

Canara Bank vs Nuclear Power Corporation Of India Ltd. ... on 6 March, 1995

Equivalent citations: 1995 SCC, SUPL. (3) 81 JT 1995 (3) 42, AIRONLINE 1995 SC 7, (1995) 84 COM CAS 70, 1995 SCC (SUPP) 81, (1995) 2 SCR 482, (1995) 2 COM LJ 203, (1995) 3 JT 42

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Bench: S.P Bharucha, Jagdish Saran Verma, K.S. Paripoornan

PETITIONER:

CANARA BANK

Vs.

RESPONDENT:

NUCLEAR POWER CORPORATION OF INDIA LTD. AND ORS.

DATE OF JUDGMENT 06/03/1995

BENCH:

BHARUCHA S.P. (J)

BENCH:

BHARUCHA S.P. (J)

VERMA, JAGDISH SARAN (J)

PARIPOORNAN, K.S.(J)

CITATION:

1995 SCC Supl. (3) 81 JT 1995 (3) 42

1995 SCALE (2)162

ACT:

HEADNOTE:

JUDGMENT:

BHARUCHA, J.:

1. Leave granted.

Facts

2. This is an appeal from the judgment and order of the Company Law Board which raises an interesting question as to the exclusive jurisdiction of the Special Court constituted under the provisions of the Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992. The Company Law Board (CLB) has held that its jurisdiction to deal with matters relating to securities, provided by the Companies Act, 1956, is not affected by the Special Court Act.

3. The question arose in these circumstances. The Canara Bank (the appellant) had made an application before the CLB under Section III of the Companies Act seeking relief against the Nuclear Power Corporation of India Ltd. (the first respondent), which had refused to register in its books in the name of the Canara Bank bonds of the Nuclear Power Corporation purchased by the Canara Bank. The Stan-

dard Chartered Bank (the fourth respondent) had also claimed ownership of the said bonds. The Canara Bank alleged that it had acquired the said bonds from the Andhra Bank Financial Services Ltd. (the third respondent) through one Hiten P. Dalal, (the second respondent) who had acted as a broker. Hiten P. Dalal is a person notified under the provisions of Section 3(2) of the Special Court Act and was, as the application of the Canara Bank before the CLB showed, involved as a broker in the transaction relating to the said bonds. The application of the Canara Bank was pending disposal before the CLB when, on 25th January, 1994, the Special Court Act was amended by the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Ordinance, 1994, and Section 9-A was introduced. The Canara Bank and the Nuclear Power Corporation took the stand that the application of the Canara Bank stood transferred to the Special Court by virtue of the provisions of Section 9-A(2) of the Special Court Act. The Standard Chartered Bank (Stanchart) contended that the CLB retained the jurisdiction to deal with the application. The CLB held that it was not a court within the meaning of the Companies Act nor was it a civil court. Its jurisdiction was, therefore, unaffected by the provisions of Section 9-A (2) of the Special Court Act. The Special Court Act.

4. The Special Court act was enacted to provide for the establishment of a special court for the trial of offences relating to transactions in securities and matters connected therewith or incidental thereto. Securities were defined in Section 2(c) to include shares, scrips, stocks, bonds, de- bentures, debenture stock, units and other marketable securities of a like nature, Government securities and rights or interests in securities. Section 3(1) provided for the appointment by the Central Government of a Custodian. By reason of Section 3, the Custodian was empowered, on being satisfied on information received that any person had been involved in any offence relating to transactions in securities after 1st April, 1991, and before 6th June, 1992 (the stated dates), to notify the name of such person in the Official Gazette. On and from the date of such notification, by reason of Section 3(3), property, movable and immovable, belonging to the person notified stood attached and, by reason of Section 3(4), could be dealt with by the Custodian in such manner as the Special Court directed. Section 4(1) empowered the Custodian, if he was satisfied, after such inquiry as he thought fit, that any contract or agreement entered into at any time between the stated dates in

relation to any property of a person notified had been entered into fraudulently or to defeat the provisions of the Special Court Act, to cancel such contract or agreement and, on such cancellation, such property stood attached. Such cancellation was required to be preceded by a reasonable opportunity to the parties to the contract or agreement to be heard. Any person aggrieved by notification under Section 3(2) or Section 4(1) was entitled to file a petition of objection before the Special Court. The Special Court was established by. It was to consist of a sitting Judge of the High Court nominated by the Chief Justice of the High Court within the local limits of whose jurisdiction the Special Court was situated, with the concurrence of the Chief Justice of India. Section 6 empowered the Special Court to take cognizance of and try such cases as were instituted before it or transferred to it. Section 7 dealt with the jurisdiction of the Special Court and it read thus :

"7. Jurisdiction of Special Court - Not- withstanding anything contained in any other law, any prosecution in respect of any offence referred to in subsection (2) of section 3 shall be instituted only in the Special Court and any prosecution in respect of such offence pending in any court shall stand transferred to the Special Court."

Section 9 made provision 'or the procedures and powers of the Special Court. It stated that the Special Court should in the trial of cases it follow the procedure prescribed by the Code of Criminal Procedure for the trial of warrant cases before a Magistrate. It was also provided that the Special Court would be deemed to be a Court of Session, having all the powers of such a court. Section 10 provided that an appeal would lie from any judgment decree, sentence or order, not being an interlocutory order, of the Special Court to the Supreme Court, both on facts and on law. By reason of Section 11(1), the Special Court could make such order as it deemed fit directing the Custodian in the matter of disposal of property under attachment. Section 11(2) set out the order in which the liabilities of the persons notified had to be discharged. Section 13 stated that the provisions of the Special Court Act would have effect not- withstanding anything inconsistent therewith contained in any other law for the time being in force, or in any instrument having effect by virtue of any law, or in any decree or order of any court, tribunal or other authority. By reason of Section 15 the Special Court (Trial of Offences Relating to Transactions in Securities) Ordinance, 1992, which preceded the Special Court Act, was repealed.

5. The Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Ordinance, 1994, was brought into effect on 25th January, 1994. The provision thereof which is most relevant for our purpose is Section 9- A. It reads thus :

"9A. - Jurisdiction, powers, authority and procedure of Special Court in civil matters -

(1) On and from the commencement of the Special Court (Trial Offences Relating to Transactions in Securities) Amendment Ordinance, 1994, the Special Court shall exercise all such jurisdiction, powers and authority as were exercisable, immediately before such commencement, by any civil court in relation to any matter of claim -

(a) relation to any property standing attached under subsection (3) of section 3;

(b) arising out of transactions in securities entered into after the 1st day of April 1991 and on or before the 6th day of June, 1992, in which a person notified under subsection (2) of section 3 is involved as a party, broker, intermediary or in any other manner; (2) Every suit, claim or other legal pro-

ceedings (other than on appeal) pending before any court immediately before the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Ordinance, 1994, being a suit claim or proceeding, the cause of action whereon it is based is such that it would have been, if it had arisen after such commencement, within the jurisdiction of the Special Court under sub-section (1). shall stand transferred on such commencement to the Special Court and the Special Court may, on receipt of the records of such suit, claim or other legal proceeding, proceed to deal with it, so far as may be, in the same manner as a suit, claim or legal proceeding from the stage which was reached before such transfer or from any earlier stage of de novo as the Special Court may deem fit.

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

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

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

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of the sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a case for default or deciding it ex parte,

(h) setting aside any order of dismissal of any case for default or any order passed by it exparte and

(i) any other matter which may be prescribed by the Central Government under sub-section (1) of section 14."

The Amendment Ordinance also introduced Section 9B. It invested the Special Court with the jurisdiction and powers of a court conferred under the Arbitration Act, 1940, to decide any question forming the subject matter of a reference relating to any matter or claim mentioned in Section 9A(1). Every suit or other proceeding (other than an appeal) in relation to any matter or claim referred to in Section 9A(1) pending before any court and governed by the Arbitration Act stood transferred to the Special Court on the date of commencement of the Amendment Ordinance.

6. An Act replaced the Amendment Ordinance. The Statement of Objects and Reasons thereof said.

"Under the provisions of the Special Court. (Trial of Offences Relating to Transactions in Securities) Act, 1992, a Special Court was set up at Bombay and a Custodian was appointed to deal With the situation arising out of the large scale irregularities and malpractices which were noticed in the securities transactions of banks, to ensure the speedy trial of the offenders, to recover properties of the offenders With a view to prevent diversion of such properties by the persons responsible for these offences. 2. During the course of the trial of these cases, the jurisdiction of the Special Court, particularly in matters of civil claims, was being challenged for %,ant of specific pro- visions in the Act. The Special Court, therefore, needed to be conferred with civil jurisdiction. For the said purpose, the Special Court (Trial) of Offences Relating to Transactions in Securities) Amendment Ordinance, 1994, was promulgated by the President on the 25th January, 1994..... Analysis of Section 9A.

7.By reason of sub-section (1) of Section 9-A on and from the date of commencement of the Amendment Ordinance the Special Court exercises all such jurisdiction, powers and authority as were exercisable by any civil court in relation to any matter or claim (a) relating to any property standing attached and (b) arising out of transactions in securities entered into between the stated dates in which a notified person was in any manner involved. By reason of sub-section (2) any suit, claim or other legal proceeding (other than an appeal) pending before any court immediately before the commencement of the Amendment Ordinance, being a suit or proceedings the cause of action whereof was such that it would have, if it had arisen after the commencement of the Amendment Ordinance, been within the jurisdiction of the Special Court, stands transferred to the Special Court. By reason of subsection (3), on and from the commencement of the Amendment Ordinance no court other than the Special Court may exercise any jurisdiction, powers or authority in relation to any matter of claim referred to in sub-section (1).

8. Sub-Section (1) of Section 9A empowers the Special Court to exercise the jurisdiction, powers and authority exercisable by a civil court. It so empowers the Special Court in relation to any matter or claim, inter alia, that arises out of transactions in securities entered into between the stated dates in which a notified person is involved. The words 'civil court' are used in the context of the jurisdiction, powers and authority that the Special Court may exercise. The Special Court is empowered to exercise such jurisdiction, powers or authority in relation to the matters or claims therein specified. These matters or claims include those arising out of transactions in securities entered into between the stated dates in which a notified person is involved. Sub-section (2) of Section 9A deals with the transfer of certain suit% claims or other legal proceedings (other than an appeal) to the Special Court. Every suit, claim or other legal proceeding pending before any court the cause of action whereof is such that, had it arisen after the commencement of the Amendment Ordinance, the suit, claim or other legal proceeding would have had to be filed before the Special Court, stands transferred to the Special Court. Every suit, claim or other legal proceeding pending before any court the cause of action whereof arises out of transactions in securities entered into between the stated dates in which a notified person is involved would, therefore, if it is pending before any court on the date on which the Amendment Ordinance came into force, stand transferred to the Special Court. By reason of sub-section (3) of Section 9A, on and after the commencement of the Amendment Ordinance, no court other than the Special Court may exercise any jurisdiction, powers or authority in relation to any matter or claim referred to in sub-section (1), that is to say, in relation to any matter or claim, inter alia, arising out of transactions in securities entered into between the stated dates in which a notified person is involved'.

9. A "court" other than the Special Court is debarred, by reason of sub-section (3) of Section 9A, from exercising any jurisdiction, powers or authority, after the commencement of the Amendment Ordinance, in relation to any matter or claim arising out of transactions in securities entered into between the stated dates in which a notified person is involved. Sub-section (2) of Section 9A also speaks of a 'court'; a proceeding before a court, the cause of action of which arises out of a transaction in securities entered into between the stated dates in which a notified person is involved, stands transferred to the Special Court. The question, in these circumstances, is whether the use of the words 'civil court' in subsection (1) excludes the application of Section 9 A to the CLB?

10. Sub-section (1) of Section 9-A is divisible into two parts. By the first part, the Special Court is empowered to exercise, on and from the commencement of the Amendment Ordinance, all such jurisdiction, powers and authority as were exercisable before such commencement by any civil court. By the second part, the Special Court is empowered to exercise such jurisdiction, powers or authority in regard to the matters or claims thereon specified, which include matters or claims arising out of transactions in securities entered into between the stated dates in which a notified person is involved. So read, the Special Court has the jurisdiction, powers and authority of a civil court to exercise the same in regard to matters or claims arising out of transactions in securities entered into between the stated dates in which a notified person is involved. Sub-section (1) of Section 9A, therefore, invests the Special Court with the jurisdiction, powers and authority necessary for the purposes of entertaining matters or claims of the nature specified therein. Sub-section (2) provides for the transfer of such matters or claims pending in any court to the Special Court on the commencement of the Amendment Ordinance. And sub-section (3) expressly

debars any court other than the Special Court from exercising any jurisdiction, powers or authority in relation to such matters or claims.

11. The question to pose, therefore, is: is the CLB a court. If it is, it is divested of the jurisdiction, powers and authority to entertain matters or claims arising out of transactions in securities entered into between the stated dates in which a notified person is involved, by reason of sub-section (3); and, by reason of sub-section (2), such matters or claims pending before it on the commencement of the Amendment Ordinance stand transferred to the Special Court.

12. While on Section 9A. it must also be noted that sub- section (2) thereof mandates transfer to the Special Court of "every suit, claim or other legal proceedings (other than an appeal)"

which is pending before any court on the commencement of the Amendment Ordinance in which the cause of action, inter alia, arises out of a transaction in securities entered into between the stated dates in which a notified person is involved. It is, therefore, the proceeding in the court of first instance that stands transferred. If the court of first instance has finally disposed of the proceeding and its order thereon is the subject of an appeal, the appeal does not stand transferred.

Section III of the Companies Act.

13. Section III of the Companies 1 Act, 1956, with effect from 31st May 1991, reads thus "Power to refuse registration and appeal against refusal - (1) If a company refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any shares or interest of a member in, or debentures of, the company, it shall, within two months from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferee and the transferor or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(2) The transferor or transferee, or the person who gave intimation of the transmission by operation of law, as the case may be, may appeal to the Company Law Board against any refusal of the company to register the transfer or transmission, or against any failure on its part within the period referred to in sub-section (1), either to register the transfer or transmission or to send notice of its refusal to register the same.

(3) An appeal under sub-section (2) shall be made within two months of the receipt of the notice of such refusal or, where no notice has been sent by the company, within four months from the date the intimation of transmission, as the case may be, was delivered to the company.

(4) If -

(a) the name of any person -

(i) is without sufficient cause, entered in the register of members of a company or

(ii) after having been entered in the register, is, without sufficient cause, omitted therefrom; or

(b) default is made, or unnecessary delay takes place, in entering in the register the fact of any person having become, or ceased to be, a member [including a refusal under subsection (1)] the person aggrieved, or any member of the company, or the company, may apply to the Company Law Board for rectification of the register.

(5) The Company Law Board, while dealing with an appeal preferred under subsection (2) or an application made under subsection (4) may, after hearing the parties, either dismiss the appeal or reject the application, or by order -

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within ten days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

(6) The Company Law Board, while acting under sub-section (5), may, at its discretion, make -

(a) such interim orders, including any orders as to injunction or stay, as it may deem fit and just;

(b) such orders as to costs as it thinks fit; and

(c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares.

(7) On any application under this section. the Company Law Board -

(a) may decide question relating to the title of any person who is a party to The application to have his name entered in, or omitted from, the register;

(b) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification.

(8) The provisions of subsections (4) to (7) shall apply in relation to the rectification of the register of debenture-holders as they apply in relation to the rectification of the register of members. (9) If default is made in giving effect to the orders of the Company Law Board under this section, the company and every officer of the company who is in default shall be punishable with fine which may extend to one thousand rupees and with a further fine which may extend to one hundred rupees for every day after the first day after which the default continues (10) Every appeal or application to the Company Law Board under sub-section (2) or sub-section (4) shall be made by a petition in writing and shall be accompanied by such fee as may be prescribed.

(11) In the case of a private company which is not a subsidiary of a public company, where the right to any shares or interest of a member in, or debentures of, the company -is transmitted by a sale thereof held by a Court or other public authority, the provisions of sub-section (4) to (7) shall apply as if the company were a public company:

Provided that the Company Law Board may, in lieu of an order under sub-section (5), pass an order directing the company to register the transmission of the right unless any member or members of the company specified in the order acquire the right aforesaid within such time as may be allowed for the purpose by the order, on payment to the purchaser of the price paid by him therefor or such other sum as the Company Law Board may determine to be a reasonable compensation for the right in all the circumstances of the case.

(12) If default is made in complying with any of the provisions of this section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues. (13) Nothing in this section and section 108, 109 or 110 shall prejudice any power of a private company under its articles to enforce the restrictions contained therein against the right to transfer the shares of such company.

14. Section III, as set out above, was incorporated in the Companies Act subsequent to the report of a committee appointed to consider amendments to the Companies Act, The Sachar Committee, as it came to be called, said :

"Under the existing law, there are two remedies open to an aggrieved person to file an appeal under section 111, or to apply to the Court for rectification of the share register under section 155. We think that these two remedies should now be assimilated and provision be made (at one place) for a person aggrieved (including any person aggrieved by a refusal of the Board of Directors to register a transfer or transmission of shares) to apply to the Company Law Board - as proposed to be constituted - for rectification of the share register on any of the grounds mentioned in sub-clause (a) or (b) of sub-section (1) of the present section 155.

Our proposals are -

Accordingly, we would recommend as follows:

Sections III and 155 should be assimilated into a single statutory provision."

15. Section 155, as it read before 31st May, 1991, entitled a person aggrieved or any member of a company or a company to apply to the court for rectification of the company's register of members if the name of any person was, without sufficient cause, entered in it or, after having been entered in it, was, without sufficient cause, omitted therefrom or default was made or unnecessary delay took place in entering on it the fact of any person having become, or ceased to be, a member. The court

'was entitled to order rectification of the register and to direct the company to pay the damages, if any, sustained by a party aggrieved. The court was entitled to decide any question relating to the title of any person who was a party to the application to have his name entered in or omitted from the register. An appeal from the order of the court was provided for.

16. It will be seen that the CLB now exercises the powers that were exercisable by the court under Section 155. It is entitled to direct rectification of the register and the payment of damages by the company. It is entitled to decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register and to decide any question which it is necessary or expedient to decide in this connection. An appeal to the High Court against any decision or order of the CLB on a question of law is available to any person aggrieved, thereby under the provisions of Section 105.

17. Whereas sub-sections (2) and (3) of Section 111 term the pleading that the person aggrieved has to file before the CLB an 'appeal', sub-section (4) requires the person aggrieved to apply, sub-section (5) speaks of it as an 'appeal' or an 'application', sub-section (7) as an 'application' and sub-section (10) as an "appeal or application", which shall be made "by a petition in writing". The words "appeal" and "application" in the context of the provisions of Section III have the same meaning. Plainly, it is an application that has to be made.

18. The powers under Section 155 were exercised by a civil court. Reference may be made to the definition of "court" in the Companies Act. Section 2 (11) defines "court" to mean, with respect to any matter relating to that company.

"District Court" is also defined. The definition thereof in Section 2(14) is that it is the principal civil court of original jurisdiction in a district, but does not include a High Court in the exercise of its ordinary original civil jurisdiction. Section 10 deals with the jurisdiction of courts and it reads thus:

"Jurisdiction of Courts - (1) The Court having jurisdiction under this Act shall be -

(a) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situated, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of subsection (2); and

(b) Where jurisdiction has been so conferred,

the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect of companies having their registered offices in the district.

(2) The Central Government may, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit empower any District Court to exercise all or any of the jurisdiction conferred by this Act upon the Court, not being the jurisdiction conferred -

- (a) in respect of companies generally, by sections 237, 391, 394, 395 and 397 to 407, both inclusive;
- (b) in respect of companies with a paid up share capital of not less than one lakh of rupees by Part VII (sections 425 to 560) and the other provisions of this Act relating to the winding up of companies.
- (3) For the purposes of jurisdiction to wind-up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

19. The provisions of Section 10-E of the Companies Act, as they were amended with effect from 31st May, 1991, read thus:

"S.10-E. Constitution of Board of Company Law Administration - (1) As soon as may be after the commencement of the Companies (Amendment) Act, 1988, the Central Government shall, by notification in the Official Gazette constitute a Board of Company Law Administration.

(1A) The Company Law Board shall exercise and discharge such powers and functions as may be conferred on it, by or under this Act or any other law, and shall also exercise and discharge such other powers and functions of the Central Government under this Act or any other law as may be conferred on it by the Central Government, by notification in the Of-

Official Gazette under the provisions of this Act or that other law.

Reference to the provisions of Section 105 has already been made.

20. It is to be noted that the CLB performs functions which are administrative, as under Sections 224 and 269, and curial, as under Section 111.

Contentions.

21. Mr. Salve, learned counsel for the Canara Bank, who was supported by Mr. J.C. Seth, learned counsel for the Nuclear Power Corporation, submitted that Section 9-A(1) conferred upon the Special Court the jurisdiction of a civil court "in the wider sense", as including courts exercising powers conferred upon civil courts. The word 'civil' was used in Section 9A(1) to contrast the provisions thereof with those of Section 9(2), whereunder the Special Court was given all the powers of a Court of Session. The jurisdiction of the Special Court, until the coming into force of the Amendment Ordinance, under Sections 7, 8 and 9 of the Special Court Act was in respect of criminal matters and the powers of a Court of Session had, therefore, been conferred upon it. It was found necessary to confer upon the Special Court the powers of a civil court to deal with the civil matters set out in Section 9-A(1). Such an interpretation of Section 9A was in accord with the legislative intent, which was to exclude from the jurisdiction of all courts save the Special Court the matter

described in Section 9-A(1). A clear indication of this was provided by Section 9B by reason of which even matters in court relating to arbitration proceedings concerning causes of action arising out of the matters specified in Section 9-A(1) were confined to the Special Court. The legislative intent was to place all cases arising out of such causes of action before the Special Court so that a court having knowledge of all the cases would decide all matters provided for in the Special Court Act. A purposive interpretation ought, therefore, to be placed upon the provisions of Section 9-A. Emphasis was laid upon the fact that, by reason of Section II 1(7) of the Companies Act, the CLB had the power to decide the title of the securities in question before it; the jurisdiction in this behalf conflicted with the jurisdiction exclusively conferred upon the Special Court by Section 9-A.

22.Mr. Nariman, learned counsel for Stanchart, submitted that the relevant question was whether the CLB was a 'civil court'. In his submission it was not. Mr. Nariman drew attention to the provisions of Section 13 of the Special Court Act, which stated that the provisions of the Special Court Act would have effect notwithstanding anything contained, inter alia, "in any decree or order of any court, tribunal or other authority", and emphasised the distinction made by Parliament between court, tribunal and other authority. The CLB was not intended to be covered by the provisions of Section 9-A(1), for those provisions did not exclude the jurisdiction of a tribunal or authority but only of a court. Secondly, the jurisdiction of the Special Court was in regard to matters arising out of transactions in securities entered into between the stated dates in which a person notified was involved as a broker, intermediary or in any other manner. It would be very difficult for an intending litigant to know whether a person notified had been involved in a transaction relating to securities which he had purchased and which were not being registered in his name, as a broker or intermediary or in any other manner at any time between the stated dates. It was, therefore, inappropriate to hold that such a litigant was bound to take recourse to the law before the Special Court and not before the CLB under Section 111 of the Companies Act, particularly when, by reason of the provisions of the latter provision, he had to move, within a specified time limit. The interpretation suggested on behalf of the Canara Bank was not really a purposive interpretation. Attention was drawn to the provisions of Section 4 whereunder the Custodian was entitled, if satisfied after such inquiry as be thought fit that any contract or agreement entered into between the stated dates in relation to any property of a person notified under Section 3(2) had been entered into fraudulently or to defeat the provisions of the Special Court Act, to cancel such contract or agreement whereupon such property stood attached. Even if the CLB under the provisions of Section 111 of the Companies Act made any order, with regard to any securities, that order would stand at naught if an order relating to the same securities was made under Section 4 of the Special Court Act by reason of the fact that, under Section 13 of the Special Court Act, the Special Court Act had effect notwithstanding anything inconsistent therewith contained in any decree or order of any court, tribunal or other authority. In any event, an appeal did not stand transferred to the Special Court under the provisions of Section 9A(2), and what was filed before the CLB under Section III of the Companies Act was an Appeal. Discussion.

23.As to what are courts and tribunals, the leading decision is *M/s. Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunhuwala and ors.*, (1962) 2 S.C.R. 33 9, delivered by a Constitution Bench of this Court. A person who held a large number of shares in the appellant company transferred two blocks of the shares to his son and daughter-in-law. The transferees applied to the company to register the

transfers. Purporting to act under the Articles of Association of the company, the directors resolved not to register the transfers. The transferees preferred appeals under Section 111 of the Companies Act which, as the provision read at that time, lay to the central Government. The Central Government set aside the resolution of the directors and directed the company to register the transfers, but it did not give any reasons for its decision. The company obtained special leave to appeal under Article 136 of the Constitution against the decision of the Central Government. The transferees raised the objection that the Central Government, exercising powers under Section 111, was not a tribunal exercising judicial functions and was, therefore, not subject to the appellate jurisdiction of the Supreme Court under Article 136. J.C. Shah, J. spoke for four of his brethren and held that a person aggrieved by the refusal to register the transfer of shares had two remedies under the Companies Act, namely, to apply to the court for rectification of the register under Section 155 or to appeal against the resolution refusing to register the transfer under Section 111. It was common ground that in the exercise of power under Section 155, the court had to act judicially; to adjudicate upon the right exercised by the directors in the light of the powers conferred upon them by the Articles of Association. The transferees, however, submitted and were supported by the Union of India, that the authority of the Central Government under Section 111, was nevertheless, purely administrative. In an appeal under Section 111 there was a lis or dispute between the contesting parties relating to their civil rights, and the Central Government was invested with the power to determine that dispute according to law. It had to consider and decide the proposal and the objections in the light of the evidence and not on grounds of policy or expediency. The power to order registration of transfers had to be exercised subject to limitations similar to those imposed upon the exercise of the power of the court in a petition under Section 155. Those restrictions also applied to the exercise of the power by the Central Government. The Central Government had to decide whether, in exercising their power, the directors were not acting oppressively, capriciously or corruptly or in some way mala fide. The decision had manifestly to stand those objective tests. The exercise of such authority of rendering a decision upon the respective contentions by reason of which the rights of the contesting parties were directly affected was judicial. It was immaterial that the statute which conferred the power upon the Central Government did not expressly set out the extent of the power; the very nature of the jurisdiction required that it be exercised subject to the limitations which applied to the court under Section 155. Section III also provided that in the circumstances specified therein reasonable compensation could be awarded in lieu of the shares. This compensation, which was to be reasonable, had to be ascertained by the Central Government, and reasonable compensation could not be ascertained except by the application of some objective standards of what was just having regard to all the circumstances of the case. The authority of the Central Government to entertain an appeal under Section 111 was an investiture of the judicial power of the State. As the dispute between the parties related to civil rights and the Companies Act provided for a right of appeal and made detailed provisions about hearing and disposal according to law. It was impossible to avoid the inference that a duty was imposed upon the Central Government in deciding the appeal to act judicially. Hideyatullah, J. delivered a separate but concurring judgement. He said that all tribunals were no courts though all courts were tribunals. The word "courts" was used to designate those tribunals which were set up in an organised State for the administration of justice. By administration of justice was meant the exercise of the judicial power of the State to maintain and uphold rights and to punish wrongs. Whenever there was an infringement of a right or an injury, the courts were there to restore the 'vinculum juris'. When

rights were infringed or invaded, the aggrieved party could go and commence a 'querela' before the ordinary civil courts. These courts were invested with the judicial power of the State and their authority was derived from the Constitution or some Act of legislature constituting them. Their number was ordinarily fixed and they were ordinarily permanent and could try any suit or cause within their jurisdiction. Their numbers might be increased or decreased but they were almost always permanent and went under the compendious name of "Courts of Civil Judicature". There could be no doubt that the Central Government did not come within this class. With the growth of civilisation and the problems of modern life, a large number of administrative tribunals had come into existence. These tribunals had the authority of law to pronounce upon valuable rights. They acted in a judicial manner and even on evidence on oath, but they were not part of the ordinary courts of civil judicature. They shared the exercise of the judicial power of the State but were brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law. They were very similar to courts but were not courts. When the Constitution spoke of "courts" in Articles 136, 227 and 228 and in Articles 233 to 237 and the Lists, it contemplated courts of civil judicature but not tribunals other than such courts. This was the reason for using both the expressions in Articles 134 and 227. By "courts" was meant courts of civil judicature and by "tribunals" those bodies or men who were appointed to decide controversies arising under certain special laws. Among the powers of the State was included the power to decide such controversies. This was undoubtedly one of the attributes of the State and was aptly called the judicial power of the State. In the exercise of this power, a clear division was noticeable. Broadly speaking certain special matters went before tribunals and the residue went before the ordinary courts of civil judicature. What distinguished them had never been successfully established, A court in the strict sense was a tribunal which was a part of the ordinary hierarchy of courts of civil judicature maintained by the State under its Constitution to exercise the judicial power of the State. These courts performed all the judicial functions of the State except those that were excluded by law from their jurisdiction. The word "judicial" was itself capable of two meanings. It might refer to the discharge of duties exercisable by a judge or by justices in court or to administrative duties which need not be performed in court but in respect of which it was necessary to bring to bear a judicial mind to determine what was fair and just in respect of the materials under consideration. That an officer was required to decide matters before him judicially in the second sense did not make him a court or even a tribunal because that only established that he was following a standard of conduct and was free from bias or interest. Courts and tribunals acted judicially in both senses and in the term 'courts' were included the ordinary and permanent tribunals and in the term 'tribunals' were included all others which were not so included. The matter would have been simple if the Companies Act had designated a person or persons, whether by name or by office, for the purpose of hearing an appeal under Section 111. It would then have been clear that though such person or persons were not 'courts' in the sense explained, they were clearly 'tribunals'. The Companies Act said that an appeal would lie to the Central Government. The court was, therefore, faced with the question whether the Central Government could be said to be a tribunal. The function that the Central Government performed under the Companies Act and Rules was to hear an appeal against the action of the directors. For that purpose a memorandum of appeal setting out the grounds had to be filed and the company, on notice, was required to make representations, if any, and so also the other side, and both sides were allowed to tender evidence to support their representations. The Central Government by the order then directed that the shares be registered or need not be

registered. The Central Government was also empowered to include in its orders directions as to payment of costs or otherwise. The function of the Central Government was curial and not executive. There was provision for a hearing and a decision on evidence, and that was indubitably a curial function. In its functions the Central Government often reached decisions but all its decisions could not be regarded as those of a tribunal. Resolutions of Government might affect rights of parties and yet they might not be in the exercise of judicial power. Resolutions of Government might be amenable to writs under Articles 32 and 226 in appropriate cases but might not be subject to a direct appeal under Article 136 as the decisions of a tribunal. The position, however, changed when Government embarked upon curial functions and proceeded to exercise judicial power and decide disputes. In these circumstances, it was legitimate to regard the officer who dealt with the matter and even Government itself as a tribunal. The word "tribunal" was a word of wide import and the words "court" and "tribunal" embraced within them the exercise of judicial power in all its forms. The decision of the Central Government thus fell within the powers of the Supreme Court under Article 136.

24. In *Kihoto Hollohan v. Zachillhu and ors.* (1992) Suppl 2 S.C.C. 65 1, the observations in the case of *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjunwala and ors.* (ibid) were quoted with approval and it was said that where there was a lis - an affirmation by one party and denial by another, the dispute involved the rights and obligations of the parties to it and the authority was called upon to decide it, there was an exercise of judicial power. That authority was called a tribunal if it did not have all the trappings of a court.

25. In the case of *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjunwala and Ors.* this court was called upon to decide whether an order of the Central Government under Section 111 of the Companies Act, as it then read, was appealable under Article 136 of the Constitution. Article 136 empowers this court to grant special leave to appeal from any judgment, decree determination, sentence or order in any cause or matter passed or made by "any court or tribunal" in the territory of India. The connotation of the words "court" and "tribunal" was determined in the judgment in the context of Article 136. The argument was that the Central Government, acting under Section 111 of the Companies Act, as it then read, was exercising administrative authority. The court held that it was exercising judicial authority. The majority judgment relied upon the provisions of Section III for so holding. Hidayatullah, J., concurring held that all tribunals were not courts though all courts were tribunals. The word "courts" was used to designate the tribunals that a State established to administer justice. They were fixed and permanent and could try any suit or cause within their jurisdiction. They went under the compendious name of "Courts" of Civil Judicature". A large number of administrative tribunals had come into existence with the growth of civilisation and the problems of modern life. They acted in a judicial manner but they were not part of the ordinary courts of civil judicature. What distinguished them had never been successfully established. When the Constitution spoke of "courts" in Article 136 and other Articles, it contemplated courts of civil judicature but not tribunals other than such courts. This was the reason both expressions were used in Articles 136 and 226. The judgment is, therefore, determinative in deciding whether a tribunal is subject to the jurisdiction of this court under Article 136 or of the High Court under Article 227, but it does not hold that a "Court" is only a court of civil judicature in the ordinary hierarchy of courts.

26. In our view, the word "court" must be read in the context in which it is used in a statute. It is permissible, given the context, to read it as comprehending the courts of civil judicature and courts or some tribunals exercising curial, or judicial, powers. In the context in which the word "court" is used in Section 9A of the Special Court Act, it is intended to encompass all curial or judicial bodies which have the jurisdiction to decide matters or claims, inter alia, arising out of transactions in securities entered into between the stated dates in which a person notified is involved.

27. The occasion for enacting the Special Court Act must not be lost sight of. The Statement of Objects and Reasons of the Bill to replace the Amendment Ordinance has already been quoted. A Joint Parliamentary Committee was constituted to investigate what the Statement of Objects and Reasons called "the large scale irregularities and malpractices which were noticed in the securities transactions of banks". This is what the Joint Parliamentary Committee said in its report about the "scam" :

scam is basically a deliberate and criminal misuse of Public funds through various types of securities transactions with the aim of illegally siphoning of funds of banks and PSUs to select brokers for speculative returns. The latest irregularities in the securities and banking transactions, are manifestations of this chronic disorder since they involved not only the Banks but also the stock market, financial institutions, PSU, the central bank of the country and even the Ministry of Finance, other economic ministries in varying degrees. The most unfortunate aspect has been the emergence of a culture of non-

accountability which permitted all sections of the Government and Banking system over the 3 Years. The state of the country's system of governance, the persistence of non-adherence to rules, regulations and guidelines, the alarming decay over time in the banking systems has been fully exposed. These grave and numerous irregularities persisted for so long that eventually it was not the observance of regulations but their breach that came to be regarded and defended as "market practice". Through all these years the ability of the concerned authorities to effectively address themselves to the problems has been tested and found wanting. The consequence of these irregularities in securities and banking transactions are both financial and moral. During the period from July, 1991 to May, 1992 the most glaring proof of the nexus between the irregularities in banks and the overheating of stock market which came to light is explained by the graphic representations of the BSE Index and the fact that there was a sharp increase in securities transactions during the corresponding period of the banks involved in serious irregularities related with the scam. What is more apparent is the systematic and deliberate abuse of the system by certain unscrupulous elements. It is abundantly clear that the scam was the result of failure to check irregularities in the banking system and also liberalization without adequate safeguards. There is also some evidence of collusion of big industrial houses playing an important role. It is because of these elements that the economy of the country had to suffer and while some gained thousands of crores, millions of investors lost their savings. The criminality of the perpetrators of the scam becomes all the more

despicable as it was during this period that the country was passing through most trying times, economically and financially. An observation that the Committee has been constrained to make at a number of places in the succeeding chapters is that for all these not many have yet been identified and effectively punished.

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28. Having regard to the enormity of the "scam" and its vast ramifications, Parliament thought it was necessary that all the matters of claims arising out of transactions in securities entered into between the stated dates in which a person notified was involved should be brought before and tried by the same forum. That forum had been invested with the jurisdiction to try persons accused of offences relating to transactions in securities entered into between the stated dates. It was also required to give directions to the Custodian in regard to property belonging to persons notified which stood attached under the provisions of the Special Court Act. The object of amending the Special Court Act invest the Special Court with the power and authority to decide civil claims arising out of transactions in securities entered into between the stated dates in which a person notified was involved has already been stated. In these circumstances, it is proper to attribute to the word "court" in Section 9A(1) of the Special Court Act, not the narrower meaning of a court of civil judicature which is part of the ordinary hierarchy of courts, but the broader meaning of a curial body, a body acting judicially to deal with matters and claims arising out of transactions in securities entered into between the stated dates in which a person notified is involved. An interpretation that suppresses the mischief and advances the remedy must, plainly, be given.

29. In Halsbury's Laws of England (4th edition, Volume 10, paragraphs 701 and 702), this is observed :

701. Meaning of "court". Originally the term "court" meant, among other things, the Sovereign's place. It has acquired the meaning of the place where justice is administered and, further, has come to mean the persons who exercise judicial functions under authority derived either directly or indirectly from the Sovereign. All tribunals, however, are not courts, in the sense in which the term is here employed. Courts are tribunals which exercise jurisdiction over persons by reason of the sanction of the law, and not merely by reason of voluntary, sub-

mission to their jurisdiction. Thus, arbitrators, committees of clubs and the like, although they may be tribunals exercising judicial functions, are not "courts" in this sense of that term. On the other hand, a tribunal may be a court in the strict sense of the term even though the chief part of its duties is not judicial. Parliament is a court. Its duties are mainly deliberative and legislative; the judicial duties are only part of its functions. A coroner's court is a true court although its essential function is investigation.

702. What is a court in law. The question is whether the tribunal is a court, or whether it is a court of justice for, there are courts which are not, courts of justice. In determining whether a tribunal is a judicial body the facts that it has been appointed

by a non-judicial authority, that it has no power to administer on oath, that the chairman has a casting vote, and that third parties have power to intervene are immaterial, especially if the statute selling it up prescribe a penalty for making false statements; elements to be considered are (1) the requirement for a public hearing, subject to a power to exclude the public in a proper case, and (2) a provision that a member of the tribunal shall not take part in any decision in which he is personally interested, or unless he has been present throughout the proceedings. A tribunal is not necessarily a court in the strict sense of exercising judicial power merely because (1), it gives a final decision; (2) it hears witnesses on oath;

(3) two or more contending parties appear before it between whom it has to decide: (4) it gives decisions which affect the rights of subjects: (5) there is an appeal to a court;

and (6) it is a body to which a matter referred by another body;

Many bodies are not courts even though they have to decide questions, and in so doing have to act judicially, in the sense that the proceedings must be conducted with fairness and impartiality. Examples are the benchers of the Inns of Court when considering the conduct of one of their members, the disciplinary committee of the General Medical Council when considering questions affecting the conduct of a medical man, a trade union when exercising disciplinary jurisdiction over its members.....

30. These passages, from the earlier edition of Halsbury, were cited by this court in *Thakur Jugal Kishore Sinha v. The Sitamarhi Central Co-operative Bank Ltd.*, (1967) 2 SCR 163. The question there was whether the provisions of the Contempt of Courts Act applied to a Registrar exercising powers under Section 48 of the Bihar and Orissa Co-operative Societies Act. It was held that the jurisdiction of the ordinary civil and revenue courts of the land was ousted in the case of disputes that fell under Section 48. A registrar exercising powers under Section 48, therefore, discharged the duties which would otherwise have fallen on the ordinary civil and revenue courts. He had not merely the trappings of a court but in many respects he was given the same powers as were given to the ordinary civil courts of the land by the Code of Civil Procedure, including the power to summon and examine witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own order and to exercise the inherent jurisdiction of courts mentioned in Section 151. In adjudicating a dispute under Section 48 of the Bihar Act, the Registrar was held to be, "to all intents and purposes a Court discharging the same functions and duties in the same manner as a Court of law is expected to do."

31. Now, under Section 111 of the Companies Act as amended with effect from 31st May, 1991, the CLB performs the functions that were therefore performed by courts of civil judicature under Section 155. It is empowered to make orders directing rectification of the company register, as to damages, costs and incidental and consequential orders. It may decide any question relating to the title of any person who is a party before it to have his name entered upon the company's register; and any question which it is necessary or expedient to decide. It may make interim orders. Failure to

comply with any order visits the company with a fine. In regard to all these matters it has exclusive jurisdiction (except under the provisions of the Special Court Act, which is the issue before us). In exercising its function under Section 111 the CLR must, and does, act judicially. Its orders are appealable. The CLR, further, is a permanent body constituted under a statute. It is difficult to see how it can be said to be anything other than a court, particularly for the purposes of Section 9A of the Special Act.

32. We shall assume that a shareholder whose name the company has refused to enter in its register would be put to some difficulty in deciding whether he should approach the Special Court or the CLB, but that is no reason to interpret the provisions of Section 9A in a manner that would defeat its intendment and adversely affect the public interest. In any event, the time taken in approaching the CLB in a matter that should have been filed before the Special Court would not be of any consequence for there is no time limit within which the Special Court has to be approached; and it is most unlikely that the Special Court would be approached unless the shareholder were sure that his claim fell within Section 9A(1).

33. It will be remembered that Mr. Nariman had drawn attention to the provisions of Section 4 of the Special Court Act and argued that even if the CIB, under the provisions of Section III of the Companies Act, made any order with regard to any securities, that order would stand at naught if an order relating to the same securities was made under Section 4 of the Special Court Act by reason of the fact that, under Section 13 of the Special Court Act, order of the Special Court had effect notwithstanding anything inconsistent therewith contained in any decree or order of any court, tribunal or other authority. Section 3(2) of the Special Court Act empowers the Custodian, on being satisfied on information received that any person has been involved in any offence relating to transactions in securities entered into between the stated dates to notify the name of such person in the Official Gazette. On such notification, by reason of Section 3(3), the property of the person notified stands attached. That property, by reason of Section 3(4), is to be dealt with by the Custodian in such manner as the Special Court may direct. Section 4 states that if the Custodian is satisfied after such inquiry as he may think fit that any contract or agreement entered into fraudulently or to defeat the provisions of the Special Court Act, he may cancel such contract or agreement whereupon such property stands attached. The scope, therefore, of Section 4 is limited. It applied only in regard to property that belongs to a person notified. Section 9A(1) is much wider and it invests the Special Court with jurisdiction to entertain matters or claims arising out of transactions in securities entered into between the stated dates in which a person notified is involved not only as a party but also as a broker, intermediary or in any other manner. The argument based on Section 4 must, therefore, fail.

34. As has been pointed out, sub-sections (2) and (3) of Section 111 of the Companies Act term the pleading that the person aggrieved has to file before the CLB an 'appeal', sub-section (4) requires the person aggrieved to apply, sub-section (5) speaks of it as an 'appeal' or an 'application', subsection (7) as an 'application' and sub-section (10) as an 'appeal or application' which shall be made by a "petition in writing". The words "appeal" and "application" in the context of the provisions of Section 111 have, therefore the same meaning and it is, plainly, an original application that is made. The shareholder does not resort to a superior court to review the decision of an inferior court or

tribunal. The fact, therefore, that Section 9A(2) of the Special Court Act speaks of the transfer of 'every suit', claim or other legal proceeding (other than an appeal)" does not exclude the "application' or "appeal" made under the provisions of Section 111 of the Companies Act from the purview of Section 9A(1) of the Special Court Act. Conclusion

35. For all these reasons, the appeal must succeed. No order on the transfer petition is now called for.

36. The appeal is allowed. The judgment and order of the CLB under appeal is set aside. The application of the Canara Bank pending before the CLB shall stand transferred to the Special Court constituted under the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

37. the Transfer Petition is dismissed.

38. There shall be no order as to costs.