securities, total value of which aggregated Rs. 1253 crores. This means that there was an outgoing of Rs. 1253 crores from the appellant bank, in cash or in kind and thirteen types of securities listed in para 2 of the said letter, in respect of which the outgoing had taken place, had not been delivered or bank receipts in respect thereof given. It is to secure the delivery of these stocks and shares that securities and shares worth Rs. 145 crores listed in annexure to this letter were pledged to the appellant Bank.

The Special Court Act, 1992 contemplates attachment of all movable and immovable properties from the day when the party is notified. The attached property is thereupon to be dealt with by the Custodian in such a manner as the Court may direct. The attached property is to be disposed off by the Custodian under order of the Court and Section 11(2) specifies the liabilities of the notified party which are required to be paid or discharged out of the proceeds of the properties of the notified party. It was, therefore, but right that the Court had to be satisfied by positive evidence, and not merely on the basis of the admission of Dalal that the appellant Bank had suffered loss inasmuch as purchases aggregating Rs. 1258 crores are not supported by deliveries. with the result that the securities and shares worth Rs. 145 crores had been pledged in favour of the appellant bank.

The loss of Rs. 201 crores qua item No. 1 in regard to the non-delivery of Rs. 15 crores units of U.T.I. of the face value of Rs. 150 crores was proved through the evidence of Mr. Sanjay Pandit, PW 4. The documents which were produced in evidence for proving that the appelllant bank had made payment of Rs. 201 crores for the purchase of the said U.T.I. units, which securities were not

received by the appellant bank, was firstly a deal slip No. 7941 which showed purchase of these units from the Bank of Karad. In respect of this transaction, cost memo had been received by the appellants from the Bank of Karad on 8.1.1992. A transaction slip dated 8.1.1992 showing the purchase of Rs. 15 crores U.T.I. units at the rate of Rs. 13.40 (Ex. B- Vol. IV) per unit amounting to Rs. 201 crores was proved by PW 4. Also placed on record was the bankers receipt dated 8th January, 1992 for a sum of Rs. 201 crores. Against this, on 8th January, 1992, there was a sale of 9% I.R.F.C. bonds of the face value of Rs. 210 crores. By pay order dated 8th January, 1992 bearing No. 231967, a sum of Rs. 199.79 crores was paid to the Bank of Karad. Another document Ex. M is the receipt dated 8th January, 1992 issued by the Bank of Karad acknowledging the receipt of Rs. 201 crores in respect of said U.T.I. units. In face of the said evidence, Shri Ganesh was unable to persuade this Court that the decision of the Special Court in accepting the loss of Rs. 201 crores was incorrect. This finding regarding the loss of Rs. 201 crores is affirmed.

Now we come to the next item of loss which was accepted by the Special Court, namely, that of Rs. 79.80 crores mentioned as item no. 10 in Ex. G.

During the cross-examination of the appellant bank witness PW 6, the counsel for the Hiten Dalal put him the following question: Mr. Rao calls upon the plaintiffs to show any single transaction wherein the plaintiffs funds have been diverted by Mr. Hiten Dalal through bank of Karad. This question was put to the witness on 6th November, 1998. Thereafter on 11th November, 1998, the said PW 6 tendered in evidence Ex. 19 (colly) which was a statement containing details of two transactions which indicated that money had ultimately gone to the account of Dalal. One of the transactions which was listed was item no. 10 of Ex. G. When this statement was tendered in evidence, the Special Court noted that the counsel for the appellants had kept in Court all the Deal Slips, Cost Memos, Pay Orders and Banker Receipts. These were not marked as exhibits because the counsel for Dalal stated that he had not called for these documents and the said counsel had not taken inspection of the said documents. The Special Court observed that this statement Ex. 19 had to be regarded as having been tendered under Section 163 of the Evidence Act and, therefore stood proved and was binding on Dalal. The Special Court then examined the said Ex. 19 which showed that the appellants had purchased six crores units of the U.T.I. of the face value of Rs. 60 crores for Rs. 79.80 crores from the Bank of Karad and had made payment of the same by Pay Order No. 231919 for Rs. 37.63 crores. This payment was made after netting of sale of security to Bank of Karad. Ex. 19 further shows that in respect of said transaction, the appellants had received a banker receipt No. 18 of the Metropolitan Co-operative Bank. Ex. 19 further showed that the money which the appellants paid to the Bank of Karad was credited into the account of one Abhay Narottam in the Bank of Karad and thereafter, from that account, an amount of Rs. 36 crores was transferred/credited to the account of Dalal with Andhra Bank. The Special Court observed that even though the said statement established that Rs. 36 crores had been transferred into the account of Dalal, no evidence had been led by him to show why he had received Rs. 36 crores and/or that it was under some transaction with the Bank of Karad. In the absence of such evidence, the Special Court came to the conclusion that this money of the appellant bank had been siphoned out by Dalal. The Special Court further noted from Ex. 19 that on 27th November, 1991 the appellant bank purchased 13% M.T.N.L. Bonds of the face value of Rs. 20 crores from the Bank of Karad and by pay order No. 231079, a sum of Rs. 18.71 crores was paid by the appellant bank to the Bank of Karad. A sum of Rs. 29.99 crores, which included the aforesaid sum of Rs. 18.71 crores plus another sum of Rs. 11.27 crores, was transferred to the account of Hiten Dalal with Andhra Bank. The Special Court noted that in this case also it was shown that from the Bank of Karad an amount of Rs. 18.71 crores of the appellants bank had gone to the account of Hiten Dalal. The Special Court further noticed that in respect of this transaction relating to Rs. 18.71 crores regarding the purchase

of 13% M.T.N.L. bonds, the appellant bank had not claimed that they had suffered a loss as the said transaction was not listed in Ex. G. While not accepting the sum of Rs. 18.71 crores as being loss/suffered by the appellants bank, the Special Court accepted the loss of Rs. 79.80 crores being the face value of six crores Units of the U.T.I. in respect of which Rs. 37.63 crores had been paid but the said units were not received.

It is contended by Mr. S. Ganesh, learned counsel for the respondent no. 2 that the Special Court mis-understood and mis- conceived the provisions of Section 163 of the Evidence Act. He submitted that Section 163 applied only in the following three conditions: i) The specified documents must have been identified by the parties concerned; ii) That the parties must give notice to the other party to produce the documents; iii) The said documents must have been produced and inspection thereof taken by the party who gave notice for the same.

It was contended that these basic conditions, which are necessary for the application of Section 163 of the Evidence Act, had not been fulfilled and, therefore, the Special Court was not correct in admitting the said statement in evidence as Ex. 19.

Mr. Rustomjee, learned counsel, who appeared on behalf of Custodian, also submitted that Section 163 of the Evidence Act had been wrongly invoked in the present case.

We are not inclined to go into the correctness of the decision of the Special Court regarding the applicability of Section 163 of the Evidence Act. Mr. Rustomjee, learned counsel submitted that as far as Custodian is concerned, he had chosen to accept the decision of the Special Court wherein it had accepted the losses qua item no. 1 stated to have been suffered by the appellant bank for a sum of Rs. 201 crores. No appeal has been filed by the Custodian challenging the correctness of the decision of the Special Court accepting the loss of Rs. 79.80 crores. If the Custodian had felt aggrieved an appeal should have been filed. This not having been done it is not open to Mr. Rustomjee to submit that this part of the judgement of the Special Court should be reversed.

As far as Dalal is concerned, once the Special Court has come to the conclusion that there was no coercion or undue influence in his signing letter dated 11th May, 1992, Ex. G, it is then not open to him to contend and challenge the findings of the Special Court which has accepted the claim of the appellant bank with regard to payment having been made in respect of the U.T.I. Units of the face value of Rs. 79.80 crores. This is more so when we find that the Special Court has noticed that when the statement Ex. 19 was tendered in evidence, the counsel for the appellant bank had kept in court all the deal slips, cost memos, pay orders and banker receipts in respect of the said transaction. Dalal having accepted the fact that there had been a non-delivery of six crores units of the face value of Rs. 79.80 crores which had been purchased by the appellant bank, which is evident by his signing Ex. G, it is not open to him to contend that he does not accept the correctness of the contents of the said letter. In our view, therefore, without expressing any opinion on the correctness of the findings of the Special Court with regard to the applicability of Section 163 of the Evidence Act in the present case, the conclusion of the Special Court to the effect that six crores units of the U.T.I. of the face value of Rs. 79.80 crores had not been delivered to the appellant bank, even though it had made payment in respect thereof, does not call for any interference.

With regard to the other items of securities referred to in Ex. G, learned counsel for the appellant bank invited our attention to Ex. E collectively which were hand-written notes signed by Dalal on 17th May, 1992 wherein he had undertaken to deliver various shares and securities of the total value of Rs. 900 crores. Keeping in view the fact that the Special Court had observed that the appellant

bank will have to prove the extent of loss not on the basis of admission of Hiten Dalal but by leading evidence on its own, we are of the opinion that the best evidence which could have been led in respect of the other items stated to have been purchased and mentioned in Ex. G was not led. Apart from the loss of aforesaid amount of Rs. 280.80 crores which has been accepted by the Special Court and upheld by us, we would have expected the appellant Bank to lead evidence to prove that it had paid sums of money and did not receive the securities mentioned in Ex. G. The main documentary evidence which was led on behalf of the appellants in respect of those items was Ex. G and the notes Ex. E which contain the schedule for the delivery by Dalal of various shares which were to take place from 18th May, 1992, 19th May, 1992, 20th May, 1992 and 22th May, 1992. These notes are signed by Dalal. In addition thereto, there was to be conversion of bank receipts of Canstars having valued at Rs. 10 crores. According to the appellant bank, no such delivery took place. The appellant bank, however, did not lead any evidence to prove that either in respect of the shares and securities mentioned in Ex. E or in respect of items mentioned in Ex. G, except for items 1 and 10, any payment had in fact been made by the appellants. The claim of loss in excess of Rs. 280.80 crores cannot be accepted.

The Special Court, on the basis of the evidence before it, came to the conclusion that except for sum of Rs. 280.80 crores, the balance claim of the appellants stood dis-proved. As we have already noticed, the suit was filed by the appellant bank because it had in its possession shares and securities which had been lodged by Dalal as a notified party with the appellant bank between 11th and 15th May , 1992. The appellants had been asked by the Custodian to establish its right to retain the said shares and securities and this is the reason why the suit was filed. Even though in the plaint, it was said, and that is noted in Ex. G itself that the appellant bank had suffered a loss of Rs. 1253 crores for the purpose of establishing its right to retain and sell shares and securities worth Rs. 145 crores, it was not necessary for the appellant bank to have proved the extent of total loss which it had suffered. It was enough for the Bank to prove that it had paid money in excess of Rs. 145 crores and had not received shares or Bankers receipt in respect thereof. This would give the Bank right to retain the said shares as having been pledged to it.

Undoubtedly the Special Court had required the appellant bank to prove by independent evidence as to what was the extent of loss suffered by it. One of the issues between the appellant bank and the custodian, being Issue No. 2, was as to what was the extent of loss suffered by the Bank. The Special Court answered the issue by holding that the appellant bank had been able to prove that it had suffered a loss to the extent of Rs. 280.80 crores only. Having come to this conclusion it would have been more appropriate, in our opinion, for the Special Court to have observed that the appellant bank had failed to prove loss in excess of Rs. 280.80 crores rather than giving a finding that the loss in excess of Rs. 280.80 crores stands dis-proved. The loss which it had suffered was sufficient to enable it to retain and dispose off the shares to the extent of Rs. 145 crores which had been pledged with it.

In respect of the pledged stock, right shares were subscribed and obtained by the appellant bank, bonus shares and dividend and interest were also received by it. In respect of this the two questions which arise are whether these accretions form part of the pledged property and; secondly if they do not, then whether the Special Court should have directed the appellant bank to hand them over to the Custodian.

Before we deal with the main contention it will be pertinent to note that in so far as the right shares were concerned, it was accepted by all the parties that as the appellant bank had paid for these right shares the same belong to the it and they were entitled to keep them irrespective of the question

whether they formed part of the pledge or not. The question of return of right shares does not, therefore, arise in these appeals.

As far as bonus shares are concerned it was submitted by Mr. Cooper, learned counsel for the appellant bank that they are not accretions and no issue arises whether they should be handed over to the appellant bank or to Dalal. It was submitted that as bonus share is only a piece of paper it has no intrinsic value. Reliance was placed on the following passage from the decision of this Court in Commissioner of Income Tax vs. Dalmia Investment Company Ltd. 1964 [7] SCR 210 when in relation to the issue of bonus shares it was observed as follows:

.it takes nothing from the property of the corpus and adds nothing to the interest of the shareholder. Its property is not diminished and their interests are not increased. The proportional interest of each shareholder remains the same. The only change is the evidence, which represents that interest, the new shares and the original shares together representing the same proportional interest that the original shares represented before the issue of the new ones. The corporation is no poorer and the stockholder is no richer than they were before. What has happened is that the plaintiffs old certificates have been split up in effect and have diminished in value to the extent of value of the new.

This decision was followed by this Court in Hunsur Plywood Works Ltd. Vs. Commissioner of Income Tax 1998 [1] SCC 335.

In our opinion the Court rightly came to the conclusion that bonus share is an accretion. A bonus share is issued when the company capitalises its profits by transferring an amount equal to the face value of the share from its reserve to the nominal capital. In other words the undistributed profit of the company is retained by the company under the head of capital against the issue of further shares to its shareholders. Bonus shares have, therefore, been described as a distribution of capitalised undivided profit. Section 94 of the Companies Act refers to the power of a limited company to alter its share capital. Under Section 94[1][a] it has power to increase its capital share while under sub-clause [d] it can sub- divide its share into shares of smaller amount. Whereas in a case of sub-division an existing share is simply divided or split and it may be argued that no new share or capital is created, but there can be little doubt that in the case of issue of bonus share there is an increase in the capital of the company by transferring of an amount from its reserve to the capital account and thereby resulting in additional shares being issued to the shareholders. A bonus share is a property which comes into existence with an identity and value of its own and capable of being bought and sold as such. Neither In Dalmia Industries nor in Hunsur Plywoods case was this Court concerned with a question whether the bonus share could be regarded as an accretion or not. This Court in those cases was only concerned with a question relating to the valuation of the bonus share for tax purposes.

On the other hand the Privy Council in Motilal Hirabhai and Ors. Vs. Bai Mani AIR 1925 PC 86 had to consider as to whether the pledgee was required to return to the pledgor, on redemption, bonus shares which had been issued. The plea taken by the pledgee in that case was that the pledgee was only required to return the original shares which were pledged and not the bonus shares which were received. Rejecting this contention it was held that the bonus shares were received as arising out of and appertaining to the original shares and that it was impossible to contend that the right to these shares could be differentiated from the right to the original shares. Referring to Section 163 of the Contract Act the Privy Council held that These shares [bonus shares] are clearly accessions to the shares expressly pledged or hypothecated, and the pledgor or his representative, the present

plaintiff, is entitled to recover the same. Applying the same logic it must follow that the dividend and interest which was received by the plaintiffs and which was relatable to the pledged stocks must also be regarded as accretions thereto.

It was then contended by Mr. Cooper that the bonus shares, dividend and interest, if they are regarded as accretions to the pledged stocks then they must also be regarded as forming part of the pledged property which could not be ordered to be handed over unless redemption takes place. In other words, the submission was that the Special Court could not have permitted the appellant bank to have retained the stocks originally pledged but at the same time directed that the accretions thereto should be handed over to the custodian.

Section 172 of the Contract Act provides that the bailment of goods as security or payment of a debt or performance of a promise is called pledge. Bailor being the pawnor and pawnee being the bailee. What is bailment is defined by Section 148 which, inter alia, provides that bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the bailor and the person to whom the goods are delivered is called the bailee. Section 160 provides that the goods bailed are to be returned by the bailee on expiration of time or accomplishment of purpose. Reading Section 172 with Sections 148 and 160 of Contract Act, it would appear that when goods are bailed for securing payment of debt or the performance of a promise the bailor would get a right for the return of the said goods when the purpose is accomplished, namely, the debt is returned or the promise is performed. At the same time Section 176 provides for pawnees right when pawnor makes default. This section reads as follows:

Pawnees right where pawnor makes default:- If the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

This section not only gives the pawnee the right to retain the goods pledged as collateral security but also entitles the pawnee to sell the pledged goods after giving pawnor reasonable notice of the same. If the proceeds of the sale are less than the amount due, the pawnor continues liable to pay the balance. On the other hand if the proceeds realised on the sale being made are greater then the amount due the pawnee is under obligation to pay over the surplus to the pawnor.

According to Section 163 of the Contract Act, in the absence of a contract to the contrary, the bailee is bound to deliver to the bailor or according to his directions any increase or profit which may have accrued from the bailed goods. It is indicated in the section that if a calf is born to a cow then the bailee is bound to deliver the calf as well the cow to the bailor. The custodian claims that as and when such accretions have taken place the pledgee has no right to retain the same.

In this connection it was contended by Mr. S. Rustomjee, learned counsel for the respondents, that Section 163 mainly provides that the bailee is bound to deliver any increase in profit which may have accrued but the said section does not provide that such delivery is to be made only on accomplishment of the purpose for which the goods are bailed. Had it been the intention that such accessions were to be delivered only at the time of accomplishment of the purpose for which the goods are bailed, the Legislature would have clearly provided for it. To buttress his argument he

sought to rely upon Sections 63 and 64 of the Transfer of Property Act which provide that where the mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagor to such accession. It was contended that the words upon redemption are conspicuous by their absence in Section 163 of the Contract Act. He further contended that Sections 163 to 173 of the Contract Act repeatedly referred to the words goods pledged and indicated that the pawnees rights including that of sale extended only to the goods pledged and not to other goods.

While interpreting Section 3(3) of the Special Courts Act, 1992, this Court in Tejkumar Balakrishna Ruia Vs. A.K. Menon and Anr. [(1997) 9 SCC 123] at page 127, in paragraph 9, observed as follows:

It is perhaps necessary to make clear that the income or usufruct of attached property is also attached property. Thus, if the property be shares, dividends and bonus and rights shares thereon would also be attached property. It is only income generated by a notified person by dint of his own labour which falls outside the net of Section 3(3). In respect of such income, the attachment under Section 3(3) does not operate.

If the accretions are regarded as property which come to existence after the date when the party was notified then in view of T.B. Ruias case income generated after the date of notification would fall outside the net of Section 3(3). It, therefore, became necessary for this Court in T.B. Ruias case to observe in paragraph 9 that if the attached property is shares then the dividends, bonus and rights shares would also be regarded as attached property. If this be so then would pledge not extend to these accretions to the shares which were pledged? In this connection it is relevant to notice that Story on Law of Bailment at para 292 has stated thus: By the pledge of a thing, not only the thing itself is pledged, but also, accessory, the natural increase thereof. As if a flock of sheep are pledged, the young, afterwards born, are also pledged. This passage has been relied upon by Chitty on Contract, 28th Edition at page 162 where it is noted that If during the pledge there is an increase in the value of the thing pledged, the pledgee is entitled to the increase as part of his security. To the same effect is the view contained in Halsburys Laws of England Vol.36 para 123 where it is stated in connection with the special property of the pawnee If during the contract there is any increase in the value of the security, the pawnee is entitled to that increase as part of his security.

From the aforesaid it would follow that what Section 163 of the Contract Act really means is that accretions in respect of the goods bailed cannot be a property of the bailee but must be returned when the goods themselves bailed are returned. A necessary corollary to this would be that as the pledge extends to such accretions then when the pledged goods are returned these accretions must also be given back. But if the pledge extends to such natural increase of the pledged goods it must follow that the pledgee would not only have the right to retain the said accretions but also have the right to sell the same along with original shares pledged for the purposes of realising amounts due to it and in respect of which the shares were pledged as a security. Not only will this be in line with the aforesaid observations of this Court in T.B. Ruias case but in arriving at this conclusion we find support from the Halsburys Laws of England Vol.2 para 1524, where dealing with the bailees duty to account it was observed that When the return of the bailed chattel constitutes part of the bailees obligation, he must restore not only the chattel itself, but also all increments, profits and earnings immediately derived from it. It would follow from the aforesaid that the accretions to the pledged property would continue to be retained by the pawnee and, in the case of a notified party, like in the present case, the accretions to the pledged property would also be regarded as attached property to

be dealt with in the manner in which the pledged shares have to be dealt with.

It is not possible to accept the contention of the custodian that as and when any accretion takes place the pawnee is under Section 163 liable to hand over the accretion to the pawnor. It is true that the words upon redemption as used in Sections 63 and 64 of the Transfer of Property Act are not included in Section 163 of Contract Act but it is to be seen that if the accretion is to be regarded as forming part of the bailed property then such accretion must remain with the pawnee and be dealt with by him in the same manner as the pledged shares. In other words the accretions form an integral part of the attached shares as on the date of attachment, as held in T.B. Ruias case, and it follows that it would also be an integral part of the shares when they were pledged and would, therefore, constitute a part of the pledged security. The appellant bank would, therefore, be entitled to retain the same and deal with them as pledged stocks. The decision of the Special Court that the bonus shares, dividend and interest which had accrued on the pledged shares were not themselves the subject matter of the pledge and must, therefore, be handed over by the appellant bank to the custodian cannot be sustained.

In the aforesaid letter dated 11th May, 1992, Ex. G, item no.12 refers to Cantriple Units having a transaction value of Rs.205 crores and item no.13 was shown as Cantriple accepted having a transaction value of Rs. 58 crores. In so far as Cantriple Unites of the value of Rs.58 crores are concerned, it appears that by an order dated 10th June, 1993, passed in Miscellaneous Application No.29 of 1993, the Special Court directed the appellant bank to hand over the said units to the custodian. This order has attained finality and no contention has been urged in respect thereto.

What now remains to be considered is the order of the Special Court directing that the Cantriple Units of the value of Rs. 205 crores should be handed over by the appellant bank to the custodian. In arriving at this decision the Special Court dealt with the evidence which had been led by the appellant bank in respect of this item and observed that the appellant bank had been taking contradictory stands in respect thereto. The Court came to the conclusion that no payment had been made in respect of these shares and the case which was then sought to be put forth that the said units had been received as security was false.

It does appear that the appellant bank has, in respect of Cantriple Units, adopted varying and contradictory stands. While in the letter dated 11th May, 1992, the tenor was that payment had been made but these units had not been given, but in the letter dated 20th May, 1993, the stand taken was that these Cantriple Units formed part of the pledged securities. In another letter of 16th June, 1993, it was stated that these units were purchased and set off against earlier transaction. A witness on behalf of the appellant bank gave evidence to the effect that the units were taken by way of security and were not purchased at all.

In the light of the said evidence the Special Court rightly came to the conclusion that the appellant bank had no right to retain these units in their possession. These units had to be regarded as being attached. We may, however, note that in respect of these units Miscellaneous Application No.36 of 1993 had been filed by Can Bank Financial Services Ltd. before the Special Court. The claim of Can Bank Financial Services was that the appellant bank herein had forcibly taken away the said Cantriple Units. The Special Court has in this case directed that these units should be handed over to the custodian but the appellant bank may establish a claim to these units in any other proceedings. It may here be noted that the contention on behalf of the appellant bank was that pending before the Special Court were Suit No.9 of 1994, Suit No.45 of 1995 and Miscellaneous Application No.36 of 1993 where the question of title to these Cantriple Units was directly in issue.

The grievance of the appellant bank in these appeal is that the Special Court erred in giving detailed findings in respect of these Cantriple Units and also erred in directing the appellant bank to hand over the said units to the custodian because Cantriple Units were outside the scope of the suit. The fear of the appellant bank is that the findings of the Special Court with regard to the appellant banks right to retain these Cantriple Units may prejudice them in the other proceedings.

In paragraph 50 of the plaint it has been categorically stated that the suit was restricted to seeking relief in respect of the shares, securities, debentures and bank receipts delivered between 11th to 13th May, 1992. The Cantriple Units in question had been delivered by Dalal on 9th May, 1992. There is no specific issue, which was framed with regard to the question, as to whether these Cantriple Units had been purchased by the appellant bank or had been handed over to them by way of security. Once the Special Court has come to the conclusion that the appellant bank has not proved that Rs. 205 crores, representing the transaction value of these Cantriple Units, were paid for or were pledged, it was justified in directing handing over of the said units to the custodian. Other proceedings specifically relating to these Cantriple Units are still pending before the Special Court, especially Miscellaneous Application No. 36 of 1993. Under the circumstances it would appear that the observations and findings of the Special Court relating to the Cantriple Units, in the absence of evidence being led before it by all the interested parties, can only be regarded as, prima facie so as to enable it to come to the conclusion that the said Cantriple Units must be handed over to the custodian and his retention would be subject to the outcome of the other legal proceedings including Miscellaneous Application No. 36 of 1993 and the appellant bank and other parties would be entitled to try and establish their rival claims to get possession of the said Cantriple Units.

Learned counsel for the appellant bank also submitted that the observations of the Special Court to the effect that there appeared to be some arrangement which subsisted between the appellant bank and Dalal were unwarranted and uncalled for. We do not intend to make any observation in connection therewith because the Court has itself stated that it was merely a presumption, and not a finding, that the appellant bank had entered into some sort of a transaction in securities with Dalal with the understanding that they would get a fixed return of 15 per cent on those transactions. Once the Court itself observed that loss is not a finding but merely a presumption, the said observations cannot in any way adversely affect the appellant bank or reflect as being a positive finding in respect of its business transactions. Perhaps the Special Court could have avoided the said observation but, as we have already observed, these observations should not and cannot cause any prejudice to the appellant bank in any other matter which is pending before the Special Court.

It was submitted on behalf of the plaintiffs that the Special Court ought not to have passed strictures or made harsh observations against the appellant bank. It was contended that the appellant bank was victim of conspiracy between their employees and Dalal on account of whicht suffered loss heavily. Services of several officers alleged to be involved in the conspiracy were terminated by the appellant bank and criminal proceedings were instituted. This shows, it was contended, that when the appellant bank got to know about the acts of its employees it acted in a bona fide manner and no strictures should have been passed against it.

While examining the evidence the Special Court has observed that the app�pellant bank was creating false record, which was admitted by their own witnesses, and further that in the greed for profit the appellant bank was flouting rules and regulations of the Reserve Bank of India. This and the other observations made by the Special Court, though harsh, appear to be amply justified. In making these observations the Special Court took note of the fact that according to the appellant banks own witnesses false records were created in the case of 9% IRFC Bonds to hide a hole from

the Reserve Bank of India. The false record, which was created, showed purchase of Cantriple Units even when there was no transaction of purchase. This was done because inspection by the Reserve Bank of India was expected. None of the officers against whom observations have been made by the Special Court have chosen to challenge the same. No orders need be passed, in our opinion, with regard to the said observations of the Special Court made with reference to the officers of the bank who suddenly one day realised in May 1992 that the bank had made purchases of securities etc. for Rs.1253 crores but in respect of which deliveries have not been made, the case which was set up in the letter dated 11th May, 1992. If before 11th May, 1992 the management was unaware of the short fall of arrears worth Rs.1253 crores, as claimed by the appellant bank, the strictures passed and the observations made against the appellant bank by the Special Court were eminently justified.

Hiten Dalal in C.A. No. 1878 of 1999 has impugned the decision of the Special Court upholding the appellant banks claim for losses/deficiencies to the extent of Rs.280.80 crores. The decision of the Special Court in this regard has already been approved by us herein above and nothing more need to be said about this. One other contention which requires consideration relates to the awarding of the costs of Rs.30 lacs by the Special Court against Hiten Dalal. Arguing the appeal on behalf of Hiten Dalal, Mr. Ganesh contended that he has serious objection to the award of the huge costs of Rs.30 lacs to Standard and Chartered Bank. He contended that it was the Standard and Charted Bank which has led evidence for all along 33 days, the Special Court has given special findings that except for PW-4 the other witnesses of the bank had lied or prevaricated and in respect thereto severe strictures had been passed. As many as 11 claims put up by the appellant bank had been rejected by the Special Court and that the Special Court had also found that the appellant bank had constantly shifted their stand. It was contended that the award of costs of Rs.30 lacs was grossly excessive and Hiten Dalal should not have been directed to pay this amount.

The Special Court observed that it did not doubt that the appellant bank had incurred costs of over Rs.2 crores. It then held that this was not a fit case where actual costs should be awarded but it restricted the costs to Rs.30 lacs. This represents 15 per cent of the costs actually incurred by the appellant bank. It is to be noted that the plea of Dalal was that securities had been taken away from him by the appellant banks officers by force and coercion. The appellant bank had, therefore, to lead evidence to disprove this case and to prove the circumstances under which the letter dated 11th May, 1992 Ex. G was executed. The appellant banks claim of loss of about Rs.280 crores has been upheld and this being so the decision of the Special Court awarding costs of Rs.30 lacs cannot in any way be

findings as incorrect. As a consequence of the aforesaid discussions and findings it follows that:

1] In Civil Appeal No.762 of 1999, filed by the Standard Chartered Bank and Another:

a) The decision of the Special Court holding that the appellants had been able to prove loss to the extent of Rs.280.80 crores is affirmed.

b) Bonus shares, dividend and interest were accretions to the pledged stock and have to be regarded as forming part of the pledged property which could not be ordered to be handed over unless redemption takes place.

c) We hold that the letter dated 11th May, 1992, addressed by Hiten P. Dalal to the appellants created a pledge in their favour not only of the shares and debentures worth Rs.105 crores, particulars of which were given in the said letter, but also on the bonus shares, dividend and interest

accrued on the said pledged shares and debentures.

d) In reduction of Dalals liability to the appellants, they are entitled to sell the original shares, rights shares and the bonus shares and also to retain the dividend and interest accrued on the original shares.

e) Cantriple Units referred to in the letter dated 11th May, 1992 representing transaction value of Rs.205 crores shall be returned to the custodian and his retention would be subject to the out come of the other proceedings including Miscellaneous Application No. 36 of 1993 and the appellants and other parties would be entitled to try and establish their rival claims to the said units.

f) The observations made by the Special Court with regard to the conduct of the appellants and their employees do not call for any interference.

g) The award of costs by the Special Court for Rs.30 lacs against Hiten P. Dalal is affirmed.

2] Appeal No.762 of 1999 is partly allowed to the extent indicated above.

3] Appeal No.1878 of 1999, filed by Hiten P. Dalal, stands dismissed.

Parties to bear their own costs.