

MANJIT SINGH SODHI

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v.

THE CUSTODIAN & ORS.

(Civil Appeal No. 5126 of 2022)

AUGUST 04, 2022

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**[DR DHANANJAYA Y CHANDRACHUD AND
J. B. PARDIWALA, JJ.]**

Special Court (Trial of Offences Relating to Transactions in Securities) Act 1992 – ss. 3(2), 4(2), 10, 11 – Limitation Act, 1963 – ss. 18, 29(2) – Directions for disclosure of assets – Third respondent – corporation, had availed a short term loan of 25 lakhs from FFSL (Second respondent) and agreed to pay it after 180 days with 20% interest – Central Government appointed first respondent as custodian under the provisions of Act of 1992 – FFSL instituted Miscellaneous petition against the third respondent for the recovery of an amount of Rs. 25 lakh, together with interest – On 28.03.2003, the Special Court directed the third respondent to pay to FFSL a sum of Rs 63.86 lakhs, together with interest – FFSL issued two notices to third respondent for the payment of decretal amount on 28.04.2003 and 16.12.2011, respectively – By communication dated 22.02.2018, the appellant offered to pay the principal amount of Rs. 25 lakhs and sought a waiver of the interest and pursuant to his offer, appellant paid an amount of one lakh – The first respondent moved execution application before the Special Court – Appellant contested that said application on the ground that it was barred by limitation – The Special Court passed an ad-interim order directing the disclosure of assets of the appellant and the third respondent – It further held that the appellant clearly acknowledge the liability, hence, the claim of the first respondent is not barred by the limitation – On appeal, held: Based on the decision of Supreme Court in L S Synthetics Ltd, the ultimate directions which were issued by the Special Court cannot be interfered with – The observations contained in the impugned order were for the purpose of issuing the directions for a disclosure of assets and would not preclude the custodian (first respondent) from urging that the Act of 1963 had no application to the Execution application which was filed for enforcement of the decree dated 28.02.2003 – Appellant

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- A *directed to file his disclosure of assets subject to his right to urge his submissions in Execution application.*

Disposing of the appeal, the Court

- HELD:** 1. An “interlocutory order” denotes an interim or temporary order which does not decide the important rights or liabilities of the parties. The Special Court in its order dated 6 March 2020 has conclusively held that the execution petition is not barred by limitation. The determination of the issue of limitation affects the rights and liabilities of the parties. Thus, the argument of the first appellant that the appeal is not maintainable in view of Section 10 of the Act of 1992 is rejected. [Para 13][173-D-E]
2. Section 18 of the Act of 1963 stipulates that if an acknowledgment of liability in writing is made before the expiration of the prescribed period for a suit or application in respect of any right, a fresh period of limitation shall be computed from the time when the acknowledgment was signed. Explanation (c) to Section 18 states that an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right. In the present case, the Special Court has proceeded on the basis that there was an acknowledgement of liability by the letter of the appellant dated 22 February 2018. That finding is sought to be assailed by the appellant by urging that the acknowledgement of liability under Section 18 of the Act of 1963 has to be within the period of limitation and in the present case this test is not satisfied. On the other hand, it has been urged on behalf of the first respondent that the premise of the judgment of the Special Court that the Act of 1963 would stand attracted would run contrary to the decision of this Court in *L S Synthetics Ltd.* Based on the decision of this Court in *L S Synthetics Ltd.*, the ultimate directions which have been issued by the Special Court cannot be interfered with. The observations contained in the impugned order were for the purpose of issuing the directions for a disclosure of assets and would not preclude the Custodian from urging that the Act of 1963 had no application to the Execution Application which was filed for enforcement of the decree dated 28 February 2003. The directions for the disclosure of assets and other consequential

directions which have been issued are not interfered with in this appeal. The appellant is granted four weeks to file his disclosure of assets subject to his right to urge his submissions in the execution application. In the meantime, the Court has been apprised of the fact that an application has been filed for the arrest of the appellant. Conditional on the appellant making the disclosure of assets within four weeks as directed above, the application for arrest shall not be pursued until the Execution Application is decided. [Paras 17-20][176-F-H; 177-A-E]

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Mohan Lal Magan Lal Thacker v. State of Gujarat AIR 1968 SC 733 : [1968] SCR 685 - followed.

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L S Synthetics Ltd v. Fairgrowth Financial Services Ltd and Another (2004) 11 SCC 456 : [2004] 4 Suppl. SCR 109 - relied on.

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Fairgrowth Investments Ltd v. Custodian (2004) 11 SCC 472 : [2004] 5 Suppl. SCR 505; Amar Nath v. State of Haryana, (1977) 4 SCC 137 : [1978] 1 SCR 222- referred to.

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Case Law Reference

[2004] 4 Suppl. SCR 109	relied on	Para 7	E
[2004] 5 Suppl. SCR 505	referred to	Para 8	
[1968] SCR 685	followed	Para 12	
[1978] 1 SCR 222	referred to	Para 13	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5126 of 2022.

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From the Judgment and Order dated 06.03.2020 of the Special Court (Trial of Offences Relating to Transaction in Securities) Act, 1992 in Execution Application No.01 of 2019 in Misc Application No. 15 of 2000.

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Huzefa Ahmadi, Sr. Adv., Ms. Lalita Kohli, Ms. Shahrukh Alam, Manoj Shukla, Abhishek Swarup, M/s Manoj Swarup and Co., Advs. for the Appellant.

Arvind Kumar Tewari, Abhishek Tewari, Tushar Upreti, Yosha Dutt, Anupam Upreti, Advs. for the Respondents.

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- A The Judgment of the Court was delivered by
DR DHANANJAYA Y CHANDRACHUD, J.
1. Leave granted.
2. The appeal arises from a judgment dated 6 March 2020 of the
- B Special Court constituted under the Special Court (Trial of Offences Relating to Transactions in Securities) Act 1992¹. The decision of the Special Court arises out of an execution application filed by the Custodian, the first respondent, being Execution Application No 1 of 2019.
3. Fairgrowth Financial Services Ltd², the second respondent, is a
- C company registered under the provisions of the Companies Act 1956. Raviraj Housing Corporation, the third respondent, had availed a short term loan of Rupees Twenty five lakhs from FFSL and agreed to repay it after 180 days with interest at the rate of 20 percent per annum. The first respondent is the custodian appointed by the Central Government under the provisions of the Act of 1992. The custodian notified the second
- D respondent as a “notified person” under the provisions of Section 3(2) of the Act of 1992.³ The assets of FFSL stood attached with effect from 2 July 1992. The case of FFSL was that the third respondent had executed a promissory note on 14 October 1991 for the repayment of the loan and a letter of undertaking-cum-indemnity reiterating its commitment to repay
- E Rupees twenty five lakhs. FFSL instituted Miscellaneous Petition No 15 of 2000 against the third respondent for the recovery of an amount of Rupees twenty five lakhs, together with interest at the rate of twenty per cent. On 28 March 2003, the Special Court directed the third respondent to pay to FFSL a sum of Rs 63.86 lakhs, together with interest at twenty per cent on the principal sum of Rupees twenty five lakhs
- F from the date of the institution of the petition till payment and/or realization.
4. On 28 April 2003, a notice was issued by FFSL to the third respondent for the payment of the decretal amount. This was followed by a notice dated 16 December 2011 by the first respondent. On 22 February 2018, the appellant addressed a communication to the first
- G respondent stating that the erstwhile trustee of Raviraj Housing
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- ¹ “Act of 1992”
- ² “FFSL”
- ³ Section 3(2) “The custodian may, on being satisfied on information received that any person has been involved in any offence relating to transactions in securities after the 1st day of April 1991 and on and before the 6th June, 1992, notify the name of such person in the Official Gazette.”
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Corporation, who was looking after its affairs, died in 2004 and that the appellant became a trustee after his death. By the said communication, the appellant offered to pay the principal amount of Rupees twenty five lakhs and sought a waiver of the interest. By a communication dated 10 July 2018 the first respondent stated that the decision on waiver of interest on the decretal sum rests with the Special Court under the Act of 1992. The Custodian stated that pending the filing of an application before the Special Court seeking a waiver of interest, the principal amount be sent to FFSL expeditiously. Pursuant to his offer, the appellant admittedly paid an amount of Rupees one lakh. However, the advocate for Raviraj Housing Corporation sent another communication on 19 October 2018 stating that since the appellant became a trustee only in 2005 after the death of Mr. LV Whabhi who used to conduct the affairs of the Corporation, he is not liable to pay the dues of the third respondent. It was also stated that the third respondent trust does not have any income. A copy of a nil annual income tax return for the year 2002-2003 was furnished to substantiate the claims.

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5. The first respondent moved an execution application⁴ before the Special Court. The Execution Application was contested by the appellant on the ground that it was barred by limitation. The appellant submitted that though the decree was made in 2003, the first demand by the custodian was made sixteen years later on 16 December 2011 and the delay has not been explained. On 14 June 2019, the Special Court passed an ad-interim order directing the disclosure of assets of the appellant and the third respondent. The Special Court, by its judgment dated 6 March 2020 observed that the appellant has been attempting to delay the proceedings. The Special Court held that the claim of the first respondent is not barred by the law of limitation because:

- (i) The appellant in the letters addressed to the Custodian on 22 February 2018 and 11 August 2018 acknowledged the liability to pay the dues and sought a waiver of interest. The appellant also remitted a sum of Rs 1,00,000 by demand draft drawn from the bank account of Raviraj Housing Corporation in which the balance is alleged to only be in the amount of Rs. 15,036. The Bank account has been selectively used to show minimal balances but funds are

⁴Execution application no. 1 of 2019

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- A made available for issuing Demand Drafts. Thus, the appellant clearly acknowledged liability; and
- (ii) Even otherwise, the execution application has been filed by the Custodian who is entitled and liable to recover the amounts in accordance with the Act of 1992.
- B 6. Appearing on behalf of the appellant, Mr Huzefa A Ahmadi, learned senior counsel, submitted that:
 - (i) The appellant was not part of the trust when the decree was passed, since he had become a trustee only in 2005 and that, in any event, the personal properties of the appellant cannot be attached in satisfaction of the decree;
 - (ii) The appellant's letter dated 22 February 2018 does not acknowledge liability, but, in substance, is only a 'without prejudice' offer to pay; and
 - (iii) In any event, the acknowledgement which was issued on 22 February 2018 is beyond the period of limitation since the decree is of 2003 and the limitation which is prescribed by Article 136 of the Schedule to the Limitation Act 1963⁵ would be applicable.
- E 7. On the other hand, Mr Arvind Kumar Tewari, learned counsel appearing on behalf of the first respondent has relied on a decision of a three-Judge Bench of this Court in **L S Synthetics Ltd v. Fairgrowth Financial Services Ltd and Another**⁶ in which it has been held that the provisions of the Act of 1963 would apply only when a suit is filed or a proceeding is initiated for recovery of an amount. The judgment holds
- F that the Act of 1963 would have no application towards claims pending before the Special Court for the purpose of the discharge of liabilities of a notified person in terms of Section 11 of the Act of 1992.
- G 8. Responding to this submission, Mr Ahmadi has urged that the decision in **L S Synthetics** (supra) has been explained by a two-judge bench in **Fairgrowth Investments Ltd v. Custodian**⁷, where the observations in the earlier decision have been limited to the provisions of

⁵ "Act of 1963"

⁶ (2004) 11 SCC 456

H ⁷ (2004) 11 SCC 472

Section 11 of the Act of 1992 and to the proceedings by the Special Court under that provision. A

9. At this stage, it would be material to note that Mr Tewari appearing on behalf of the first respondent has sought to challenge the maintainability of the appeal on the ground that Section 10 of the Act of 1992 excludes an appeal to this Court against an interlocutory order. B
Section 10 is extracted below:

“10. Appeal - (1) Notwithstanding anything in the Code (or the Code of Civil Procedure 1908 or the Arbitration Act 1940, an appeal shall lie from any judgment [decree] sentence or order, not being interlocutory order, of the Special Court in the Supreme Court both on facts and law.” C

10. Responding to the preliminary objection to the maintainability of the appeal, it has been urged on behalf of the appellant that the Special Court has, in the present case, concluded the aspect of limitation by holding that there was an acknowledgement of liability by the appellant on 22 February 2018. Learned senior counsel submitted that since the issue of limitation has been concluded against the appellant, the decision of the Special Court cannot, in substance, be regarded as interlocutory in nature. D

11. The order which has been passed by the Special Court is for the disclosure of assets. For convenience of reference, the operative part of the directions of the Special Court is extracted below: E

“(i). Respondent nos. 1 and 2 are directed to disclose their assets. Respondent no. 2 is directed to disclose all personal assets, shares held in jointly and with others as also stocks of limited companies bonds, Mutual Funds, National Savings Certificates, Post Office Savings and other securities all of which will be disclosed in affidavit to be filed within a period of two weeks from today. F

(ii) Meanwhile respondent no. 2 shall also disclose his Permanent Account number as registered with the Income Tax Authorities within two weeks from today. If such disclosure is not forthcoming the concerned Commissioner of Income Tax shall provide the Custodian with the PAN based on which Custodian is directed to make all necessary G

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- A inquires and seek disclosure of assets from the aforesaid parties.
- (iii) The Custodian shall address letters to NSDL and CDSL calling upon them to furnish copies of statement of accounts of all transactions in shares and stocks and bonds and Mutual funds that may be held in the name of respondent no. 2 in his own name and jointly with any third party, respondent no. 1 and 2 jointly and separately or with any third party, respondent no. 2. The NSDL and CDSL are directed to comply with the request of the Custodian within a period of one week of receipt of such demand along with authenticated copy of this order for further directions.
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- (iv) In the meantime there will be an ad-interim order in terms of prayer clause(c) which reads as follows :
- (c) that pending the final hearing and disposal of the present Application, the Respondent No. 1 and Respondent No. 2 and /or his agents, attorneys be injunctioned by an order of this Hon'ble Special Court from selling or transferring or alienating or in any manner dealing with or disposing or encumbering or parting with possession or creating any third party rights in respect of all or such of his properties and other movable and immovable assets as are sufficient to satisfy the decretal amount.
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- (v) List on 20th March, 2020 for compliance.”
- 12. A Constitution bench of this Court in **Mohan Lal Magan Lal Thacker v. State of Gujarat**⁸ differentiated between a ‘final order’ and ‘interlocutory order’ as follows:
- G “4. The question as to whether a judgment or an order is final or not has been the subject-matter of a number of decisions; yet no single general test for finality has so far been laid down. The reason probably is that a judgment or order may be final for one purpose and interlocutory for another or final as to part and interlocutory as to part. The meaning of the two words “final” and “interlocutory” has, therefore, to be considered separately in relation to the particular purpose for which it is required. However,
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⁸AIR 1968 SC 733

generally speaking, a judgment or order which determines the principal matter in question is termed final. It may be final although it directs enquiries or is made on an interlocutory application or reserves liberty to apply [*Halsbury's Laws of England* (3rd Edn.) Vol. 22, 742-43]. In some of the English decisions where this question arose, one or the other of the following four tests was applied.

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1. Was the order made upon an application such that a decision in favour of either party would determine the main dispute?

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2. Was it made upon an application upon which the main dispute could have been decided?

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3. Does the order as made determine the dispute?

4. If the order in question is reversed, would the action have to go on?"

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13. An "interlocutory order" denotes an interim or temporary order which does not decide the important rights or liabilities of the parties.⁹ The Special Court in its order dated 6 March 2020 has conclusively held that the execution petition is not barred by limitation. The determination of the issue of limitation affects the rights and liabilities of the parties. Thus, the argument of the first appellant that the appeal is not maintainable in view of Section 10 of the Act of 1992 is rejected.

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14. The Special Judge has specifically held against the appellant on the ground that there was an acknowledgement of liability within the meaning of Section 18 of the Act of 1963. The finding that there was an acknowledgement of liability within the meaning of Section 18 is premised on the hypothesis that the Act of 1963 would stand attracted. However, it has also been held in the judgment of the Special Court that in any event the Custodian is entitled and liable to recover the amount under the Act of 1992 in view of the decision of this Court in **L S Synthetics Ltd** (*supra*).

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15. In **L S Synthetics Ltd** (*supra*), the appellant had obtained short term loans from a notified party. The Custodian had called upon the appellant to furnish details of the loan. The notified party initiated proceedings before the Special Court seeking a direction to the appellant to pay the Custodian on his behalf. The contention of the appellant was

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⁹ Amar Nath v. State of Haryana, (1977) 4 SCC 137

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- A that the claim was barred by limitation since he had furnished the full details of the amount in question to the Custodian in 1993. On the question of whether the claim of the notified party is barred by limitation, the three-Judge Bench of this Court held that provisions of the Limitation Act have no application, “in so far as directions required to be issued by the Special Court relating to the disposal of the attached property are concerned”. The relevant extract of the judgment reads as follows:
 - “37. We may, however, add that the attachment of the properties of the notified party being for specific purposes, i.e., for the purpose of discharging his liabilities, the Special Court is bound to pass appropriate orders in relation thereto. A property once attached shall remain under attachment till an appropriate order is passed. It is, therefore, idle to contend that even in respect thereof the provisions of the Limitation Act would apply. The Court while issuing directions to the Custodian in relation to the attached property for the purpose of discharge of the liability of the notified person must pass an appropriate order. **So long the claims or other proceedings initiated before the Special Court as regard discharge of liability of the notified person continue, the attachment remains in force.** A proceeding before the Special Court is not a suit for recovery of an amount. The proceedings before the Special Court are extraordinary in nature. Distribution of the assets of a notified person may take a long time but it would bear repetition to state because all the claims filed before the Special Court are disposed of, the property of the notified person stands attached. In other words, the provisions of the Limitation Act would inter alia apply only when a suit is filed or a proceeding is initiated for recovery of an amount and not where a property is required to be applied towards the claims pending before the tribunal for the purpose of discharge of the liabilities of the notified person in terms of Section 11 of the said Act.
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 - 41 [...] We are, therefore, of the opinion that the provisions of the Limitation Act have no application, so far as directions required to be issued by the Special Court relating to the disposal of the attached property, are concerned.”
- H **(emphasis supplied)**

Section 29(2) of the Limitation Act stipulates that where a special law prescribes a period of limitation for an application different from the period prescribed in the Schedule of Act of 1963, then Section 3 of the Act of 1963 shall apply as if such period was prescribed by the schedule, and the provisions of Sections 4 to 24 shall apply to the extent that it is not expressly excluded by the special Law. The three-Judge Bench in **L S Synthetics Ltd** (supra) observed that Section 29(2) of the Limitation Act is not applicable to the Act of 1992 since in ‘terms of the provisions of the Act, no period of limitation is prescribed’.

16. In **Fairgrowth Investments Ltd** (supra), the issue before this Court was whether the Special Court constituted under the Act of 1992 has the power to condone the delay in filing a petition under Section 4(2) of the Act. In that case, on 23 November 2001, the appellant was notified under Section 3(2) of the Act of 1992. On 8 October 2002, the appellant filed a petition of objection to the notification under Section 4(2) of the Act of 1992. The Special Court rejected the application on the ground that it was filed beyond the period of limitation prescribed by Section 4(2). Section 4(2) provides that any person aggrieved by a notification issued under Section 3(2), may file an objection within thirty days of such notification. This Court rejected the contention of the appellant that the limitation prescribed under Section 4(2) is directory and not mandatory and held that Section 4(2) is unequivocal and unqualified and there is no scope to read in a power of the Court to dispense with the time limit. Consequently, in **Fairgrowth Investments Ltd** (supra), this Court concurred with the final conclusion in **L S Synthetics Ltd** (supra) to the extent that the provisions of the Act of 1963 have no application in relation to a petition under Section 4(2) of the Act of 1992. It was observed that the decision of this Court in **LS Synthetics** (supra), was limited to a consideration of Section 11 of the Act of 1992:

“23. The decision by a larger bench in *L.S Synthetics Ltd.* holding that the provisions of the Limitation Act, 1963 do not apply to the Act may not have, by itself, concluded the question formulated by us at the outset. That case was, as has been rightly contended by learned counsel appearing on behalf of the appellant, limited to a consideration of Section 11 of the Act and the proceedings by the Special Court thereunder. It was in that context that the Court had said that the Act had not provided for any period of limitation.

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- A But for the reasons already stated by us we concur in the final conclusion reached by the Court in *L.S Synthetics* to the extent that the provisions of the Limitation Act 1963 have not application in relation to a petition under Section 4(2) of the Act.
- B 24. Finally, Section 29(2) of the Limitation Act speaks of application of the provisions contained in Sections 4 to 24 “only insofar as, and to the extent to which, they are not expressly excluded by such special or local law”. This language, together with our earlier reasoning, particularly with regard to *L.S. Synthetics* [(2004) 11 SCC 456; (2004) 7 Scale 427] would answer the further question raised by the appellant, namely, whether the question of exclusion of the provisions of the Limitation Act must be separately considered with reference to different provisions of a special/local Act or in connection with the provisions of the special/local Act, as a whole, by affirmation of the first alternative. We are therefore not called upon to decide whether claims either preferred for the first time before the Special Court or transferred to the Special Court under Section 9-A(2) would attract the provisions of Sections 4 to 24 of the Limitation Act. It is enough for the purpose of this appeal to hold that Section 29(2) of the Limitation Act, 1963 does not apply to proceedings under Section 4(2) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. Since the appellant’s petition of objection had been filed much beyond the period prescribed under that section, the Special Court was right in rejecting the petition in limine. The appeal is accordingly dismissed but without any order as to costs.
- C 17. At this juncture, Section 18 of the Act of 1963 also needs to be noted. Section 18 of the Act of 1963 stipulates that if an acknowledgment of liability in writing is made before the expiration of the prescribed period for a suit or application in respect of any right, a fresh period of limitation shall be computed from the time when the acknowledgment was signed. Explanation (c) to Section 18 states that an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.
- D 18. In the present case, the Special Court has proceeded on the basis that there was an acknowledgement of liability by the letter of the appellant dated 22 February 2018. That finding is sought to be assailed

by the appellant by urging that the acknowledgement of liability under Section 18 of the Act of 1963 has to be within the period of limitation and in the present case this test is not satisfied. On the other hand, as we have already noted, it has been urged on behalf of the first respondent that the premise of the judgment of the Special Court that the Act of 1963 would stand attracted would run contrary to the decision of this Court in **L S Synthetics Ltd** (*supra*).

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19. Based on the decision of this Court in **L S Synthetics Ltd** (*supra*), the ultimate directions which have been issued by the Special Court cannot be interfered with. The observations contained in the impugned order were for the purpose of issuing the directions for a disclosure of assets and would not preclude the Custodian from urging that the Act of 1963 had no application to the Execution Application which was filed for enforcement of the decree dated 28 February 2003. The directions for the disclosure of assets and other consequential directions which have been issued are not interfered with in this appeal.

20. The appellant is granted four weeks to file his disclosure of assets subject to his right to urge his submissions in the execution application. In the meantime, the Court has been apprised of the fact that an application has been filed for the arrest of the appellant. Conditional on the appellant making the disclosure of assets within four weeks as directed above, the application for arrest shall not be pursued until the Execution Application is decided. We request the Special Judge to dispose of the Execution Application preferably within a period of two months of the date of receipt of a certified copy of this order.

21. The appeal is disposed of in the above terms.

22. Pending application, if any, stands disposed of.

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Ankit Gyan
(Assisted by : Rahul Rathi, LCRA)

Appeal disposed of.