# State Of U.P vs Rajiv Kumar Mishra And Anr on 28 August, 2015

## Author: V. Gopala Gowda

## Bench: R. Banumathi, V.Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.9540-9541 OF 2010

STANDARD CHARTERED BANK .....APPELLANT

Vs.

ANDHRA BANK FINANCIAL SERVICES LTD & ORS. .....RESPONDENTS

J U D G M E N T

V. GOPALA GOWDA, J.

The Securities Scam that shook the Bombay Stock Exchange in 1992 took place 23 years ago, yet the Banks and Financial Institutions that were impacted as a result of the scam continue to litigate to recover their rightful damages. The present appeals filed under Section 10 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 arise out of a transaction which occurred as a part of the same scam, which have been filed against the impugned judgment and order dated 13.07.2010, as modified by the order dated 07.10.2010 in Suit No. 6 of 1994, passed by the Special Court, Bombay, constituted under the above Act.

The relevant facts which are required for us to appreciate the rival legal contentions are stated in brief hereunder:

> The National Power Corporation Limited (hereinafter "NPCL") issued bonds of two series in December, 1991. These were the 9% tax-free bonds and 17% taxable bonds. On 26.02.1992, the said bonds were allotted by NPCL to the Andhra Bank Financial Services Limited (hereinafter "ABFSL"), respondent no. 1 herein. On the same day, ABFSL sold the 17% taxable bonds of the face value of Rs. 50 crores to the appellant-Standard Chartered Bank (hereinafter "SCB"). The total amount payable to ABFSL was Rs.48,02,50,000/- which was paid by way of Pay Order on the same day. A Banker's Receipt No. 23727 was issued to the appellant by the ABFSL acknowledging the said payment. The receipt also stated that the delivery of the bonds would be done later.

On 26.02.1992, SCB sold 17% bonds of the face value of Rs. 50 crores to ANZ Grindlays Bank (hereinafter "ANZ"). SCB issued a Bank Receipt No. 1939 to ANZ in lieu of the actual possession of the bonds. On 27.02.1992, ABFSL forwarded the original letter of allotment to SCB and sought the return of the Banker's Receipt No. 23727. On the same date, SCB returned the Banker's Receipt No. 23727 to ABFSL. SCB states that as against the return of the said Bank Receipt, it only received a photocopy of the original letter of allotment. On 27.02.1992, Hiten P. Dalal, a broker who was acting in a large number of securities transactions of banks and financial institutions obtained the possession of the said original letter of allotment and delivered it to Canara Bank Mutual Fund (hereinafter "CMF"). On 17.03.1992, CMF sold the 17% NPCL bonds of the face value of Rs. 50 crores to SCB. CMF issued a Receipt No. 2767 to SCB Bank in lieu of the original letter of allotment. According to SCB, when the Securities Scam came to limelight in May, 1992, the officers of SCB conducted an investigation of its records and found that SCB did not possess the original letter of allotment but had only its photocopy with it. On 09.10.1992, SCB wrote a letter to NPCL stating that as the suit bonds had been issued to ABFSL, which had further confirmed that the same has been sold to SCB and therefore, the letter of allotment from CMF may be disregarded. NPCL informed SCB on 06.11.1992 that since there was a dispute of ownership of the suit bonds between SCB and CMF, the matter should be resolved between SCB and CMF and that it would take the necessary action only after such resolution.

On 20.06.1992, SCB filed a First Information Report against the broker Hiten P. Dalal and requested the Central Bureau of Investigation to inquire into the scam perpetrated on SCB by Hiten P. Dalal.

On 27.11.1992, SCB filed Suit No. 6 of 1994 against ABFSL for the recovery of the principal amount of Rs.48,02,50,000.00, representing the consideration paid by SCB to ABFSL against the transaction of purchase of 17% NPCL bonds of the face value of Rs. 50 crores.

Pursuant to the FIR dated 20.06.1992, the CBI filed a charge sheet on 16.06.1995. On 20.10.1995, SCB filed an application for amendment of the suit and to include Hiten P. Dalal and CMF as party respondents and to file claim against the said respondents in the alternative to the claim preferred by SCB against ABFSL.

It is pertinent to mention at this stage that a suit was filed in relation to the 9% bonds, which culminated in the judgment of this Court in the case of Standard Chartered Bank v. Andhra Bank Financial Services Ltd.[1] In the present suit relating to the 17% bonds, the learned Special Court framed and answered the following issues for its consideration:

| Issues | Answer |
|---|---|
| Between PLAINTIFFS and CMF | |
| Whether the suit as against Defendants No. 3-10 (CMF) is barred by limitation | In the affirmative |

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| Whether the Defendant No. 2 (Hiten P. Dalal) in collusion with one of the employees of the Plaintiff (viz. Santosh Mulagaonkar) fraudulently misappropriated the Suit LOA as alleged in para 6A (iii) of the Plaint? | In the negative |
| Whether the Plaintiffs were unaware that the series of transactions involving CMF, ANZ, ABFSL and the Plaintiffs themselves were “based on the very same Letter of Allotment” as alleged in para 7 of the plaint? | In the negative |
| Whether the Plaintiffs prove that they had purchased 17% taxable NPCL Bonds on 26th February,1992 of the FV of Rs. 50 crores from ABFSL or acquired any title to the Suit LOA as alleged by the Plaintiffs in para 5 of the Plaint? | In the affirmative |
| Whether the Plaintiffs prove that CMF chose to issue its BR with a view to conceal the alleged “misappropriation” of Bonds as alleged in para 7D and 7E of the Plaint? | In the negative |
| Whether the Plaintiffs prove that on 09.04.1992 there was a “hole” pertaining to the transactions of 26.02.1992 between the SCB and ABFSL as alleged in para 7H of the Plaint? | In the affirmative |
| Whether the Plaintiffs prove that the dealers of the Plaintiffs entered into a dummy transaction dated 10.04.1992 with the ABFSL to cover up the said “hole” as alleged in para 7(l) of the Plaint? | In the affirmative |
| Whether CMF have converted the bonds/ Letter of Allotment as alleged in para 6A & 7(k) of the Plaint? | In the affirmative |
| Whether the Suit transaction and the transactions referred to in para 7 (a), 7(f) and 7(g) of the Plaint reflect that the same were fictitious transactions for funding and/or they were transactions involving difference between the actual rate (as transacted) and the derived rate as alleged in para 25 and 27 of the further Written Statement? | In the negative |
| If the answer to the above issue is in the affirmative whether such transactions are illegal and/or opposed to the public policy? | In the negative |
| Whether the contention that the transactions are opposed to public policy is barred by the principles of res judicata and or constructive res judicata having regard to the judgment of the Special Court dated 13.03.1995 in Suit No. 13 of 1994 and the decision of the Supreme Court in CA 4456/95 dated 30th October 2001 and in CAs Nos. 2275 & 2276 dated 05th May 2006? | In the affirmative |
| Whether Hiten P. Dalal was the broker for ABFSL in the alleged suit transaction and ABFSL handed over the original Letter of Allotment to HPD as alleged in para 6 (c) and 11(a) of the Plaint? | Does not Arise |
| Whether SCB are stopped from making any claim as alleged in para 2 read with para 14 of the Written Statement of CMF? | In the affirmative |

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|---|---|
| Whether CMF proves that it had on 27th February, 1992 purchased the 17% NPCL bonds through Hiten P. Dalal who was allegedly acting as a mercantile agent of SCB and/or ABFSL for consideration in good faith and without notice as alleged in paragraph 11 of the Written Statement of the said Defendant? | In the negative |
| Whether the transactions under the 15% arrangement were transactions of HPD and not of SCB and HPD was entitled to deal with bonds at his discretion as alleged in para 7(g) of CMF's Written Statement? | In the negative |
| Whether CMF'S allegations that transactions under 15% arrangement were transactions of HPD, are barred by res judicata by the judgment of the Special Court in Suit No. 13/94 dated 13.03.1995 and the decision of the Supreme Court in CA No. 4456 of 1995 dated 30.10.2001 as alleged in para 7(L) (i) to 7(L)(v) of the Plaint and denied in paras 32, 33 and 34 of the additional Written Statement and by the judgment of the Supreme Court dated 05.05.2006 in Appeal from Suit No. 11 of 1996 as alleged in paras 7(L)(vii) to 7(L)(xv) of the Plaint? | In the affirmative |
| Whether CMF's allegation that the transactions of the Plaintiff under the 15% arrangement were actually transaction of Hiten P. Dalal, is barred by constructive res judicata as alleged in para 7(L)(v) of the Plaint and denied in para 36 of the additional Written Statement? | In the affirmative |
| Whether the issue of payment of consideration by the CMF for acquisition of bond on 27.12.1992 is barred by virtue of the principles of res judicata as alleged in para 11(e) of the Plaint? | In the affirmative |
| Whether the Defendants Nos. 3-10 are jointly and severally liable to pay to SCB the sum of Rs. 55,26,16,438.36 as per the particulars of the Claim together with further interest on principle sum of Rs. 48,02,50,000.00 @ 20% per annum from 28th November, 1992 till payment and/or realisations? | In the negative |
| What relief? | As per Order |
| Between PLAINTIFFS AND HPD | |
| Whether the Plaint fails to disclose any cause of action against HPD as alleged in para 1 of the Written Statement of HPD? | In the affirmative |
| Whether the suit is barred by limitation as against Defendant No.2 as alleged in para 2 of the Written Statement of Defendant No. 2 | In the affirmative |
| Whether the allegations of HPD that the Letter of Allotment was lent to him on 27th February, 1992 and/or that he purchased the same on 9th May, 1992 in the circumstances and manner set out in para 4 of his written statement are barred by res judicata as alleged in para 6B of the Plaint? | In the affirmative |
| Whether Hiten P. Dalal is jointly and severally liable along with CMF to pay to SCB the sum of Rs. | In the negative |

| | | |
|---|---|---|
| 55,26,16,438.36 as per the particulars of claim together with further interest on principal sum of Rs. 48,02,50,000.00 @ 20% p.a. from 28th November, 1992 till payment and/or realisation? | | |
| Whether SCB is entitled to any relief and if, what? | In the negative | |

As can be seen from the above table with regard to the issues framed by the learned Special Court, it came to the conclusion that SCB has succeeded in proving that they had purchased 17% taxable NPCL bonds. The learned Special Court also found that Hiten P. Dalal had not succeeded in proving that he was the owner of the suit bonds, and that SCB was entitled to file a suit for conversion against Hiten P. Dalal and CMF.

The learned Special Court, on appreciation of the pleadings and evidence produced before it, however, declined to grant any relief to the appellant on the ground that the suit was barred by limitation. The amendment to the suit to implead CMF and Hiten P. Dalal was done on 20.10.1995. The learned Special Judge held:

> "The period of limitation had started running from either 18.03.1992 and further from 23.05.1992. The amendment application for impleading defendant Nos. 2 to 10 was filed on 20.10.1995 and, therefore, if the period of limitation is calculated from 18.03.1992 or 23.05.1992, the said period expires either on 18.03.1995 or 23.05.1995. I have already given my reasons as to why 07.11.1992 cannot be treated as a date on which the Plaintiffs came to know about the conversion by Hiten P. Dalal in favour of CMF, and therefore, the Plaintiffs in my view have miserably failed in filing the suit within a period of limitation." On the issue of limitation, the main question that the learned Special Court had to answer as to whether the provision of Article 91(a) of the Limitation Act, 1963 (hereinafter "the Limitation Act") would apply to the instant case. To answer that question, the learned Special Court had to interpret the meaning of the phrase "first learns". The contention raised before the Special Court by the learned senior counsel for the defendants was that the word "learn" cannot be construed as complete knowledge for the reason that if the legislature had intended to use the word knowledge as in Articles 56 to 59, it would have done so. It was submitted that the word "knowledge" cannot be given to the word "learn" in Article 91 of the Limitation Act. The learned Special Court had to decide whether the period of limitation will be ascertained from 07.11.1992 as contended by the plaintiff, or the three earlier dates 18.03.1992, 10.04.1992 or 23.05.1992. The learned Special Court after examining the pleadings and evidence on record came to the conclusion that the period of limitation cannot be said to have started running on 07.11.1992 as the plaintiff had not succeeded in establishing the happening of any meeting on that date. The learned Special Court came to the conclusion that the period of limitation for institution of the suit started running on 18.03.1992 as that was the date of the transaction between ABFSL and ANZ. The Special Court also held that the next date when the plaintiff could have possibly found out about the conversion of the bonds was 23.05.1992 as that was the date on which Hiten P. Dalal had himself informed

the plaintiffs of the conversion of the suit bonds during a meeting.

The learned Special Court thus, while accepting the fact of conversion of the bonds in question, dismissed the suit as against Hiten P. Dalal and CMF as the said amendment was barred by limitation. Hence the present appeals are filed by the appellants urging various grounds.

We have heard Mr. Ram Jethmalani, the learned senior counsel on behalf of the appellant and Mr. Rohit Kapadia and Mr. Pradeep Sancheti, the learned senior counsel on behalf of the respondents. On the basis of the factual circumstance and evidence on record produced before the Special Court and also in light of the rival factual and legal contentions raised by the learned senior counsel for both the parties, we have broadly framed the issues which would require our consideration. Since the only issue in contention before us is that of limitation, we shall restrict our attention to that only. The main legal questions which arise in this case are-

What is the meaning of the term “first learns” as provided under Article 91(a) of the Limitation Act, 1963, and whether the said provision would apply to the facts of the present case?

Whether 07.11.1992 is the date on which the period of limitation starts running for institution of suit against the respondent Nos. 2-10, or is it an earlier date?

What order?

Answer to Point 1:

We need to examine the provision of Article 91(a) of the Limitation Act to understand the issue at hand. Article 91(a) of the Limitation Act reads thus:

| Description of Suit | Period of Limitation | Time from which period begins to run |
|---|---|---|
| 91.For compensation,- a) For wrongfully taking or detaining any specific movable property lost, or acquired by theft, or dishonest misappropriation, or conversion | Three years | When the person having the right to the possession of the property first learns in whose possession it is. |

(emphasis laid by this Court)

Mr. Ram Jethmalani, the learned senior counsel appearing on behalf of the appellant, contended that while construing Article 91(a) of the Limitation Act, Column 1 and Column 3 of Article 91(a) have to be read in conjunction with one another. He further contended that the knowledge required under Article 91(a) is knowledge of some definite person who can be identified and against whom effective reliefs for

restoration of property in question can be obtained. The knowledge must be such that as would afford to a claimant a cause of action against the party to be sued. The learned senior counsel further contended that mere suspicion, surmise or conjecture is not knowledge. The belief must almost be certain. The court must find that the plaintiff had, on credible evidence, reached a fair conclusion about the existence of a cause of action against an identifiable defendant. The learned senior counsel placed reliance upon the case of K.M Talyarkhan v. Gangadas Dwarkadas[2], delivered by Justice Rangnekar of the Bombay High Court in which it was held as under:

"the words whose possession means the possession of some definite person who can be identified and against whom effective relief for restoration of the property in question can be obtained." The learned senior counsel further contended that reference to 'the person in possession' in column 3 of Article 91(a), indicates that the knowledge is one which must be of such person who on the information derived can reasonably be sued. The learned senior counsel placed reliance on three judgments for the same. The first was the case of Muthu Koraki Chetty & anr. v. Mahamad Madar Ammal & ors. (supra), wherein it was held as under: "Therefore, in my opinion the true rule deducible from these various decisions of the Juridical Committee is this: that subject to the exemption, exclusion, mode of computation and excusing of delay, etc., which are provided in the Limitation Act, the language of column 3 Schedule 1 should be so interpreted as to carry out the true intention of the legislature, that is to say, by dating the cause of action from a date when the remedy is available to the party." The learned senior counsel also placed reliance on the case of Sarat Kamini Das v. Nagendra Nath Pal[3] decided by the judicature of Calcutta High Court wherein it was held as under:

"In such a case at the time when the cause of action arises there is no person capable of suing upon it, the statute does not run: similarly it is necessary that there shall ne a person to be sued; and it is also necessary that the cause of action should not be completed, that is all the facts must have happened which are material to be proved in order to entitle the Plaintiff to succeed. This should of course be borne in mind in interpreting the intention of the legislature as expressed in the Articles of the Act itself, or rather in such of them as admit of a consideration of the question as to when a cause of action arises." The learned senior counsel on behalf of the appellants further placed reliance on the case of Hari Mohan Dalal v. Parameshwar Shau[4], wherein Chief Justice Rankin authoring a full bench judgment had held as under:

"The old English statute of Limitation had been content to prescribe the period by putting as the limits so many years after the cause of action. The Indian legislature endeavor in detail by the Limitation Act to state in the third column of the Schedule, the event which is to be taken as completing a cause of action that is the date from the time begins to run. The language of this column of the schedule should in general, if not indeed always, be so interpreted as to carry out the true intention of the legislature, that is to say, to date the cause of action from the date on which the

remedy is available to the party." Thus, the contention of the learned senior counsel appearing on behalf of the appellant, Mr. Ram Jethmalani is essentially that Column 3 of Article 91(a) must be read with Column 1. It leads to the indisputable contention that knowledge must be of the identity of a specific person in whose possession the bonds are and that he acquired the possession of the said bonds under an arrangement, which in law would constitute wrongful conversion.

On the other hand, the learned senior counsel appearing on behalf of the respondents, Mr. Rohit Kapadia and Mr. Pradeep Sancheti contend that Article 91(a) of the Limitation Act is not applicable to the facts of the instant case as it is applicable only to "specific movable property" and that bonds are not specific movable property but chose in action. Chose in action is not a thing and is not capable of being possessed. The learned senior counsel placed reliance on the case of Standard Chartered Bank v. Andhra Bank Financial Services Ltd & Ors.[5] wherein it was held as under: "……a chose in action is not a thing, as, by definition, it is not in the possession of someone, but that possession has to be acquired by some joint which is why it is called a chose-in-action." The learned senior counsel contends that Article 91(a) of the Limitation Act deals with specific movable property which is capable of being possessed. Thus, movable property to be covered under the purview of Article 91(a) must fulfill two criteria. Firstly, it must be specific, and secondly, it must be capable of being possessed.

We are unable to agree with the contention of Mr. Rohit Kapadia and Mr. Pradeep Sancheti, the learned senior counsel appearing on behalf of the respondents. The suit bonds in the instant case are movable properties which are capable of being possessed. The definition of the term movable property can be found in Section 3(36) of the General Clauses Act, 1897 which reads thus-

"movable property, shall mean property of every description, except immovable property." A reading of the sub-Section of the above provision makes it clear that everything that is not immovable is movable, and thus the suit bonds in the instant case are specific moveable property to which Article 91(a) of the Limitation Act applies.

Mr. Rohit Kapadia and Mr. Pradeep Sancheti, the learned senior counsel appearing on behalf of the respondents, further contend that conversion for the purpose of Article 91 (a) cannot be divided into 'honest conversion' and 'dishonest conversion'. The learned senior counsel placed reliance on the case of Lewis Pugh Ewans v. Ashutosh Sen & Ors.[6] in which it was held that:-

"Article 48 alone refers to conversion and their lordships can see no ground for a splitting up conversion into two clauses, one dishonest and the other no dishonest." The learned senior counsel appearing on behalf of the respondents contend that the distinction sought by SCB on the nature or degree of knowledge is no distinction in

the eyes of law and is of no consequence so far as "first learns" as it appears under Article 91(a) of the Limitation Act, 1963. We are unable to agree with this contention advanced by the learned senior counsel on behalf of the respondents. A perusal of Article 91(a) of the Limitation Act shows that it is meant to apply to specific movable property. It further stipulates that the period of limitation shall start running from the date when the person 'first learns' about the conversion of the moveable property. While it is true that the word used in the said Article is "first learns" and not knowledge, it is difficult to construe the word "first learns" without attributing to it certain degree of knowledge. The degree or the extent of knowledge is the subject matter of controversy in the instant case. The Article 91(a) of the Limitation Act was the subject matter of controversy also in the case of K.S Nanji and Company v. Jatashankar Dossa & Ors.[7] wherein the terms of the Article were interpreted by this Court as under:

"The article says that a suit for recovery of specific moveable property acquired by conversion or for compensation for wrongful taking or detaining of the suit property should be filed within three years from the date when the person having the right to the possession of the property first learns in whose possession it is. The question is, on whom the burden to prove the said knowledge lies? The answer will be clear if the article is read as follows: A person having the right to the possession of a property wrongfully taken from him by another can file a suit to recover the said specific moveable property or for compensation therefore within three years from the date when he first learns in whose possession it is. Obviously where a person has a right to sue within three years from the date of his coming to know of a certain fact, it is for him to prove that he had the knowledge of the said fact on a particular date, for the said fact would be within his peculiar knowledge." (emphasis laid by this Court) The provision of Article 91 (a) of the Limitation Act thus demands two things. First is knowledge on the part of the plaintiff, and second, that the said fact be within his peculiar knowledge. We agree with the contention advanced by Mr. Ram Jethmalani, the learned senior counsel on behalf of the appellant, that the term "first learns" places a burden of knowledge which is rather specific in nature. Thus, the knowledge must be of the identity of a specific person in whose possession the bonds are and that he acquired the possession of the said bonds under an arrangement, which in law would constitute wrongful conversion. The knowledge of a specific person against whom the suit can be instituted is what is crucial here. A mere suspicion or a whisper of knowledge is not enough for the period of limitation to start running. Point number 1 is thus, answered accordingly.

Now that we have established that the burden of proof on the plaintiff as to the degree of knowledge is that of specific knowledge with regard to a specific person in whose possession the bonds were, we turn to determine the fact as to when did the period of limitation start running for the institution of the amendment to implead the respondent nos. 2-10 in the instant case. The period of limitation according to Article 91(a) of the Limitation Act for filing a suit for compensation for conversion of

> property is three years from the date on which the person having the right to possession of the property learns in whose possession it is. The amendment to the suit to implead CMF and Hiten P. Dalal was effected on 20.10.1995 vide a Chamber Summons. The case of the appellant is that it was during a meeting held on 07.11.1992 that they first learnt that the suit bonds had been misappropriated by Hiten P. Dalal and given to CMF. The learned Special Court came to the conclusion that the plaintiff (appellant herein) had failed to establish the happening of a meeting on 07.11.1992 for three reasons. Firstly, that if the appellant knew of the transaction between Hiten P. Dalal and CMF on 07.11.1992, then they should have been impleaded as parties in the suit filed by the appellant on 27.11.1992, and that the appellant has not given any reason as to why they were not impleaded as parties on 27.11.1992 itself. Secondly, that no reference has been made about this meeting by Mr. Kalyan Raman, PW-1, in his deposition, who at the time had been deputed from Andhra Bank to ABFSL, who was also alleged to have been present at the meeting. Thirdly, that even Mr. David Loveless PW-4, Director of Security and Investigations, Office of the Special Representatives of India (OSRI) does not make any reference to this meeting. The learned Special Court further held that the defendants (respondents herein) have, on the basis of the evidence on record, established that the plaintiff had knowledge about possession of the bonds at least on 18.03.1992 or 23.05.1992.

Mr. Ram Jethmalani, the learned senior counsel on behalf of the appellant, contends that the period of limitation started running on 07.11.1992, and that the finding of the learned special court that no meeting took place on that date is perverse for the reason that it is contrary to legal evidence on record and therefore deserves to be set aside. The learned senior counsel placed reliance on the deposition of Mr. Srinivasan, PW-3, deputed to the Office of the Special Representatives in India for the Standard Chartered Bank, which reads as under:

> "...I say that to the best of my recollection, these documents were prepared by me as a record of what transpired on 07 November, 1992 and a confirmation thereof in respect of the transactions mentioned in the documents therein referred. When I prepared these documents, facts mentioned therein were fresh in my memory. Having now refreshed my memory on the basis thereof I say that to the best of my recollection, the said documents are a record of what transpired at the said meeting mentioned therein.
>
> In view of the fact that the said document at Exh. A was not signed by me, one Mr. Sanjeev Chugh from SCB, in or about early 1996 inquired from me as to whether the copy of the minutes (being Exh. A hereto) forwarded by him to me at the time had in fact been prepared by me and whether they accurately reflected what had transpired at that meeting. I confirmed to the said Mr. Sanjeev Chugh that this was indeed the position. Mr Chugh asked me to confirm the same to the bank in writing. Accordingly, on 11 March 1996 I addressed a letter dated 11 March 1996 to SCB (Exh. B hereto) inter alia stating that due to inadvertence I had not signed the note at the

relevant time and confirmed that the original of the said note which was with the bank reflected a true and accurate statement of what had transpired on 07 November 1992 and further confirmed that the bank may refer to and rely upon the same in any legal proceedings as it may deem appropriate……..” The learned Special Court had disregarded the testimony of PW-3 Srinivasan in the following terms:

“The evidence of PW-3 Srinivasan itself does not inspire confidence since though he was a member of the investigation team, he does not remember anything else about the transaction of the Plaintiffs except the circumstances under which he has signed the letter of confirmation- Exh D2-

2.” The learned senior counsel further contends that the said finding of the learned special court ignores the provision of Sections 159 & 160 of the Indian Evidence Act, 1872 (hereinafter “the Evidence Act”). It is contended that the Evidence Act recognizes that human memory is fallible and after some time, it may become totally blank about a transaction of long ago.

Sections 159 and 160 of the Evidence Act are quoted hereunder:

“159. Refreshing memory: A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory. The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.” “160. Testimony to facts stated in document mentioned in Section 159- A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.” It is further contended by Mr. Ram Jethmalani, the learned senior counsel on behalf of the appellant, that Mr. Srinivasan, PW-3, was called to depose in the year 2009 for a transaction that took place in November 1992. Thus, it would be perfectly reasonable for him to claim that he remembers practically nothing unless reminded by the contemporaneous document of 1992 of which, he had once before been reminded in 1996. The learned senior counsel further contends that no suggestion was put to him at the time of his cross examination regarding any bribery or inducement on behalf of the CMF. No suggestion was also put to him that the letter dated 11.03.1996 was not written by him. It was further not suggested to him that no such meeting happened on 07.11.1992.

The learned senior counsel for the appellant further contends that the respondent CMF in their Written Statement before the Special Court never denied the happening of the meeting on 07.11.1992. Para 12 of the Written Statement reads thus:-

"……this Defendant denies that S.R Ramaraj stated to CBI on 07.11.1992 or at any time that Defendant No.2 had a dummy transaction with the Fund or that the details of the said alleged transactions came to light only during the proceedings in Misc. Petition No. 81 of 1995." The learned senior counsel further contends that because even the respondent CMF never denied the happening of the meeting on 07.11.1992, the learned Special Court erred in coming to the said conclusion, which is contrary to the pleading and evidence on record.

We agree with the contention advanced by the learned senior counsel on behalf of the appellant, Mr. Ram Jethmalani with regard to the meeting on the above date.

There needs to be specific denial by a witness as to the suggestion regarding the happening of a meeting for the Special Court to arrive at the conclusion that the meeting did not take place. Order VIII Rule 5 of the Code of Civil Procedure, 1908 deals with this aspect, which is reproduced hereunder:

"Order VIII Rule 5 - Specific denial:

(1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability……." It is a settled position of law that if an allegation made in the plaint is not specifically denied in the written statement, it is treated as admitted, as was also held by this Court in the case of Balraj Taneja v.

Sunil Madan[8].

In the instant case, it is evident from the affidavit of Mr. Srinivasan, PW- 3 that the meeting happened on 07.11.1992, the relevant part of which is extracted hereunder:

"…I say that to the best of my recollection, these documents were prepared by me as a record of what transpired on 07 November, 1992 and a confirmation thereof in respect of the transactions mentioned in the documents therein referred. When I prepared these documents, facts mentioned therein were fresh in my memory. Having now refreshed my memory on the basis thereof I say that to the best of my recollection, the said documents are a record of what transpired at the said meeting mentioned therein." (emphasis laid by this Court) He further stated in his cross examination conducted by the counsel for the defendant no. 2 Hiten P Dalal that:

"……I say that I have no personal knowledge of the transaction which is mentioned in Exhibit A, i.e office note dated 7/11/1992 annexed to the affidavit in lieu of evidence. I say that my memory has faded and I cannot recall why the meeting mentioned in the office note dated 7/11/1992 marked as Exh A was held. I do not recall the circumstances under which the said meeting took place. I do not recollect whether I

had checked the records of the SCB pertaining to contents of this office note. I do not recollect whether I had checked the record before mentioning the contents of the said note……I say that we were responsible officers of the Bank and whatever transpired in the meeting was mentioned in the office note that was prepared after the meeting was over…….. I say that the meeting which is referred to in note dated 7/11/1992 was not called by me and normally I did not call or convene such meetings. I do not recollect who asked me to attend this meeting dated 7/11/1992 since it was 16 years back. I say that to the best of my knowledge, I could not know persons who were present in the meeting prior to 7/11/1992. I cannot say whether I was asked to attend the said meeting because it was an important meeting……I say that to the best of my memory, I was called to Canbank Mutual Fund's office to attend the meeting dated 7/11/1992. I say that it only out of my memory I say so and I do not have any record in support thereof." (emphasis laid by this Court) At no point of time was the suggestion put to him regarding the meeting itself not happening. Further, on the suggestion that the fact that he did not originally sign the documents of the Minutes of the Meeting held on 07.11.1992 shows that he had a fraudulent intention, his response was:

"I say that the words "at the relevant time" mentioned in second line of letter at Exhibit-B to my affidavit of evidence, pertain to 1992. I say that in 1996, I would have recollected that I have not signed the note and therefore, I have mentioned in the said Exhibit-B that I have inadvertently not signed the said note. I say that there was no compulsion in me to sign the said note which is at Exhibit-A to my affidavit in lieu of evidence in 1992. I say that it seems that it was a specific request was made from the bank, and, as a result, I did not ask any question as to whether the signature on the note was required or not. I say that to the best of my knowledge when I have mentioned "original of the said note" in letter at Exhibit B dated 11/3/1996 annexed to my affidavit in evidence, I have referred to the original office note at Exhibit-A annexed to my affidavit of evidence.

I stand by whatever I have said in my affidavit in lieu of evidence." (emphasis laid by this Court) On a careful examination of the above deposition of Mr. Srinivasan, PW-3, it becomes clear that a meeting in fact, took place on 07.11.1992. Mr. Srinivasan has stated in his deposition that he prepared a document, Exh. A, which is the minutes of the meeting which took place on that date. According to this meeting, Mr. Ramaraj of Divisional Manager of CMF, Mr. Kalyan Raman, Senior Vice President of ABFSL, Mr. Bhupinder Kumar and Mr. Azad of the CBI and Mr. N. Srinivasan of the SCB were present. Mr. Srinivasan further stated in his deposition that he had inadvertently forgotten to sign the document prepared by him which contained the minutes of the meeting. On 11.03.1996, he signed a document, produced before us as Exh. B, in which he has stated:

"I have perused the attached note dated 7 November 1992 prepared by me. I have inadvertently not signed the said note at the relevant time. I now confirm that the

original of the said note which is now in possession of the bank is true and accurate and the bank may refer to and rely upon the same in any legal proceedings as it may deem appropriate." (emphasis laid by this Court) A careful examination of the testimony of Mr. Srinivasan, PW-3, reveals that a meeting did take place on 07.11.1992. Despite a lengthy cross examination conducted by the counsel for the respondents, at no point of time the suggestion was put to him regarding the not happening of the meeting itself. The deposition of Mr. Srinivasan not only confirms the happening of the meeting on 07.11.1992, but also throws light on the members present at the meeting, as well as the events that transpired at the said meeting.

Apart from the testimony of Mr. Srinivasan, the evidence of one other witness who was examined also conclusively establishes the occurrence of the meeting on 07.11.1992. That is the deposition of Mr. David Loveless, PW- 4, who was appointed as the Director of Security and Investigations, Office of the Special Representatives for India (OSRI) in August 1992. He has stated in his affidavit as under:

"I say that at the relevant time when the suit was filed i.e 27 November 1992 the Bank was under the impression that with regard to its purchase of 17% NPCL bonds from ABFSL, plaintiff had not received physical delivery of the bonds or Letter of Allotment from ABFSL, but that it had received merely a photocopy. This was based on the records of the Plaintiff, being the "Bank Receipts Held Register" which reflected the receipt of a photocopy of the original LOA. Hereto annexed and marked as EXHIBIT "A" is a copy of the relevant extract of the said Register. However, on 7 November, 1992, at a meeting which was attended inter alia by Plaintiff's representative Mr. N Srinivasan and Mr. R. Ramaraj of Canbank Mutual Fund, Plaintiff became aware of the fact that the CMF claimed to have received the original Letter of Allotment from Hiten P Dalal, who, it appears, had handed over the said Letter of Allotment to CMF in order to satisfy some alleged outstanding liabilities of HPD to the said fund, which has arisen in respect of some alleged security transactions engaged in by the CMF with HPD in November 1991." (emphasis laid by this court) It becomes manifestly clear from an examination of the deposition of Mr. Srinivasan, PW-3 and Mr. Loveless, PW-4 that a meeting did infact occur on 07.11.1992. The learned senior counsel appearing on behalf of the respondents has not been able to show any reason as to why the evidence rendered by this witness should be disbelieved.

The learned Special Court recorded the finding of fact holding that no meeting had occurred on 07.11.1992 on the primary ground that neither Mr. Kannan, PW-2 nor Mr. Ramaraj, both of whom were allegedly present at this meeting, mentioned the happening of a meeting on 07.11.1992 in their depositions. The learned Special Court erred in coming to the conclusion that no meeting has occurred on 07.11.1992 for the reason that Mr. Ramaraj and Mr. Kannan, PW-2 did not mention this meeting in their deposition, and thus, going against the well settled principle of law of 'specific denial'. Mr. Srinivasan, PW-3 and Mr. Loveless, PW-4, both specifically deposed as to the happening of a meeting on 07.11.1992. Thus, the learned Special Court could come to the conclusion that the

meeting did not happen was only if some witness deposed specifically that the meeting did not happen. In the instant case, no witness was specifically asked in the cross examination by the counsel for the respondents about the happening of the meeting on 07.11.1992. Thus, no witness expressed in as many clear terms that the purported meeting infact did not take place. On the basis of the legal evidence placed on record by the appellant before the Special Court that a meeting did infact take place on 07.11.1992, we turn our attention to what happened at the said meeting. The note prepared by Mr. Srinivasan, PW-3, after the said meeting, produced as Exh. "A" states as under:

> "CMF says the following:
>
> There was an initial purchase in end 1991, by CMF from HPD of some security against which HPD did not deliver physicals to CMF.
>
> Consequently, HPD had a dummy sale/ purchase transaction with CMF for FV Rs. 100 crs and delivered 9% NPCL and 17% NPCL to CMF on 26.02.92. The deal slip indicates deal with ABFSL, but difference between sale & purchase of Rs. 3 crores was paid to HPD directly by Andhra Bank....." A perusal of the record prepared by Mr. Srinivasan, PW-3, makes it amply clear that it was during this meeting on 07.11.1992 that CMF first admitted to SCB regarding the dummy sale involving the 9% NPCL bonds and 17% NPCL bonds. At this point, we would like to reiterate that the learned senior counsel appearing on behalf of the respondents have not been able to point out any reason for us to disbelieve either the deposition of Mr. Srinivasan, PW-3, or the documents prepared by him, which have been placed on record.
>
> Thus, we conclude that a meeting did infact take place in the office of CMF on 07.11.1992, and that it was on this date that SCB found out about the dummy transaction that had taken place between CMF and Hiten P. Dalal regarding the 9% and 17% NPCL bonds. Therefore, the finding recorded by the learned Special Court is erroneous both in fact and in law, hence the same is liable to be set aside.
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> In light of the fact that the knowledge of the appellant had started running on 07.11.1992, the question that now remains to be answered is whether there was any previous date on which it was possible that the appellant had acquired knowledge of the conversion of the bonds. The learned senior counsel appearing on behalf of the respondents, Mr. Rohit Kapadia and Mr. Pradeep Sancheti, contend that there are atleast three alternate prior dates on which the appellant can be said to have acquired knowledge of the fraud perpetrated on it by the respondents. These dates are 18.03.1992, 10.04.1992 and 23.05.1992.
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> We have heard Mr. Ram Jethmalani, the learned senior counsel appearing on behalf of the appellant and Mr. Rohit Kapadia and Mr. Pradeep Sancheti, the learned senior counsel appearing on behalf of the respondents and have perused the documents produced before us as evidence. We shall examine these dates one by one in order to

conclude whether knowledge of the appellant can be construed from any one of these dates, from which date the period of limitation for instituting the suit for claim against the respondents starts running.

It is contended by the learned senior counsel appearing on behalf of the respondents that the first date on which knowledge can be attributed to the appellant is 18.03.1992. The learned senior counsel places reliance on the second amendment to the Plaint dated October 2006 in which it is stated:

".....Significantly, although, admittedly, 3rd Defendant on 17 March 1992 had physical possession, of the said bonds (the LOA representing the said bonds), 3rd Defendant deliberately did not deliver to the plaintiffs the said bonds and instead delivered to the Plaintiffs, 3rd Defendant's BR bearing No. 2767. In view thereof, Plaintiffs did not realize that the original letter of allotment which has been delivered to the Plaintiffs on 27 February 1992 was, in fact, in the possession of 3rd Defendant as on 17 March 1992....." The learned senior counsel further places reliance on para 7E of the amended plaint which reads thus:

".....Had 3rd Defendant, delivered to plaintiffs, against the transaction of 17 March 1992, the original Letter of Allotment, which was in the possession of 3rd Defendant, Plaintiffs would have immediately realized the fraud that had been played on the Plaintiffs....." The learned senior counsel for respondent Nos. 2 to 10 contend that 18.03.1992 would be a crucial date regarding definite knowledge of the appellant about possession of the bonds by CMF. CMF had specifically pleaded that it had delivered the bonds on 18.03.1992 to the appellant and in turn the appellant discharged its Bank Receipt No. 2767 acknowledging the same. The learned senior counsel further places reliance on the Bank Receipt No. 2767 produced as Exh. P-16, dated 17.03.1992, which contains an endorsement "bonds delivered 18/3/92". According to the learned senior counsel on behalf of the respondents that the said Bank Receipt conclusively proves the delivery of the physical bonds to the appellant SCB.

Mr. Ram Jethmalani, the learned senior counsel appearing on behalf of the appellant, on the other hand contends that in para 7E of the Plaint, it has been clearly and specifically alleged that on 18.03.1992, the 17% NPCL bonds were delivered directly through Hiten P. Dalal to ANZ Bank, to whom SCB had sold the said bonds on 26.02.1992 itself. He further places reliance on the affidavit of Mr. S. Ramaraj, authorized employee and agent of CMF. This affidavit was produced in the suit before the Company Law Board. He had stated therein:

"Even in respect of the 17% NPCL bonds which were subsequently sold on 17.3.1992 by the Petitioners (CMF) to Respondent no. 4 (SCB) as set out in para A above, the Petitioners (CMF) had entered into the transaction through respondent no. 2 (HPD) who acted as the broker.....The RBI cheque for the net amount of Rs. 15,23,973.61 issued by Respondent no. 4 in favour of the Petitioners was delivered to the

> Petitioners (CMF) by respondent no. 2 (HPD) and likewise the BR in respect of the sale of 17% NPCL bonds was delivered by the Petitioners (CMF) to respondent no. 2 (HPD) for onward delivering to the Purchaser. Subsequently, even when the original letter of allotment was exchanged for the BR, the said exchange also had taken place through respondent no. 2 (HPD) and/ or his servants and agents." The learned senior counsel on behalf of the appellant submits that the said affidavit states that the 17% NPCL bonds were purchased by CMF on 27.02.1992 from ABFSL through its broker Hiten P. Dalal along with 9% NPCL Bonds. Mr. Ramaraj further said that the very same bonds were subsequently sold by CMF to SCB, on 17.03.1992. The Bank Receipt issued was exchanged by delivery of original LOA on 18.03.1992. He does not say that it was delivered to the SCB. The learned senior counsel contends that in view of the averments of the affidavit of Mr. Ramaraj, the knowledge of the bonds being delivered to the Company on 18.03.1992 is not tenable in law. He further contends that the learned Special Court erred in arriving at this conclusion on facts, which is contrary to the affidavit of Mr. Ramaraj and therefore, the said finding is erroneous, liable to be set aside.

The learned Special Court has erroneously held that the period of limitation for institution of the suit by the appellant would start running on 18.03.1992, as there was no evidence on record to show that the appellant did not have knowledge that this was the only set of bonds which were used by NPCL and therefore there was no question of other bonds being in circulation. The learned Special Court further held that the burden of proving the non existence of knowledge was on the appellant, and that in the absence of evidence on this point, it would have to be held that when the bonds were returned by CMF to ANZ on that date itself the appellant became aware of the possession of the bonds by CMF, and that is the date on which the period of limitation would start running for institution of the suit against the respondents.

As has already been discussed by us in an earlier part of this judgment, the period of limitation under Article 91(a) of the Limitation Act starts running on the date that the plaintiff acquires knowledge of the identity of the person who is in possession of the bonds. Apart from knowledge of the identity of the person, Article 91(a) also requires the knowledge that the possession of the bonds was acquired by means of wrongful conversion.

The evidence of Mr. Ramaraj, as produced before the Company Law Board, has been grossly misinterpreted by the learned Special Court. The affidavit of Mr. Ramaraj clearly states that the Bank Receipt in respect of the said 17% NPCL bonds was delivered by CMF to Hiten P. Dalal for onward delivery to the 'purchaser'. The purchaser in this context refers to ANZ. The affidavit of Mr. Ramaraj makes it amply clear that at no point of time did SCB have possession of the physical bonds. It was Hiten P. Dalal who delivered them to ANZ. Thus, the finding of the learned Special Court as to the date of knowledge being 18.03.1992 is perverse and is liable to be set aside.

The next date of knowledge, as contended by the learned senior counsel on behalf of the respondents, is 10.04.1992. It was contended by the learned senior counsel appearing on behalf of the respondents that the list of transactions disclosed by the SCB to the Joint Parliamentary

Committee reflects a transaction for sale dated 10.04.1992. In Para 7I of the Plaint, the appellant had stated that they had realized that there was a 'hole' or a shortfall in their Securities Account pertaining to the transaction of 26.02.1992 between the appellant and ABFSL, in view of the belief of the appellant that the said bonds under the said transaction had not been received from ABFSL. It was further stated in the plaint that the dealers of the appellant then entered into a dummy transaction dated 10.04.1992 with ABFSL. In fact, the said purported transaction was a mere unilateral set of entries effected in the books of the appellant and that so such transaction took place. The learned senior counsel contends that no evidence has been placed on record to show that this was a dummy transaction, and that the date of knowledge imputed to SCB should be 10.04.1992.

It is further contended by Mr. Ram Jethmalani, the learned senior counsel appearing on behalf of the appellant, that 10.04.1992 cannot be considered to be the date on which knowledge of the conversion can be said to be imputed to SCB. He relied on the evidence of Mr. Kalyan Raman, PW-1, who has stated thus:

> "My attention has also been drawn to para 6 (c) of the Miscellaneous Petition No. 81 of 1995 filed by Defendant No.3 before the Company Law Board. I say that ABFSL had not entered into any of the transactions mentioned in para 6(c) of the Miscellaneous Petition No. 81 of 1995 with CMF or any other party." The learned senior counsel for the appellant contended that this testimony of Mr. Kalyan Raman, PW-1, who was an employee of ABFSL at that time, clearly establishes that there were no transactions between SCB and ABFSL on 10.04.1992. This was the best evidence on the matter in favour of the appellant which is conveniently omitted to be considered by the learned Special Court while recording the finding on the contentious issue of limitation.
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> The learned Special Court dismissed the claim of the respondents that 10.04.1992 could be the date on which knowledge can be said to be imputed to the appellant on the ground that the respondents had not proved by leading any cogent evidence that the appellant became aware of the conversion on 10.04.1992. The learned Special Court further held that the respondents had failed to show that the said transaction was settled against bonds for valuable consideration.

We agree with this finding of the learned Special Court. The testimony of Mr. Kalyan Raman, PW-1, makes it manifestly clear that no transaction took place between ABFSL and SCB on 10.04.1992, and thus, the question of imputing knowledge to the appellant on that date does not arise for the purpose of limitation begins to run for the appellant for institution of the suit claim against the respondents.

The next date, which has been most vehemently contended by the learned senior counsel appearing on behalf of the respondents, is 23.05.1992.

The learned senior counsel for the respondents place reliance on para 4 of the Written Statement submitted by them before the learned Special Court which stated:

> "Further according to the Plaintiffs, they had a meeting with various brokers, including Hiten P. Dalal on 23.05.1992 wherein in relation to the alleged Andhra Bank Financial transactions relating to NPCL bonds he is alleged to have "admitted that he diverted the Bonds to Citibank". Thus, on the Plaintiffs own showing, without any manner admitting the correctness of the allegations, in any case, latest by May, 1992 the Plaintiffs are aware that Hiten P Dalal had traded in the said Bonds and in fact delivered the same Bonds to CMF." The learned senior counsel further submit that the happening of a meeting on 23.05.1992 is an admitted fact. During the course of the meeting, there was a specific discussion with regard to the NPCL bonds, of both 9% and 17%. The minutes of the meeting, produced before us as Exh. D-2(1) state:
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> "On the Andhrafina transactions relating to the NPCL bonds where SCB was provided with photocopies of the bonds instead of originals, HPD admitted that he had divereted the bonds to Canbank……." The learned senior counsel for the respondents further contend that the meeting of 23.05.1992 is a material fact, which ought to have been pleaded by the appellant particularly since admittedly, the appellant was informed of the conversion of the suit bonds on that day and the alleged explanation, as to whether the knowledge was complete or incomplete etc. ought to have been a part of its pleading.
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> The learned senior counsel on behalf of the respondents further contend that the distancing of the appellant from the clear knowledge about the diversion of the bonds to CMF by Hiten P. Dalal by insisting that the said information was purely informal, and that Hiten P. Dalal had even stated that he would deny this conversation if the SCB ever sought to make formal use of his statement is a clear tactic of evasion. He further contended that the minutes of the meeting do not contain any such reservation as claimed by the appellant.
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> The learned Special Court, while arriving at the conclusion on the facts pleaded and evidence on record that 23.05.1992 can also be considered to be the date from which knowledge can be said to be imputed to the appellant regarding the conversion of the bonds in question, relied primarily on the evidence of Mr. Kalyan Raman, PW-1, who was also present at the meeting held on 23.05.1992. He has stated in his affidavit submitted before the learned Special Court as under:
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> "I further state that in view of the fact that SCB's investigation team headed by Mr. Wasim Saifee, had inter alia informed me about the missing NPCL bonds, both Saifee and myself did inquire from HPD, in the course of the meeting held on 23rd May 1992 as to what had really happened in respect of the said transactions with ABFSL on 26th February 1992. HPD also informed us that insofar as the transactions

wherein SCB had purchased 9% NPCL bonds of FV 50 crores and 17% NPCL bonds of FV 50 crores were concerned and in respect of which SCB had paid full consideration but in respect of which SCB records reflected receipt of only photocopies of the original LOA's, that he (HPD) had diverted the said bonds to Canara Bank." The learned Special Court further held that Mr. Kalyan Raman, PW-1, had also identified the minutes of the meeting which had been placed on record. There was no mention of the evasive response given by Hiten P. Dalal, or that he had stated that the said information was informal and that he would deny this conversation if the SCB ever sought to make formal use of this conversation. It was further held that Hiten P. Dalal did disclose in the meeting on 23.05.1992 about diversion of the bonds to CMF. Thus, the appellant first learnt about the diversion on 23.05.1992 of the suit bonds to CMF.

Mr. Ram Jethmalani, the learned senior counsel appearing on behalf of the appellant, on the other hand contends that 23.05.1992 cannot be taken to be the date on which SCB had knowledge of the conversion of the suit bonds. He submits that knowledge is not mere suspicion, and that it must be knowledge of such a nature as will enable the person defrauded to seek a remedy in a court of law. He further contends that the fact that appellant did not know of the role played by Hiten P. Dalal and that this becomes amply clear from the FIR filed by them dated 20.06.1992. The appellant was under the clear impression that the suit bonds had not been received by them, and that it had only received a Bank Receipt which had been returned to ABFSL.

We agree with the submission of Mr. Jethmalani, the learned senior counsel on behalf of the appellant. The learned Special Court erred in arriving at the conclusion that 23.05.1992 could be a date from which the appellant could be said to have knowledge of the diversion of the suit bonds by Hiten P Dalal. In this context, we would turn our attention to the evidence of PW- 2, Mr. Kannan, who also stated after stating that Hiten P. Dalal had admitted the diversion of bonds:

"In the said meeting, I pressed H.P. Dalal to furnish me the details and particulars with regard to his allegations of alleged diversion to Canara Bank of the said NPCL bonds. HPD was however evasive and did not afford any cogent reply. I specifically inquired from him as to the manner and circumstances of the alleged diversion. However when pressed by me to give particulars and details, he refused to state anything further on the subject and instead insisted that the said information of the alleged diversion of the Bonds to Canara Bank was purely informal and that he would deny his conversation with the SCB if the SCB were to seek to make formal use of his statement.

.....The matter of NPCL bonds was thereafter discussed by me with the other senior managers of SCB but in view of the lack of any details/ particulars forthcoming from HPD and in view of his failure to adhere to his assurances and commitments of delivery of stocks/ securities/ reimbursement of losses assured by him to be delivered

between 18 and 22 May 1992, it was felt that no credence could be placed on the said statement made by HPD with regard to NPCL bonds at the relevant time." (emphasis laid by this Court) We also turn our attention to the cross examination of this witness who stated:

"You have stated that "HPD was evasive and did not afford any cogent reply." Which of these statements is correct?

Both are correct I say that the meetings which are referred to in para 17 in my evidence in earlier suit would include the meeting dated 23rd May, 1992. ...I say that HPD had admitted that he had diverted the original letter of allotment to Canara Bank and had not delivered the same to SCB. I say that since he had mentioned diversion of the bonds I thought that he might have misappropriated the bonds. I agree that misappropriation is a serious matter. I say that I reported this to Mr. Wasim Saifi. He was also present in the meeting and he has prepared this note and he told me that he would verify the record and go further in detail and therefore, this fact should not be mentioned in the office note.

How are NPCL bonds transactions a specific instance of 'Entry Guma diya', 'Duplicate funding hoya' and 'Duplicate funding kiya'? I say that when Mr. HPD informed us that the original letters of allotment were diverted to Canara Bank, I thought that it must be falling in one of these categories. I say I thought it would fall within one of these would verify the record and go further in detail and therefore, this fact should not be mentioned in the office note.

How are NPCL bonds transactions a specific instance of 'Entry Guma diya', 'Duplicate funding hoya' and 'Duplicate funding kiya'? I say that when Mr. HPD informed us that the original letters of allotment were diverted to Canara Bank, I thought that it must be falling in one of these categories. I say I thought it would fall within one of these categories because of diversion of securities." In this connection, it also important to examine the testimony of PW-4, Mr. David Loveless, who was investigating these transactions at that time. He has expressly stated:

".....I was informed that on 23 May 1992 at a meeting held between the Plaintiff's officers and various brokers, including inter alia HPD, the said HPD had casually mentioned the said 17% NPCL bonds had been diverted by him to Canara Bank. However, I was informed by the Plaintiff's officers, who attended the said meeting that when HPD was pressed to give details and particulars of the alleged diversion and manner and circumstances thereof, he had resisted evasively and had refused to furnish any details and had even gone to the extent of stating that the information divulged by him was purely informal and that if the Plaintiffs were to seek to make use of thereof in any legal proceedings, he (HPD) would deny the same. In this connection, I say that I was subsequently briefed by the members of the investigation team including Mr. Waseem Saifi as also by Mr. Kannan who were present in the said

meeting held on 23 May 1992. From the report of the said Mr. Kannan, it was clear to me that no reliance could be placed upon what HPD had vaguely alleged. It was in these circumstances that when the plaintiff originally filed its Suit no. 6 of 1994, on 27 November 1992, Plaintiff confined its claim only against ABFSL, which it believed, on the basis of its information and record had failed to deliver the original LOA in respect of Rs 50 crores FV 17% NPCL bonds, which it had sold to the Plaintiff on 25 February 1992. I was only thereafter, in the circumstances referred to by me hereinabove that Plaintiff realized that the said LOA had possibly been converted by CMF and only thereafter upon discovering the said fact and learning of the said conversion effect by CMF that plaintiff took steps to amend its Plaint and claim in the alternative, damages against CMF for conversion. I further say that the said amendment was necessitated on accounts of the facts that emerged after the CBI had investigated the matter pursuant to SCB's FIR dated 20 June 1992 and the charge sheet filed pursuant thereto, dated 16 June 1995. I further state that after filing its FIR dated 20 June 1992, SCB was waiting for the outcome of the CBI investigation." A careful examination of the deposition of these two witnesses makes it manifestly clear that the revelation made by Hiten P. Dalal during the meeting held on 23.05.1992, did not give the appellant the knowledge requisite for the purpose of Article 91(a) of the Limitation Act. The revelation in contention made by Hiten P. Dalal was vague and he gave evasive responses after the same and thus, it is not reasonable to expect the appellant to believe the same and initiate legal proceedings on the basis of the said statement.

We examined all the dates alternative dates prior to 07.11.1992 proposed by the respondents, where knowledge could be said to be imputed to the appellant for institution of suit against the respondents. We find no merit in the contentions urged by the learned senior counsel for the respondents. The period of limitation would start running only on 07.11.1992, the reasons for which we have already elaborately stated in an earlier part of this judgment. We set aside the finding of the learned Special Court on the contentious issue nos.1 and 2 framed in the suit that the institution of the suit of the appellant against Respondents Nos. 2-10 is barred by limitation.

Since we have set aside the finding of fact recorded by the learned Special Court holding that the suit is barred by limitation, as prescribed in the Schedule to the Limitation Act, 1963 by recording the reasons in the preceding paragraphs of this judgment and the other issues including the issue on the merits of the claim were held in favour of the plaintiff (appellant herein) by the learned Special Court, which have not been challenged by the Respondents 2-10 by filing an appeal, therefore, the appellant is entitled for a decree of the suit claim of the principal amount adjudged as on the date of the institution of the suit. The appellant is also entitled to interest pendente lite and future interest. This transaction can be termed as a commercial transaction and Section 34 of the Code of Civil Procedure, 1908 confers discretionary power upon this Court to award interest at appropriate rate on the suit claim of the

appellant. We have considered with regard to the facts and circumstances of the case as to what should be the reasonable rate of interest to be awarded on the suit claim both for the period of pendente lite and for future interest and from what date to be ordered. The suit in the instant case was instituted before the Special Court on 27.11.1992, but the respondent nos.2- 10 were brought on record as parties to the suit by way of an amendment, which was allowed on 10.01.1996. Therefore, it would be appropriate for this Court to award interest from the above said date during pendency of the proceedings before the Special Court and this Court and also for future rate of interest at 6% per annum till the date of realisation. The Particulars of Claim, marked as Exh. "E" to the plaint shows that the appellant had claimed 20% interest from 26.02.1992 till 27.11.1992 at the principal sum of Rs.48,02,50,000.00, to arrive at the amount of Rs.55,26,16,438.36 as the adjudged principal amount. Since we have awarded interest at the rate of 6% per annum, we shall calculate the principal amount of Rs.48,02,50,000.00, on that rate itself for the period from 26.02.1992 to 27.11.1992 at that rate itself which amounts to Rs.50,18,61,250.00 will be the adjudged principal amount from the date of institution of the suit.

For the foregoing reasons, we set aside the judgment and decree of the dismissal of the suit on the question of limitation and the suit claim as indicated herein below with interest and costs is allowed by allowing these appeals in the following terms:-

The respondent nos.2-10 are directed to pay the adjudged principal sum of Rs.50,18,61,250.00 along with interest at the rate of 6% per annum from 10.01.1996 till the date of realisation with suit costs throughout for having converted the suit bonds. The above respondents shall be jointly and severally liable to pay the same to the appellant. The appellant is permitted to file memo costs of the suit proceedings throughout within three weeks from the date of receipt of the copy of this judgment.

... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... J . [ V . G O P A L A G O W D A ]
.....J. [R. BANUMATHI] New Delhi, August 28, 2015

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[1] (2006) 6 SCC 94
[2] (1935) ILR 60 Bom 848
[3] AIR 1926 Cal 65
[4] AIR 1928 Cal 646
[5] (2006) 6 SCC 94, para 84
[6] AIR 1929 PC 69
[7] AIR 1961 SC 1474
[8] (1999) 8 SCC 396