SUPREME COURT OF INDIA

Naresh K. Aggarwala & Co.

Vs.

Canbank Financial Services Ltd.

C.A.No.5173 of 2004

(B.Sudershan Reddy and Surinder Singh Nijjar JJ.)

05.05.2010

JUDGEMENT

Surinder Singh Nijjar, J.

1. This Statutory First Appeal under *Section 10 of the Special Court (Trial of offences relating to Transactions in Securities) Act, 1992 (in short the `Special Court Act')* is directed against the judgment and decree dated 15.4.2004 passed by the Special Court at Bombay in Suit No.4 of 1998.

2. The aforesaid suit was initially filed by the appellant in the High Court of Delhi at New Delhi on its original side being Suit No.1827/1993. It was transferred to the Special Court in view of the appellant being notified on or about 17.6.1997 under the provisions of the Special Court and thereafter the suit was numbered as Suit No.4/98 before the Special Court.

> "The appellant had prayed for money decree in the amount of 1 Rs.3,18,06,868/- together with interest at the rate of 24%.
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> Respondent No.1, Can Bank Financial Services Limited, had opposed the claim and also lodged a counter claim, claim and decree in the amount of Rs.2,53,75,000/- from the appellant with interest w.e.f. 22.4.1992. The appellant claims to be a stock broker, being a sole proprietory concern of Mr. Naresh K. Aggarwala. The respondent No.1, Can Bank Financial Services Limited, is a wholly owned subsidiary of Canara Bank."

3. The appellant had prayed for a decree against respondent No.1 in respect of net amount payable arising out of two sets of transactions in shares i.e.; (i) two transactions in the shares of Reliance Industries Limited (RIL) (ii) one transaction in respect of Steel Authority of India Limited (SAIL). It is claimed that on 14.2.1992 a contract was entered into between the appellant and Can Bank for purchase of one lakh shares of RIL at a price of Rs.154 per share inclusive of all charges. On 23.3.1992 another contract was entered into by the appellant with Can Bank for purchase of one lakh shares of RIL at a price of Rs.375 per share net. On

27.2.1992 another contract was entered into by the appellant for purchase of five lakh shares of SAIL at a price of Rs.51 per share net and a contract note was issued. In the plaint it was averred that of the two lakh RIL shares purchased by the appellant only one lakh shares were delivered by respondent No.1. These shares according to the appellant were appropriated towards the contract dated 14.2.1992. It was the case of the appellant that the balance one lakh RIL shares pursuant to contract dated 23.3.1992 have not been delivered by respondent No.1. According to the appellant, respondent No.1 had been wrongly claiming that the entire two lakh shares had been duly delivered to the appellant. The appellant claims that this fact is amply borne out from the various letters written by respondent No.1 to the appellant wherein respondent No.1 claims to have delivered one lakh shares to its Bombay office and the remaining one lakh shares allegedly to a broker/one Mr. Hiten P. Dalal. The appellant states that on inquiry Mr. Dalal has sated that no such shares had been delivered on behalf of respondent No.1. In communication dated 07.08.1992 respondent No.1 acknowledges only one delivery and seeks intimation whether his broker, Mr. Hiten P. Dalal, on their account has delivered one lakh shares or not. Therefore respondent No.1 is, in fact, aware that no such delivery had been made.

> "Respondent No.1, in fact, in its communication dated 15.09.1992 acknowledges the factum of both the contract notes. In letter dated 28.09.1992, the appellant reiterated that at no stage it had received any share from Mr. Hiten P. Dalal on account of respondent No.1. It was also stated that Mr. Hiten P. Dalal had confirmed that he had not given any Reliance shares on account of respondent No.1 to the appellant. It was also averred that in spite of assurances having been given by respondent No.1 from time to time, the balance one lakh shares were not delivered."

4. It was further claimed by the appellant that on 27.07.92 respondent No.1 was requested that the transaction with regard to the SAIL shares should have been squared up at the time when the shares were purchased. They were priced at Rs.51 per share. The market rate, according to the appellant, on 27.7.1992 was Rs.130 per share. Therefore appellant asked the respondent No.1 to credit Rs. 79 per share for five lakh shares of SAIL to the account of the appellant-company. The appellant claimed that by letter dated 17.09.1992 respondent No.1 resiled from the contract regarding sale of shares of SAIL. The appellant therefore by letter dated 19.09.1992 once again requested for the cooperation of the respondents as the delivery had to be effected within reasonable period of time to avoid substantial losses. In this letter the appellant reiterated that one lakh shares only had been delivered and no other delivery had been made in respect of Reliance shares.

> "Against contract note dated 14.02.1992 Rs.1,54,000/- was credited to the account of respondent No.1 but the respondent No.1 reiterated its stand in the letter dated 17.9.1992."

5. The appellant further stated that on 27.05.1993 respondent No.1 issued a notice demanding an amount of Rs.2,56,25,000/- on the basis of account maintained up to 08/02/1992. By letter dated 14.06.1993 the appellant informed the respondent No.1 that after

reconciliation of the account, the appellant was liable to be paid by respondent No.1 an amount of Rs.2,59,75,000/-. It was further claimed that according to the statement of account of the appellant as on 31.7.1993 an amount of Rs.3,18,06,868/- is due to the appellant from respondent No.1. According to the appellant, respondent No.1 is liable to pay this amount to the appellant with interest at the rate of 24 % per annum.

6. Respondent No.1 in his written statement took a preliminary objection stating that the suit is wholly misconceived and a fictitious claim has been put forward solely with the intention of delaying or avoiding payment of a sum of Rs.2,53,75,000/- and interest thereon to the answering respondent No.1. It was also stated that along with the written statement respondent No.1 is preferring a counter claim against the appellant for the recovery of the aforesaid amount.

> "The averments made in paragraph 1 to paragraph 6 of the plaint were admitted by the respondents."

7. With regard to the other averments, it is however stated that as averred by the appellant in the plaint both the parties were maintaining running accounts with regard to the business transactions with each other. The contracts dated 14.2.1992 and 23.3.1992 are admitted. It is however claimed by the respondents that the contract dated 14.2.1992 was cancelled rescinded by the appellant on the very day, namely, 14.2.1992.

> "It was also claimed that the claim made by the appellant with regard to the running account is not correct. The running account maintained by respondent No.1 shows a sum of Rs.2,53,75,000/- as due from the appellant on 31.3.1993. Hence the counter claim had been preferred in the written statement itself. It is however, claimed that since the contract dated 14.2.1992 was cancelled, there was only one contract in existence i.e. contract dated 23.3.1992 against which delivery had been made. Therefore, nothing is payable by respondent No.1 to the appellant on account of this contract. The version of the communication between respondent No.1 and Shri Dalal as given by the appellant is denied. The query dated 7.8.1992 was necessitated to make sure that no wrong delivery or excess delivery was made by the broker, Shri Dalal, in respect of the cancelled contract dated 14.2.1992. The appellant has tried to take undue advantage of the query made by respondent No.1 for the purpose of keeping the record straight. The appellant had admitted the non-existence of the contract dated 14.2.1992 and did not show the amount as outstanding. This position is confirmed by the appellant in the statement of account signed on 17.7.1992 and again reconfirmed on 24.8.1992. It is only after the inquiry by respondent No.1 dated 15.9.1992 about the position of one lakh shares that appellant got the mala fide idea of seeking illegal advantage of the cancellation entry having been recorded in respondent No.1 books. This is particularly so because by then the share prices had gone up.

Under these circumstances the appellant submitted a revised statement of account on 19.9.1992. According to respondent No.1 the averments made in the plaint by the appellant do not convey the true position. Once the contract dated 14.2.1992 was cancelled, the question of delivery did not arise.

Therefore nothing is payable by respondent No.1 to the appellant on account of the contract dated 14.2.1992."

8. With regard to the contract in relation to SAIL shares, the fact that the appellant entered into a deal with respondent No.1 on 27.2.1992 for purchase of five lakh shares of SAIL at the price of Rs.51 is admitted. It was however denied that a contract note was issued to evidence the transaction. It is stated that the contract note was neither in accordance with the prevalent practice, nor in accordance with the rules and bye-laws of the Delhi Stock Exchange and the contract note is also opposed to the law including the Securities Contracts (Regulation) Act, 1956 and hence void ab initio. It is further stated that the irregularity of the contract note was admitted by the appellant himself in his letter dated 27.7.1992. It is submitted that the contract itself being contrary to law, no amount could be claimed by the appellant against this contract.

9. In the counter claim it was pleaded that the appellant has admitted in paragraph 8(a)(i) that on 23.3.1992 a contract was entered into between respondent No.1 and the appellant whereunder the respondent No.1 agreed to sell and the appellant agreed to purchase one lakh shares of Reliance Industries Limited on 23.3.1992 at Rs.375 per share. This averment is affirmed by respondent No.1. According to the respondent No.1 the aforesaid one lakh shares were delivered by respondent No.1 to appellant on 22.4.1992. This delivery has also been admitted by the appellant. It is further stated that appellant had wrongly contended after a long lapse of time that this delivery was in respect of another alleged contract dated 14.2.1992. The appellant, according to respondent No.1, has illegally and wrongly accounted for its liability to pay to respondent No.1 in respect of one lakh shares sold on 23.3.1992 only at Rs.154 per share instead of Rs.375 per share. Thus the difference between the rate per share at Rs.375, which was the actual contract rate, and the rate at which the appellant has accounted for i.e. Rs.154 per share comes to Rs.2,21,00,000/-.

"According to respondent No.1 this amount is payable by the appellant to the respondent No.1 with interest. It is accepted that there were dealings between the appellant and respondents and the accounts were settled periodically. Therefore on 31.3.1993 the statement of mutual account between the parties shows that a sum of Rs.2,53,75,000/- is due and payable by the appellant to the respondent No.1. The interest at the rate of 24% from 22.4.1992 till 31.5.1994 amounts to Rs.1,28,47,397.26/- which is also due and payable."

10. In its replication the appellant has reiterated the averments made in the plaint. It is stated that the counter claim is frivolous and is to delay and avoid payment of the contractual obligations, of respondent No.1. The appellant reiterates that the only one lakh shares of RIL

were delivered against contract dated 14.2.1992. It is denied that the contract dated 14.2.1992 was cancelled by the appellant. It is further reiterated that the respondent No.1 is liable to make delivery of the remaining one lakh shares; contract is to be purchased by the appellant vide contract note dated 23.3.1992.

> "It is further stated that the appellant is still ready and willing to perform his part of the contract but the respondents are trying to wriggle out of their contractual obligations."

11. On the basis of the pleadings the Special Court framed the following issues:

> "1. Whether Plaintiffs prove that Rs.2,59,75,000/- money is due from and payable by Defendant No.1 on account of transactions undertaken on behalf of or with Defendant No.1 after accounting for all transactions in the running account as alleged in para 7 of the Plaint?
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> 2. Whether Plaintiffs have correctly appropriated one Lac shares delivered towards the contract note dated 14.2.1992 (i.e. for Reliance Industries Ltd. shares) purchased @ of Rs.154/- as alleged in para 8a (ii) of the Plaint?
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> 3. Whether the Plaintiffs prove that no shares were received from the broker of Defendant No.1 towards the Contract dated 23.3.1992 as averred by the Plaintiffs in para No.8a (iv) of the Plaint?
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> 4. Whether the Plaintiffs have correctly given credit of Rs.154/- per shares for one Lac shares delivered and since one Lac shares have not been delivered as alleged in para 8a (v) of the Plaint?
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> 5. Whether the Contract dated 14th February 1992 for purchase of 1,00,000 shares at the rate of Rs.154/- per share of M/s. Reliance Industries Ltd. placed by the Plaintiffs on Defendant No.1 was cancelled/ rescinded as alleged by Defendant No.1 as alleged in paras 8 and 9of the Written Statement?
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> 6. Whether Plaintiffs' contract note dated 27.2.1992 (SAIL) had been issued as per prevalent practice as alleged in para 8b (ii) of the Plaint?
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> 7. Whether Defendant No.1 by its letter dated 17.9.1992 has resiled from its contractual obligations as alleged in para 8b (vi) of the Plaint?
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> 8. Whether the Plaintiffs are entitled for a decree or Rs.3,18,08,868/-?
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> 9. Whether the Plaintiffs are entitled for interest at the rate of 24% per annum?

10. Whether Defendant No.1 is entitled to payment of Rs.2,53,75,000/- with interest as claimed in paras 1 to 4 and 8 of the Counter Claim?

11. What orders and decree?"

12. The Special Court notices that both the parties have filed documents. On behalf of the appellant one witness has been examined. The respondent No.1 has not led any evidence. It is also noticed that some documents have been admitted in evidence by consent of the parties. Issues Nos.2 to 5 were taken up together as they relate to the transactions in RIL shares. All these issues have been decided in favour of respondent No.1 and against the appellant. It is further held that the transaction dated 27.2.1992 was illegal and therefore is not capable of being enforced. Therefore issues No.6 and 7 have also been decided against the appellant. Issues Nos. 1, 8 and 9 have also been decided against the appellant. It has been held that the appellant is not entitled to make any claim neither in relation to RIL shares nor in relation to SAIL shares. So far as issue No.10 is concerned, the Special Court has clearly held that the counter claim of respondent No.1 succeeds and is allowed.

> "Therefore, a decree in an amount of Rs.2,53,75,000/- with an interest at the rate of 12% per annum from 22.4.1992 till the date of realisation is passed against the appellant. The appellant was also directed to pay costs entitled to the respondents."

13. The present appeal has been filed by the appellant being aggrieved by the aforesaid judgment and decree. Mr. Rupinder Singh Suri, learned Senior Counsel for the Appellant, had made elaborate submissions in Court which have been reiterated in the written arguments, filed later. He submits that the impugned judgment in addition to being totally contrary to the facts, records and law in general, is a classic case wherein the prejudice against the appellant is writ large, owing to the fact that he is a notified person. The Special Court has totally disregarded the evidence adduced by the appellant in support of its case. The counter claim has been erroneously decreed merely on surmises and conjectures. It is also submitted that the interest at the rate of 12% w.e.f. 22.4.1982 till realisation has been illegally granted without there being any evidence in support. In support of his submission, Mr. Suri, has relied on numerous documents which were on the record. Mr. Suri has placed heavy reliance on the letter dated 7.8.1992 which pertains to the statement of account between the parties for the period 1.4.1991 to 25.7.1992. According to the learned counsel this letter will show that only one lakh shares of RIL had been delivered. Therefore, respondent No.1 was seeking confirmation that only one lakh shares had been received by the appellant. This letter would also show that respondent No.1 had intimated that suitable decision with regard to contentions of the appellant on SAIL shares will be given in due course. He then made a reference to letter dated 15.9.1992 written by one Ashok Kumar Kini, Executive Vice- President of respondent No.1 wherein he stated that there were two contract notes. This letter shows that even according to respondent No.1 the physical delivery of one lakh shares at Rs.375/- was made by the office of respondent No.1 at Bombay and one lakh shares at Rs.154/- of RIL were delivered by Mr. Hiten P. Dalal on its behalf. The appellant had replied to the aforesaid letter on 19.9.1992 and reiterated that only

one lakh shares had been received. According to Mr. Suri on 21.9.1992 respondent No.1 wrongly claimed that appellant had all along been maintaining that there was only one deal.

> "Therefore appellant through letter dated 28.9.1992 reiterated its stand that on checking its account there seemed to have been no record of receipt of any share from Hiten P. Dalal. Mr. Suri further submitted that in the written statement in paragraph 8 respondent No.1 had wrongly claimed that the contract dated 14.2.1992 had been cancelled. In fact there was no evidence led by respondent No.1 on issue No.5 which was relevant to this claim. In support of this learned counsel relied on extract of the account for the period 1.4.1991 to 31.3.1992 which shows the existence of both the transactions.
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> Therefore according to Mr. Suri the respondent No.1 has wrongly claimed that contract dated 14.2.1992 was cancelled. Finally it is submitted by Mr. Suri that one lakh shares were adjusted against the contract dated 23.3.1992 on the basis of trade practice. As the appellant is a broker he has corresponding commitments to every client. Mr. Suri submits that the Special Court has wrongly concluded that it was for the appellant to prove that the contract dated 14.2.1992 was not in existence.
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> Mr. Suri further submitted that learned Special Court has wrongly concluded that the contract with regard to SAIL shares being itself illegal could not be enforced in law. In fact respondent No.1 had all along maintained that contract note dated 27.2.1992 would be honoured in due course. It is only on 17.9.1992 that respondent No.1 for the first time tried to wriggle out of the contract by stating that the transaction was against law and hence void and unenforceable. According to Mr. Suri this plea is not acceptable and there is no bar in law for entering into such a contract. The reliance placed by the Special Court on the circular dated 27.6.1969 is totally misplaced and contrary to the facts of the case. According to learned senior counsel, Mr. Suri, the circular would not be applicable to sale/purchase of securities on a contract for cash. It was for this reason that statement of account of respondent No.1 would show that the contract was alive till at least 31.3.1992 when it was reversed in the books of accounts.
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> This, according to Mr. Suri, was just a ploy on the part of respondent No.1 to escape its liability under the contract dated 27.2.1992. Mr. Suri submitted that the bias of the Special Court is evident from the manner in which only selected pieces of evidence have been used to decree the counter claim of respondent No.1. The evidence, which was in favour of the appellant, had been ignored by the Special Court. According to Mr. Suri this was clearly due to the undue importance attached by the Special Court to the facts that appellant is a notified person under the Act. It is further submitted by Mr. Suri that there was no legal justification for awarding 12% interest to respondent No.1 w.e.f. 22.4.1992 as there was no evidence in support of such a claim. In any event the Special Court could only grant interest from the date of the filing of the counter claim and not from an earlier date. Mr. Suri submitted that the Special Court

also erred in law in coming to the conclusion that the requisite averments to constitute a suit for damages are absent in the present case. According to Mr. Suri a perusal of the plaint would clearly show that it is a case for damages arising out of breach of contract on the part of respondent No.1. Mr. Suri then submitted that the Special Court has wrongly drawn an adverse inference against the appellant on account of non-production of the "sauda books".

According to the learned senior counsel the sauda books were not at all relevant for proving the case of the appellant.

There was ample evidence on record to show that respondent No.1 was guilty of breach of contract. Therefore, respondent No.1 was liable to make good the damages suffered by the appellant.

The appellant having produced the best evidence available, it was not necessary to produce the sauda books at all. Therefore the learned Special Court has wrongly concluded that the best evidence rule would be applicable in the facts of the present case."

14. On the other hand, Mr. Bhushan, learned senior counsel, submits that the findings of the Special Court are based on clear and cogent evidence. He has also made reference to the correspondence between the parties and submitted that the entire claim of the appellant is based on a deliberate misreading of the same. Learned senior counsel relied on letter dated 17.7.1992 which shows that by that time the Reliance shares were not on issue. This letter has been written by the appellant to respondent No.1 and talks only of the SAIL shares. In this letter appellant has, in fact, admitted that the contract with regard to SAIL shares was technically incorrect since contract relating to unquoted shares would be outside the purview of Delhi Stock Exchange Rules, By-Laws and Regulations. It is also admitted that the shares at the relevant time were not quoted at any centre.

"This admission is reiterated in the letter dated 18.8.1992 seeking to make clarification in response to the letter dated 7.8.1992. It was confirmed by the appellant that only one lakh shares of RIL had been received from the Bombay office of respondent No.1 and that no delivery was received from H.P. Dalal. By letter dated 20.4.1992 it was clearly stated that barring the outstanding transaction of five lakh shares of SAIL there is nothing outstanding. Mr. Bhushan submits that the letter dated 15.9.1992 is being misinterpreted by the appellant which is merely an observation made by respondent No.1. According to Mr. Bhushan by that time the scam had been discovered, a new management had taken over and the letter had been written on going through the records. Hence it was observed that against two sale contracts of RIL, for one lakh shares each, physical delivery had been given of one lakh shares by Hiten P. Dalal. To take advantage of the aforesaid letter, the appellant writes the letter dated 19.9.1992 stating that there were two contracts for two lakh RIL shares. Against these two lakh shares, appellant had received only one lakh shares which had been

credited against the contract dated 14.2.1992. The appellant further claimed delivery of one lakh shares under contract dated 23.3.1992. Having taken this stand in its letter dated 14.6.1993 the appellant does not claim any damages on account of non-delivery of one lakh shares against the contract note dated 23.3.1992 at the rate of Rs.375/- per share. The only plea is that delivery of one lakh shares has been credited against the contract dated 23.3.1992. Therefore, credit due to respondent No.1 would be only Rs.1,54,00,000/- and not Rs.3,75,00,000/- as shown by the respondent No.1 in its account. Mr. Bhushan further submits that even if the plea of the appellant is accepted that the transaction has been shown in the account as being incomplete, it still had to be reflected in the sauda books. However during the course of the trial sauda books were not produced and therefore an adverse inference has been drawn against the appellant. With regard to the SAIL shares, Mr. Bhushan submits that the contract was contrary to law. The appellant was aware of this legal position and admitted the same in the letter dated 27.7.1992."

15. Upon consideration of the submissions made by the learned counsel for the parties we have examined the material on the record. It is not disputed before us that there were, in fact, two transactions with regard to RIL shares dated 14.2.1992 and 23.3.1992. The Special Court notices that the appellant claims to have adjusted the delivery of one lakh shares of RIL against the contract dated 14.2.1992 which is said to have been cancelled by respondent No.1. The Special Court also notices that if the case of the appellant that the contract dated 14.2.1992 was alive is accepted, then the transaction will remain incomplete and unfulfilled. The Special Court further observed as follows:

> "In my opinion, even without recording any finding as to whether the contract dated 14-2-1992 was cancelled on the same day or not, the Plaintiff cannot be granted any relief in relation to the contract dated 14-2-1992, assuming it to be outstanding because the only relief that might have been claimed by the Plaintiff if the contract dated 14-2-1992 was unfulfilled contract was relief for damages for breach of contract."

16. The Special Court also upon reading of the plaint concludes that it is not a suit filed by the appellant for a decree in the amount of damages for breach of contract. In our opinion, the aforesaid findings cannot be said to be erroneous or based on no evidence. In fact in paragraphs 6 and 7 of the plaint the appellant had stated as follows:

> "6. The plaintiff and defendant No.1 have been doing regular business over a fairly long period of time and are maintaining running accounts respectively.
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> 7. The present suit is in respect of recovery of money which is due from the defendant No.1 on account of transactions undertaken on behalf of with the defendant No.1 after accounting for all the transactions in the running accounts and the amount whereof has not been paid to the plaintiff in spite of requests for the same."

17. In the face of these averments, we find it a little difficult to appreciate the submission of Mr. Suri that the findings on these issues are erroneous or not supported by any evidence. The Special Court also notices that the appellant had, in fact, adjusted the delivery of shares towards the contract dated 23.3.1992. It is true that in the examination- in-chief appellant had stated that he had made the claim against respondent No.1 on the basis of difference in price of Reliance shares as on 14.2.1992 and as on 23.3.1992, i.e., Rs.375-Rs.154 for one lakh shares. In our opinion, the Special Court has correctly observed that in the absence of pleadings the statement made by the appellant had to be ignored. We are also unable to accept the criticism of Mr. Suri that the burden of proving the continuance of the contract dated 14.2.1992 was not on the appellant. We may notice here that respondent No.1 had taken a categorical plea that contract dated 14.2.1992 was cancelled by appellant on the same day. The conduct of the appellant showing delivery made on 22.4.1992 as delivery against the contract dated 23.31992 indicated that he was also treating the contract dated 14.2.1992 to be cancelled. Had that not been so, he would have made entries in the books of account to show that the delivery of shares were against the contract dated 14.2.1992. In our opinion Mr. Bhusan, has rightly pointed out that till 27.7.1992, the reliance shares were not in issue.

> "The letter written by the appellant to the Respondent No 1 talks only of the SAIL shares. Therefore it was for the appellant to produce documentary evidence to show that in his books of accounts the contract had been shown as incomplete.
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> But the appellant failed to produce the necessary evidence, which led the Court to observe that:
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> "The burden was on the plaintiff to prove that the contract dated 14.2.1992 remained incomplete. In my opinion, therefore, it was for the plaintiff to produce documentary evidence to show that in his Books of Accounts the contract is shown as incomplete. It becomes necessary for the plaintiff to produce the document to show that the transaction in his Books of accounts is shown as incomplete. The conduct of the plaintiff of showing delivery made on 22.4.1992 as delivery made on 23.3.1992 indicates that he was also treating the contract dated 14.2.1992 as cancelled. Had that not been so he would have made entries in the Book of account to show that the delivery of shares were against contract dated 14.2.1992. "
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> In our opinion the view expressed by the special Court is an acceptable view, and does not call for any interference."

18. With regard to issues no 6 & 7, we again do not find any merit in the submissions of Mr. Suri. Admitted position is that on the date when the contract with regard to the SAIL shares was entered into, the shares were unlisted. It is also the admitted position that on that day, the circular dated 27.6.1969 issued under Section 16 of the Securities Contract Regulation Act 1956 was in existence and in force. Relevant portion of the afore said circular reads as follows:

"S.O. 2561 In exercise of the powers conferred by *sub-section (1) of Securities Contract (Regulation) Act 1956 (42 of 1956)* the Central Government being of opinion that it is necessary to prevent undesirable speculation in securities in the whole of India, hereby declares that no person in the territory to which the said Act extends shall save with the permission of the Central Government enter into any Contract for the sale or purchase of securities other that such Spot delivery contract or Contract for cash or Hand delivery or Special Delivery in any securities as is permissible under the said act and the rules, bye laws and regulations of a recognized Stock Exchange."

It is thus clear from the circular that after issuance of these Circular, transactions into securities by (i) Spot delivery contract; (ii) Contract for cash; (iii) Hand delivery and (iv) Special Delivery are only permitted. The term `spot delivery' is defined in Section 2 (i) of the Act, which reads as under:- "Spot delivery contract means a contract which provides for :- (a) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b)transfer of the securities by the depository from the account of a beneficial owner when such securities are dealt with by a depository; "

A perusal of the aforesaid definition would show that spot delivery contract is the contract where actual delivery of the securities and the payment of price is either on the same day or on the next day. Admitted position is that the contract note issued by the appellant in relation to this transaction shows that it was not a spot delivery contract."

19. As regards the other types of contracts, the terms, contract for cash, hand delivery or special delivery are not defined by the Act. Therefore in terms of the circular dated 27.6.1969 quoted above, if the rules made under the act, bye laws and regulations of a recognized Stock Exchange permit contract for cash, hand delivery or special delivery, those types of transactions would also be permitted by the circulars.

"The provisions of the bye-laws of Delhi Stock exchange clearly permits spot delivery transaction, hand delivery transaction and special delivery transaction. It was noticed by the Special court that "It was not even the case of the Plaintiff that the transaction into SAIL shares in relation to which contract note has been issued by the plaintiff was either hand delivery, spot delivery or special delivery contract."

It was argued before the Special Court that the transaction was a cash delivery contract. The Special Court negated such contention, observing as follows:

"Firstly there are no pleadings to that effect.

There is no evidence to that effect and there is no provision to that effect either in the Act, rules framed by the Delhi Stock Exchange.

Therefore cash delivery contract unless it is permitted by the Act, bye laws and regulations of the Stock Exchange is prohibited by the circulars."

The appellant was aware of the illegality of the transaction. It is evident from the letter dated 27th of July, 1992 written by the appellant to the respondent No.1 wherein it is clearly stated that "technically this was incorrect since contracts relating to unquoted shares would be outside the purview of Delhi Stock Exchange rules, bye-laws and regulations." In the face of such an dmission, the Special Court, in our opinion, has correctly concluded, as noticed above. In our opinion the view expressed by the Special Court does not call for any interference."

20. The contention that the circular did not apply to unlisted securities was duly considered and rejected by the Special Court. The Special Court thoroughly considered the term `securities' as defined in Section 2(h) of the Act. It reads as under:- "2(h) Securities include-

"(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes.

(ii) Government securities;

(iia) such other instruments as may be declared by the central Government to be securities; and (iii) rights or interests in securities; "

Perusal of the above quoted definition shows that it does not make any distinction between listed securities and unlisted securities and therefore it is clear that the Circular will apply to the securities which are not listed on the Stock Exchange. Admittedly the contract note issued in relation to this transaction by the appellant does not show that it was a spot delivery contract, therefore the transaction was clearly contrary to the circular. Consequently in terms of the provisions of Sub-section(2) of Section 16 the transaction was illegal and is not capable of being enforced."

21. With regard to issues no 1,8 & 9, it was correctly observed by the Special Court that the Plaintiff i.e. Appellant herein is not entitled to make any claim either in relation to the

Reliance Industries Shares nor in relation to contract for SAIL shares. Further as the appellant is not entitled to claim any amount from the respondent on account of the aforesaid transactions, there is no question of the appellant being entitled to any interest.

22. On Issue No.10, Mr.Suri has submitted that the Special Court has illegally allowed the counter claim of respondent No.1. It was submitted that the Special Court has come to a contrary conclusion even though the fact situation was identical in the claim put forward by both the parties. We are unable to accept the submissions made by the learned senior counsel. Once it is concluded that the appellant is not entitled to claim any amount from respondent No.1 in relation to the aforesaid three transactions i.e. contract dated 14.2.1992, contract dated 23.3.1992 for one lakh RIL shares each and contract dated 27.2.1992 relating to one lakh SAIL share. It needed to be determined as to whether the appellant in fact needed to compensate respondent No.1. In the counter claim, the respondent No.1 clearly stated that the appellant had agreed to purchase one lakh shares of RIL on 14.2.1992 @ Rs.154/- per share, but this contract was cancelled by the appellant on the very same date. Thereafter, the appellant had intimated about another contract for purchase of one lakh shares of RIL on 23.3.1992 @ Rs.375/- per share. Against the aforesaid contract, the delivery of one lakh shares was made by the respondent No.1 to the appellant on 22.4.1992. After the receipt of a letter dated 15.9.1992 when the Management of respondent No.1 had changed, the appellant started claiming that the delivery of one lakh shares on 22.4.1992 had been adjusted against the cancelled contract dated 14.2.1992. The respondent No.1 had based the counter claim on the difference of price in shares between two periods of contract i.e. 14.2.1992 and 23.3.1992. The difference of amount of Rs.2,21,00,000/- was claimed as the amount due from the appellant to the respondent No.1. A perusal of the letter dated 27.5.1993, which contains a statement of account with the subject "settlement of outstanding" clearly shows that the respondent No.1 is claiming a sum of Rs.2,56,25,000/- as outstanding against the appellant from various transactions as per the details given therein. Against the entry dated 4.3.1992, there is a clear entry with regard to the sale of one lakh RIL shares @ Rs.375/- per share given a total consideration of Rs.3,75,00,000/-. The respondent No.1 had clearly requested the appellant to settle account by paying Rs.2,56,25,000/- immediately. In the letter dated 14.6.1993, the appellant offered its comment on the statement of account for payment by respondent No.1 on 27.5.1993. Herein, the appellant states that the credit claimed by the respondent No.1 should be Rs.2,21,00,000/- instead of Rs.2,56,25,000/-.

> “This balance was claimed by the appellant on the ground that the credit claimed by respondent No.1 of Rs.3,75,00,000/- has to be reduced by Rs.1,56,00,000/- i.e. the difference in price of shares of the two contracts dated 14.2.1992 and 23.3.1992.
>
> The appellant also claimed that a sum of Rs.2,95,00,000/- was also required to be adjusted in respect of SAIL shares. The appellant had claimed the difference in contract price of shares of SAIL @ Rs.51/- per share against the official quotation of the Delhi Stock Exchange @ Rs.110/- per share.

Thus he had claimed that respondent No.1 was liable to pay for the difference of Rs.59/- per share (Rs.110/-Rs.51/- per share amounting to Rs.2,95,00,000). It was held by the Special Court, which finding has been affirmed by us, that the contract with regard to SAIL shares being contrary to law was void ab initio. Therefore, the appellant could not possibly claim anything against the aforesaid SAIL shares on account of any difference in the contracted rate and the rate when the same were listed on the Delhi Stock Exchange. Therefore, the irresistible conclusion was that the appellant was liable to pay to respondent No.1 for the RIL Shares @ Rs.375/- per share, the contract dated 14.2.1992 having been cancelled.

Thus the Special Court, in our opinion, correctly concluded that the appellant was liable to pay to the respondent No.1 the amount of Rs.2,53,75,000/-. In view of the above, we find no reason to interfere with the findings of the Special Court on Issue No.10 also."

23. We also do not find any cogent reason to interfere or to reduce the amount of interest awarded by the Special Court in the peculiar facts and circumstances of this case.

24. Mr.Suri had submitted that the entire approach of the Special Court was biased against the appellant simply because the sole proprietor of the appellant was duly notified under the Special Courts Act. We are of the considered opinion that the aforesaid submission has to be merely stated to be rejected. The allegations of bias and mala fide had to be proved by cogent and clear evidence. In the present case, apart from the bald submissions made by Mr.Suri, no material was placed on the record to indicate that the judgment of the Special Court was coloured, let alone being affected by any bias. It seems to have become a common practice these days for the losing party after receiving an unfavourable verdict, to make allegations of bias against the Presiding Officer. We decline to give any credence to such wild and bald submissions without any factual basis.

25. In view of the above, we find no merit in this appeal and the appeal is dismissed. No order as to costs.