

application by the father is where his son is residing. Their Lordships by following earlier judgment reported in 1963 SC Page 1521, delivered this judgment. By the impact of this judgments, it is very difficult for the parents to file these type of petitions, where the sons are residing.

For example : A son is working in Delhi in a reputed multinational company or in a Central Government Job, but the parents are residing at Hyderabad. Though, it is the duty casts upon the son to maintain the parents, but in view of the woman -folk the son neglected the parents. Thus poor parents in order to get their survival according to this judgment they have to file a petition at Delhi which is far away from their residence and it is very difficulty for these poor parents to attend each and every adjournment at Delhi in order to get the maintenance from his son. The travelling expenses will be more than the maintenance amount to be granted by the Hon'ble Court. The Hon'ble Court will not consider about the travelling expenses and those expenses will not be ordered to the parents.

Example No.2 : If the parents are illiterates and the son is residing in other state where that State language is not known to the parents what is the fate of the parents to go

to such a state where that language is not known to them how much difficulty has to be faced by them in engaging advocate and in filing the petition before the concerned Court without getting the acquaintance of such language.

It is the duty casts upon the son or daughter (who ever he may be) to provide food, shelter, clothing to the parents, when they fail to do so in discharging their lawful duties it is for them to provide the maintenance to the parents, wherever the parents are residing. They have to come and they have to pay the amount to the parents. But the parents cannot be asked to go to the Courts where his son or daughter is residing. This is a problem which is being faced by the poor parents through out the country.

In view of the above judgment the parents who intends to seek maintenance from their children have to necessarily file the maintenance petition, where their children are resides. As such Section 126 Cr.PC is to be properly amended by giving jurisdiction to the parents where they are residing otherwise great injustice will be caused to poor parents. This is needed urgently because throughout the country this problem is there. To meet out this problem, the amendment to Section 126 of Cr.PC is needed.

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## ENFORCEMENT ISSUES RELATED TO THE SECURITIES AND EXCHANGE BOARD OF INDIA

*By*

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An organized and efficient capital market is an engine of economic growth. Acting as an efficient tool for resource allocation, it

facilitates entrepreneurs to raise both risk and debt capital and provides opportunities to common investors to employ their disposable

income for their own good and that of their nation.

The Securities and Exchange Board of India (SEBI), which operates within the legal framework of the Securities and Exchange Board of India Act, 1992 (SEBI Act, 1992) and in keeping with its statutory objectives of protecting the interests of the investors, promoting the development and regulation of a transparent, efficient and competitive capital market, has set for itself strategic aims for each of the four key spheres which encompass its activities in relation to that of the investors, issuers, intermediaries and the regulatory regime. To the investors, the SEBI strives to assure that their rights are protected, that they are enabled to make informed choices and decisions in a market that is fair in the financial dealings. To the issuers, the SEBI strives to provide a transparent and efficient market where they are enabled to raise resources at low cost, but conduct themselves in accordance with the highest standards of corporate governance and that they are conscious of and meet their regulatory obligations.

To the intermediaries, the SEBI strives to render a market in which they can compete freely and operate in a manner which gives the investors and market participants, the confidence that the market is efficient, orderly and fair. In the regulatory regime, SEBI seeks to ensure that it always remains appropriate, proportionate and effective in which all “stakeholders” have the confidence.

Thus ensuring the integrity of the markets, occupies a very significant position in the functioning of a regulator, particularly SEBI as the regulator of the securities markets inasmuch as the effectiveness of regulatory function in any jurisdiction is benchmarked against the enforcement of its orders, directions, rules and regulations. Therefore, enforcement is the sword arm of a regulator.

Upon the completion of more than a decade of its establishment, SEBI has tried to ensure fair transactions and maintain the confidence of investors, as well as the safety and integrity of the capital market and in keeping with its role as the regulatory authority, has imposed different sanctions for various securities violations.

However, the enforcement actions of SEBI can be broadly categorized into (a) preventive actions and (b) punitive actions.

Preventive Actions are taken usually pending investigation or enquiry and are aimed at preventing harm to the interest of the investors and the securities market. These actions include suspending the trading of any security on a stock exchange, restraining persons under Sections 11/11B of the SEBI Act, 1992 from accessing the securities market and from buying, selling or dealing in securities, impounding and retaining proceeds or securities in respect of a transaction under investigation, attaching the bank accounts of the Intermediaries or persons associated with the securities market after obtaining judicial approval, directing an intermediary or person associated with the market from disposing off or alienating an asset, forming part of a transaction under investigation and suspending an office bearer of a stock exchange or other self regulatory bodies.

Other preventive measures include cease and desist proceedings under Section 11D of the SEBI Act, 1992 where SEBI apprehends violation of any provision of law or insider trading or market manipulation as well as the issuance of directions to any person or intermediary to prevent its affairs being conducted in a manner detrimental to the interest of the investors and the securities market.

Punitive actions include censure, suspension/cancellation of registration, monetary penalties and criminal proceedings.

In the case of intermediaries registered with SEBI, their registration and activities are governed by specific regulations which besides laying down the do's and don'ts, have Codes of Conduct that are mandatorily required to be followed by the intermediaries. These regulations also provide for penalties in case of default in complying with the provisions. Penalties such as censure, suspension and cancellation of the certificate of registration granted to an intermediary under Section 12(3) read with the Enquiry Proceedings Regulations are imposed on the intermediaries after an enquiry into the facts and circumstances of every case in due adherence with the principles natural justice such as show-cause notice and hearing.

Besides suspension or the cancellation of the certificate of registration, SEBI is also empowered to impose monetary penalties under Chapter VIA of the SEBI Act, 1992 by the Adjudicating Officer. These penalties which may extend to Rs.25 crores (Approximately US \$ 5.5 million) are imposed after adjudication proceedings which are conducted as per the rules framed in that regard. These penalties are imposed for a variety of violations including the failure to furnish information/periodical returns, failure to redress grievances of investors, for insider trading, for fraudulent and unfair trade practices and for specific defaults by intermediaries such as mutual funds, asset management companies and stock brokers. Monetary penalties are imposed even where the intermediaries fail to enter into agreements with clients. An adjudicating authority, although an officer of the Board functions independently and no appeal lies to SEBI from the orders of the adjudicating authority. Moreover, the amounts recovered by way of such penalties are credited to the Consolidated Fund of India and are not received by SEBI, thereby eliminating any possibility of vested interest on the part of the Regulator while imposing such penalties.

SEBI also initiates criminal proceedings under the SEBI Act, 1992 for the violations of its, rules or regulations and for non-compliance with an order of the adjudicating authority. The penalty under such criminal proceedings may be imprisonment up to 10 years and a fine which may extend up to Rs.25 crores (Approximately US \$ 5.5 million).

SEBI also carries out enforcement actions under the provisions of the Securities Contract (Regulations) Act, 1956 which regulates the setting up and functioning of Stock Exchanges, the Depositories Act, 1996 which regulates the functions of a Depository and the Companies Act, 1956 in relation to the issue of capital, transfer of securities and payment of dividend.

It is interesting to note that during the period January 2003 to December 2003, a total of 491 civil enforcement actions were taken by SEBI. These include 119 warnings issued to intermediaries, 69 instances where the registration was suspended and 133 instances of cancellation of the certificate of registration. In 164 instances, preventive directions were issued in the interest of the investors and ensuring the integrity of the securities market. During the same period, criminal proceedings totaling 342 and covering 1707 number of persons were initiated by SEBI.

In the recent past, major amendments have been made to the SEBI Act, 1992, empowering SEBI with additional powers, more importantly such as search and seizure for the investigation of market crimes and initiation of appropriate enforcement actions in such cases.

More recently, there has been an overhauling of the regulations relating to fraudulent and unfair trade practices. The old regulations have been repealed and the new regulations that have taken their place have sought to address the issue of proving

intention or *mens rea* in such offences. As is well known, intention is very difficult to prove in such cases and keeping in view the sensitivity of the securities market, the revised regulations seek to make offences against the market as one of strict liability. The regulations have also outlined commonly observed offences and the scopes of penalties that can be imposed have also been increased.

Separate regulations for conducting enquiry have been framed to provide for a uniform procedure prior to imposition of penalties on intermediaries. These regulations also provide for summary proceedings in cases of defaults such as violation of conditions of registration *etc.*, since summary proceedings greatly reduce the time taken for enforcement actions.

Significant penalties have been imposed by SEBI since the recent amendment to the

SEBI Act. These include imposition of penalties upto Rs.2 crores and also penalties for non response to summons issued by the investigating authority. During the current financial year, significant orders against persons, who indulged in insider trading, fraudulent and unfair trade practices, were passed debarring them from the securities market.

SEBI is also mooted the setting up of special Criminal Courts to speed up criminal proceedings.

With the enhanced penalties and a better streamlined procedure, SEBI has been enabled to a great extent in initiating effective enforcement actions and better compliance with the rules and regulations governing the securities market, thereby also ensuring that the investors in the securities market are protected.

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### JUDICIAL APPROACH IN WRITING JUDGMENTS AND ORDERS IN PARTICULAR APPEAL SUITS AND MISCELLANEOUS - APPEALS WITH REFERENCE TO THE SETTLED PRINCIPLES AND PROCEDURE

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Law is a mighty ocean. The laws we deal with are procedural and substantive. The procedural law known as adjectival law facilitates the results to be obtained since the rights conferred on persons by substantive law will reach them through the process of procedural law.

As per *M.C. Shetahwad* the Civil Procedural

Law is based on the theory that there must be a full disclosure by each party of his case to the other, that rival contentions must be reduced as quickly as possible to the form of clear and precise points or issues for decision and there must be a prompt adjudication by the Court on those points. Justice delays not so much due to defects in procedure, it is by faulty application.