A COMMISSIONER OF INCOME TAX, DELHI

v.

M/S. KELVINATOR OF INDIA LIMITED

(Civil Appeal Nos. 2009-2011 of 2003)

JANUARY 18, 2010

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[S.H. KAPADIA, AFTAB ALAM AND SWATANTER KUMAR, JJ.]

Income Tax Act, 1961: s.147 – Power to reassess – The C *word "opinion" inserted in s.147 after the enactment of Direct Tax Laws (Amendment) Act, 1987 i.e. prior to 1st April, 1989, vested arbitrary powers in the Assessing Officer to reopen past assessments on mere change of opinion – The concept of "change of opinion" stood obliterated with effect from 1st April,* D *1989, i.e. after substitution of s.147 of the Act by Direct Tax Laws (Amendment) Act, 1989 – Direct Tax Laws (Amendment) Act, 1987 – Circular No.549 dated 31st October, 1989.*

The question which arose for consideration in the E **present appeal is whether the concept of "change of opinion" stands obliterated with effect from 1st April, 1989, i.e. after substitution of section 147 of the Income Tax Act, 1961 by Direct Tax Laws (Amendment) Act, 1989.**

Dismissing the appeals, the Court

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HELD: Post-1st April, 1989, power to re-open is much wider. The words "reason to believe" need to be given a schematic interpretation failing which, Section 147 of the Income Tax Act, 1961 would give arbitrary powers to the G **Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot *per se* be reason to re-open. The Assessing Officer has no power to review but he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-**

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condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the Companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer. The Circular No.549 dated 31st October, 1989, stated that the omission of expression 'reason to believe' from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. The Amending Act, 1989, has again amended section 147 to reintroduce the expression 'has reason to believe' in place of the words `for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new section 147, however, remain the same. [Para 6] [772-C-H; 773-A-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2009-2011 of 2003.

From the Judgment & Order dated 19.04.2002 of the High Court of Delhi at New Delhi in I.T.C. No.4 of 2000 and dated 15.05.2002 in I.T.A. No. 81 of 2000.

WITH

C.A. No. 2520 of 2008.

A Arijit Prasad, Kunal Bahri, B.V. Balaram Das for the Appellant.

Kavita Jha, Bhargava V. Desai, Rahul Gupta, Nikhil Sharma for the Respondent.

B The Judgment of the Court was delivered by

S.H. KAPADIA, J. 1. Heard learned counsel on both sides.

2. A short question which arises for determination in this C batch of civil appeals is, whether the concept of "change of opinion" stands obliterated with effect from 1st April, 1989, i.e., after substitution of Section 147 of the Income Tax Act, 1961 by Direct Tax Laws (Amendment) Act, 1989?

3. To answer the above question, we need to note the D changes undergone by Section 147 of the Income Tax Act, 1961 [for short, "the Act"]. Prior to Direct Tax Laws (Amendment) Act, 1987, Section 147 reads as under:

"Income escaping assessment.

E 147. If--

[a] the Income-tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return under section 139 for any assessment F year to the Income-tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

G [b] notwithstanding that there has been no omission or failure as mentioned in clause

(a) on the part of the assessee, the Income- tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped

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assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in sections 148 to 153 referred to as the relevant assessment year)." A B

4. *After enactment of Direct Tax Laws (Amendment) Act,* 1987, i.e., prior to 1st April, 1989, Section 147 of the Act, reads as under:

"147. Income escaping assessment.-- If the Assessing Officer, for reasons to be recorded by him in writing, is of the opinion that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in Sections 148 to 153 referred to as the relevant assessment year)." C D E

5. *After the Amending Act,* 1989, Section 147 reads as under: F

"Income escaping assessment.

147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation G H

A allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year)."

B 6. On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, re-opening could be done under above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the Act [with effect from 1st C April, 1989], they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re-open the assessment. Therefore, post-1st April, 1989, power to re-open is much wider. However, one D needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. We must also keep in mind E the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of F the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible G material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, H 1987, Parliament not only deleted the words "reason to believe"

but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the Companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer. We quote hereinbelow the relevant portion of Circular No.549 dated 31st October, 1989, which reads as follows:

> "7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression `reason to believe' in Section 147.--A number of representations were received against the omission of the words `reason to believe' from Section 147 and their substitution by the `opinion' of the Assessing Officer. It was pointed out that the meaning of the expression, `reason to believe' had been explained in a number of court rulings in the past and was well settled and its omission from section 147 *would give arbitrary powers to the Assessing Officer* to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended section 147 to reintroduce the expression `has reason to believe' in place of the words `for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new section 147, however, remain the same."

For the afore-stated reasons, we see no merit in these civil appeals filed by the Department, hence, dismissed with no order as to costs.

D.G. Appeals dismissed.

A UNION OF INDIA & ANR.

v.

RAJA MOHAMMED AMIR MOHAMMAD KHAN

I.A. No. 47 and 48

In

B (Civil Appeal No. 2501 of 2002)

JANUARY 19, 2010

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

C *Mesne Profit – Claim for – Supreme Court by final order declaring the claimant to be successor of the estate of predecessor-Raja – Direction issued to the Custodian of Enemy Property to release the rents and profit collected after 5.4.2002 to the claimant – Also held that mesne profit prior* D *to that date to be claimed by resorting to the remedy of suit – Interlocutory applications filed before Supreme Court claiming the amount credited in the account of predecessor-Raja on 27.3.2002 – Held: Since the claim was for the period prior to 5.4.2002, claimant entitled to recover it by filing a suit – Enemy* E *Property Act, 1968.*

In the present appeal, Supreme Court held that the respondent was sole legal heir and successor to the properties of the Late Raja of Mahmudabad, which had been taken over by the Custodian of Enemy Property F **under the provisions of the Enemy Property Act, 1968. The court held that he could get *mesne profit* for the period i.e. till the passing of interim order on 5.4.2002 by filing a suit. Money received as rent or lease after 5.4.2002 was directed to be handed over to the respondent.** G **Appellant was also directed to handover possession of other properties to the respondent.**

From the records of the Custodian of Enemy Property, respondent came to know that an amount was

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credited to the account of the Late Raja on 27.3.2002. Respondent claimed remission of the amount to his credit. The same was refused. Hence the present applications were filed by the respondent for a direction to the appellant and the Custodian of Enemy Property, to release the amount to his credit.

Dismissing the applications, the Court

HELD: 1. A conscious distinction with regard to the rents and profits collected from the estate prior to 5.4.2002 and thereafter, had been made by this Court while disposing of the appeal. It was clearly the intention of the Court that in respect of rents and profits collected after the order of *status-quo* passed on 5.4.2002, the same were to be made over by the Custodian to the applicant, but as far as the rents and profits collected prior to that date were concerned, the applicant would be required to file a suit to recover the same. [Para 14] [781-F-H; 782-A]

2. The directions given to the appellants to hand over the possession of other properties, mentioned in the second part of the order relates to the immovable properties of the estate and not to the rents and profits collected by the Custodian from the estate prior to 5.4.2002. The two sets of properties are dealt with separately and are on two different settings. [Para 15] [782-E-F]

3. Since the amount recorded in the Custodian's ledger as being credited to the Estate of Raja of Mahmudabad represents the collections made from the estate prior to the order of status-quo passed on 5.4.2002, the respondent has been given leave to recover the same by filing a suit. In view of the said order passed by this Court, it cannot be said that the directions to make over the possession of other properties to the applicant also included the rents and profits collected from the estate prior to 5.4.2002. [Para 15] [782-G-H; 783-A]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2501 of 2002.

I.A. Nos. 47 & 48

In

B Civil Appeal No. (s) 2501 of 2002.

From the Judgment & Order dated 21.09.2001 of the High Court of Judicature at Bombay in Writ Petition No. 1524 of 1997.

C Indira Singh, ASG, Naresh Kaushik, Subhash Kaushik, A.K. Sharma, Aditi Gupta, Lalitha Kaushik, Shreekant N. Terdal for the Appellants.

P.V. Kapur, S.K. Dwivedi, Anjali K. Varma, Meera Mathur,
D Niraj Gupta, Chetna Gulati, Shail Kumar Dwivedi, Subhash Chandra Jain, Shrish Kumar Misra, Gunnam Venkateswara Rao, R.K. Gupta, Manoj Kumar Dwivedi, G.V. Rao for the Respondent.

E The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. These two I.A. Nos.47 and 48 of 2008 have been filed on behalf of the Respondent in connection with Contempt Petition No.87 of 2006 filed in Civil Appeal No.2501 of 2002, inter alia, for a direction upon the Union of
F India, and the Custodian of Enemy Property to release to the Respondent a sum of Rs.1,77,38,828.11, being held by the said Custodian on account of the Estate of the Raja of Mahmudabad.

G 2. It may be recalled that in Writ Petition No.1524 of 1977 filed by the applicant herein, Raja Mohammed Amir Mohammad Khan, (Raja MAM Khan for short), the Bombay High Court, while allowing the writ petition, had directed the return of the properties of the Raja of Mahmudabad to the
H applicant. The decision of the Bombay High Court was

challenged by the Union of India in this Court in Civil Appeal No.2501 of 2002, which was disposed of on 21.10.2005, *inter alia*, with the following directions :

> "The High Court had refused to grant the mesne profits to the respondents, against the aforesaid finding no appeal has been filed by the respondent. Since no appeal has been filed, the appellants are not entitled to the mesne profits till the passing of the interim orders of status quo by this Court on 5.4.2002. The respondent would be entitled to the actual mesne profits by filing a suit, if so advised for this period. However, whatever moneys have been collected by the appellants by way of rent or lease etc. after 5.4.2002, till the handing over of the possession of these properties to the respondent be deposited/ disbursed to the respondent within 8 weeks.
>
> The appellants are directed to get the buildings (residence or offices) vacated from such officers and handover the possession to the respondent within eight weeks. Similarly, appellants are directed to handover the possession of other properties as well. The officers who are in occupation of the buildings for their residence or for their offices are also directed to immediately vacate and handover the buildings or the properties to the Custodian to enable him to handover the possession to the respondent in terms of the directions given. Failure to comply with the directions to handover the possession within 8 weeks will constitute disobedience of this order and the appellants would be in contempt of this order. Respondent would be at liberty to move an application in this Court if the above directions are not complied with for taking appropriate action against the appellants or their agents. Since the appellants have retained the possession of the properties illegally and in a high handed manner for 32 years the appeal is dismissed with costs which are assessed at Rs. 5 lacs."

A 3. In I.A. No. 47 it has been stated that when the properties were taken over by the Custodian, the amounts due and payable by the various occupants were collected by the office of the Custodian and credited to the account of the Estate of Mahmudabad in the Ledger of the Custodian maintained in his B office at Mumbai. In view of the judgments of the Bombay High Court and this Court, holding the applicant to be the sole legal heir and successor of the Late Raja of Mahmudabad, he had succeeded to the properties belonging to the late Raja which had been taken over by the Custodian of Enemy Property under C the provisions of the Enemy Property Act, 1968. It has further been contended that it could not, therefore, be disputed that the applicant is entitled to the moneys standing to the credit of the Estate of Mahmudabad in the Ledger Account maintained by the Custodian of Enemy Property.

D 4. According to the applicant, after continuous efforts, a copy of the Ledger Account was supplied to him in the month of December, 2007, by the office of the Custodian of Enemy Property and on perusal of the same it was discovered that a sum of Rs.1,77,38,828.11 stood credited to the account of the E applicant as on 27.3.2002. On coming to know of the above, the applicant requested the Custodian by his letter dated 27.12.2007, to remit the amount which stood to his credit in the Ledger maintained by the office of the Custodian.

5. As no response was received to the said letter, another F letter was issued to the Custodian on 6.2.2008, and in his reply the said Custodian replied that there was no provision in the Enemy Property Act, 1968, to refund any amount received from Enemy Property. In response it was also indicated clearly that no amount was admissible to the applicant by way of refund.

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6. It is on account of such response from the Custodian of Enemy Property that I.A.No.47 of 2008 was filed for the reliefs which are indicated in the prayer.

7. Appearing for the applicant, Mr. P.V. Kapur, learned H Senior Advocate, submitted that after the clear and

unambiguous directions given by this Court in its judgment dated 21.10.2005 in Civil Appeal No.2501 of 2002, there could be no justification for the Custodian of Enemy Property to object to making over of the moneys collected by him on account of rents and profits to the applicant. Mr. Kapur submitted that the intent of the order of this Court was very clear that on being found to be the sole legal heir of the Raja of Mahmudabad, the applicant was entitled to his entire estate, which included all amounts which had been collected from the properties of the Estate and credited to the account of the Estate in the Ledger maintained by the office of the Custodian of Enemy Property.

8. As an alternate submission Mr. Kapur urged that in addition to the directions contained regarding disbursement to the applicant of the amount collected by the appellant by way of rent or lease after 5.4.2002 till the handing over of the possession of the properties to the applicant this Court had also directed the appellants to get the immovable properties of the Estate vacated and to hand over the possession of the same to the respondent/applicant within 8 weeks. *The appellants were also directed to handover the possession of the other properties as well.* (Emphasis supplied)

9. Mr. Kapur submitted that under the general directions given by this Court in respect of properties belonging to the Estate of Mahmudabad, which included the amount held by the Custodian on account of rents collected from the Estate of the Raja of Mahmudabad prior to 5.4.2002, the said Custodian and the Union of India were bound to make over the said amount collected by the Custodian to the applicant.

10. Resisting the application filed on behalf of the respondent Mr. MAM Khan, the learned Additional Solicitor General, Ms. Indira Jai Singh submitted that in view of the categorical direction given in the order of 21.10.2005 passed by this Court, the question of making payment of the amount in question to the respondent did not arise. Ms. Jai Singh submitted that this Court had recorded the fact that the High

A Court had refused to grant mesne profits to the appellant and against that decision no appeal had been filed by him. Consequently, the applicant was not entitled to the mesne profits till the passing of the interim order of status quo by this Court on 5.4.2002. In the said order this Court went on to say B that the applicant would be entitled to the actual mesne profits for the period prior to the passing of the interim order of status quo by filing a suit. However, whatever moneys that had been collected by the appellant by way of rents after 5.4.2002 till the handing over of the possession of the properties to the C applicant, should be deposited/disbursed to the respondent within 8 weeks. Ms. Jai Singh submitted that the rents collected from the said properties after 5.4.2002 till the handing over of the possession of the properties to the applicant, had already been disbursed to him as directed. However, since other than D the directions for recovery of mesne profits for the period prior to 5.4.2002 no other direction had been given by this Court for disbursement of the rents and profits from the said Estate prior to 5.4.2002, the claim of the applicant was misconcieved. Ms. Jai Singh contended that if it had been the intention of this Court that the applicant would be entitled even to the rents and profits E prior to 5.4.2002, then it would have given a clear direction for payment of the entire amount to the applicant.

11. As to the alternate submission of Mr. Kapur, the learned ASG urged that in view of what has been stated hereinabove, F it could not have been the intention of this Court to release the entire sum of Rs.1,77,38,828.11 being the amount of the rents and profits collected from the Estate of the Raja prior to 5.4.2002. Ms. Jai Singh submitted that the claim of the applicant was misconceived in view of the directions contained in the G Judgment of this Court dated 21.10.2005.

12. In addition to her aforesaid submissions, Ms. Jai Singh also urged that neither of the two applications were maintainable since the appeal and the contempt petition in which they have been filed have already been disposed of H

earlier. Ms. Jai Singh submitted that having disposed of the appeal and the contempt petition, this Court had become functus officio and was bereft of jurisdiction for passing orders on the said two applications which are not in the nature of consequential reliefs being claimed from the disposed of matters but substantive applications raising substantial claims, de hors the reliefs prayed for in the appeal and the contempt petition. Ms. Jai Singh referred to various decisions on the question of the maintainability of applications filed in concluded proceedings, which we may refer to if it becomes necessary to do so.

13. Replying to Ms. Jai Singh's submissions, Mr. Kapur submitted that the answer to the question as to what is to be done in regard to the rents and profits collected prior to 5.4.2002, is clearly provided in Section 18 of the Enemy Property Act, 1968, which provides that the Central Government may by general or special order, direct that any enemy property vested in the Custodian under this Act and remaining with him shall be divested from him and be returned, in such manner as may be prescribed, to the owner thereof or to such other person as may be specified in the direction and thereupon such property shall cease to vest in the Custodian and shall revest in such owner or other person. It was submitted that there was neither any legal nor moral justification for the Custodian to hold on the said amount lying to the credit of the Estate of the Raja of Mahmudabad which had devolved upon the applicant as held by the Bombay High Court and confirmed by this Court.

14. On a careful consideration of the submissions made on behalf of the respective parties, we are of the view that a conscious distinction with regard to the rents and profits collected from the Estate of Raja of Mahmudabad prior to 5.4.2002 and thereafter, had been made by this Court while disposing of Civil Appeal No.2501 of 2002 on 21st October, 2005. It was clearly the intention of the Court that in respect of rents and profits collected after the order of status-quo passed

A on 5th April, 2002, the same were to be made over by the Custodian to the applicant, but as far as the rents and profits collected prior to that date were concerned, the applicant would be required to file a suit to recover the same. We have been informed that, in fact, such a suit has been filed by the applicant
B and the same is pending decision.

15. Notwithstanding the use of the expression "mesne profits" in the first pat of the directions given by this Court, what was intended was that all rents and profits collected in respect of the Estate of Raja of Mahmudabad prior to the order of
C status-quo passed on 5th April, 2002, would have to be treated separately and not with the other collections made from the estate. The use of the expression "mesne profits", in our view, would cover all the monies received by the Custodian for the period prior to 5th April, 2002, and would, thereafter, be
D covered by the aforesaid order of this Court directing the appellant to release to the respondent the sum of Rs.1,77,38,828.11 held by the Custodian to the credit of the Estate of Raja of Mahmudabad. The interpretation sought to be given to the second part of this Court's order extracted
E above, will not include handing over of possession of the rents and profits prior to 5.4.2002, which had been excluded in the previous paragraph of the judgment of this Court. In our view, the directions given to the appellants to hand over the possession of other properties, mentioned in the second part
F of the order extracted hereinabove, relates to the immovable properties of the estate and not to the rents and profits collected by the Custodian from the estate prior to 5.4.2002. The two sets of properties are dealt with separately and are on two different settings. Mr. Kapur's attempt to include both the movable and
G immovable properties of the Estate of Raja of Mahmudabad is misconceived and is not acceptable. Since the amount recorded in the Custodian's ledger as being credited to the Estate of Raja of Mahmudabad represents the collections made from the estate prior to the order of status-quo passed on 5th
H April, 2002, the Respondent has been given leave to recover

the same by filing a suit. In view of the said order passed by this Court, it can no longer be argued that the directions to make over the possession of other properties to the applicant also included the rents and profits collected from the estate prior to 5.4.2002. A

16. We are not, therefore, inclined to allow I.A. Nos.47 and 48, which are, accordingly, dismissed. The applicant will be free to pursue his claim for the said amount of Rs.1,77,38,828.11 before the Civil Court. B

17. There will, however, be no order as to costs. C

K.K.T. Applications dismissed.

A MAHESH RATILAL SHAH

v.

UNION OF INDIA AND ORS.

(Special Leave Petition (C) No. 21686 of 2006)

JANUARY 19, 2010

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[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

Securities Contracts (Regulation) Act, 1956:

C *s.4 – Absence of publication of the Rules and Bye-laws of the Bombay Stock Exchange, framed prior to its recognition in 1956 under the Act would not render its activities illegal and without authority.*

ss.7 and 9 – Non-compliance of – Listing of fake and D *bogus shares – Petitioner's allegation that Bombay Stock Exchange (BSE) acted contrary to the interest of the securities market and investors in listing the share scrips of a company involved in fraudulent dealing of its scrip – Held: There is nothing to establish any ulterior motive on the part of BSE in* E *listing the said scrip – The said scrip was listed on BSE after it had been listed in the Stock Exchange at Ahmedabad – However, as soon as information was received that the said company was involved in fraudulent dealing of its scrip, the said scrip was delisted and debarred from trading by the BSE* F *– Thus, no offence committed by BSE or its members.*

The case of the petitioner was that BSE and its members induced him to buy 4,50,800 shares of "Presto Finance Ltd." and under the assurance of BSE, he G **deposited the entire purchase amount, amounting to Rs.71.19 lacs. Petitioner's further case was that BSE and its members intentionally and deliberately cheated him by giving him delivery of forged share certificates and refused to cancel the said dealing when the same was**

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discovered and instead asked the petitioner to go to the Liquidator of Presto Finance Ltd. for claiming damages. He filed a writ petition before High Court under Article 226 of the Constitution for a direction upon the Union of India and SEBI to withdraw the recognition granted to BSE for alleged non-compliance with the provisions of Sections 7 and 9 of the Securities Contracts (Regulation) Act, 1956. A further direction was also sought for cancellation of SEBI registration of all relevant 90 members of BSE for fraudulently inducing investors to trade in forged scrips of M/s Presto Finance Ltd. and to declare the Rules, Bye-laws and Regulations of the BSE as illegal, void and *ultra vires* the 1956 Act as also the Constitution of India. High Court summarily dismissed the writ petition holding that action was initiated against the Company as far back as in 1998-99 under Section 11B of the SEBI Act and SEBI came to a finding that all the Directors of the Company were guilty of dealing in fake and bogus shares and cheating the investing public at large. The High Court also observed that the market regulator took due steps in the matter of individual transactions and the remedy of the petitioner, who was aggrieved by the acts of the promoters of the company in question, as well as its Directors, would be in approaching the appropriate Court to initiate criminal prosecution against the offenders. The High Court also noted that no material was produced by the petitioner for issuing directions for de-recognition of the BSE or to declare its Rules, Bye-laws and Regulations to be illegal, void and *ultra vires.*

The questions which arose for consideration in the present SLP were whether in the absence of publication of the Rules and Bye-laws of the Bombay Stock Exchange, which had been framed prior to its recognition in 1956 under the 1956 Act, its activities could be said to be without authority and whether in listing the shares of

A M/s. Presto Finance Ltd. on the Stock Exchange, the Bombay Stock Exchange had acted in a manner which failed to ensure fair dealing and to protect the investors.

Dismissing the Special Leave Petition, the Court

B HELD: 1. The petitioner did not make out any case of *malafides* or irregularity on the part of the Bombay Stock Exchange with regard to the listing and subsequent de-listing of the scrip of M/s Presto Finance Ltd. The publication of the Rules and Bye-laws of the C Stock Exchange was not intended in the Securities Contract (Regulation) Act, 1956, as otherwise some provision would have been made in the Act with regard to pre-recognition Rules and Bye-laws. While the Act provides for publication of amendments to the Rules and D Bye-laws after grant of recognition, the Act is silent with regard to the publication of the pre-recognition Rules or Bye-laws which were already in existence and had been acted upon all along. [Para 25] [799-G-H; 800-A-C]

E 2. The scrip of M/s. Presto Finance Ltd. was listed on the Bombay Stock Exchange after it had been listed in the Stock Exchange at Ahmedabad. However, as soon as information was received that the said company was involved in fraudulent dealing of its scrip, again on intimation from the Ahmedabad Stock Exchange, the said F scrip was delisted and debarred from trading by the BSE. The Bombay Stock Exchange had not acted in a manner which tended to promote the share scrip of M/s. Presto Finance Ltd. with any *malafide* motive. That apart, the delay of 10 years in approaching the High Court over the G transactions in the said scrip cannot be ignored since, a long standing decision should not be easily interfered with, having regard to the fact that over the years, people have already settled their business in accordance therewith. Except for the bald allegations that the H Bombay Stock Exchange had acted in a manner which

was contrary to the interest of the securities market and investors in listing the share scrips of M/s. Presto Finance Ltd. for trading, there is nothing else to establish any ulterior motive on the part of the Stock Exchange in listing the said scrip and, in fact, in terms of remedial measures the Stock Exchange also invited all those who had been given forged scrips, to submit the same to the Stock Exchange for further action. [Para 22] [798-B-G]

Raj Narain Pandey & Ors. v. Sant Prasad Tewari & Ors. **(1973) 2 SCC 35, relied on.**

3. Since the said Rules and Bye-laws had been in existence from long before the enactment of Securities Contracts (Regulation) Act, 1956 and the grant of recognition to the Stock Exchange, the same did not require publication in terms of Section 4 of the 1956 Act. All amendments to the Rules and Bye-laws made after grant of recognition had been duly published in the Gazette. [Para 23] [798-H; 799-A-B]

Ritesh Agarwal v. SEBI (2008) 8 SCC 205; *Stock Exchange, Mumbai v. Vijay Bubna & Ors.* **1999 (2) LJ 289;** *Dr. Indramani Pyarelal Gupta & Ors. v. W.R. Natu & Ors.* **AIR 1964 SC 274;** *V.V. Ruia v. S. Dalmia* **AIR 1968 Bombay 347, referred to.**

4. Even if the 1956 Act did not contemplate publication of the pre-recognition Rules and Bye-laws, the position is and would continue to be rather ambivalent if the amended Rules and Bye-laws were published in the Official Gazette while the main Rules and Bye-laws remain unpublished. It may, therefore, be in the fitness of things to have the said Rules and Bye-laws also published in the Official Gazette and the State Gazette to prevent questions similar to those raised in this Special Leave Petition from being raised in future. [Para 27] [800-D-E]

A **Case Law Reference :**

(2008) 8 SCC 205	**referred to**	**Para 8**
1999 (2) LJ 289	**referred to**	**Para 12**
B **AIR 1964 SC 274**	**referred to**	**Para 12**
AIR 1968 Bombay 347	**referred to**	**Para 12**
(1973) 2 SCC 35	**relied on**	**Para 15**

CIVIL APPELLATE JURISDICTION : SLP (Civil) No. C 21686 of 2006.

From the Judgment & Order dated 01.03.2006 of the High Court of Bombay at Mumbai in Civil Writ Petition (Lodg.) No. 429 of 2006.

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Manohar Lal Sharma, Mushtaq Ahmad for the Petitioner.

Shyam Diwan, Pratap Venugopal, Deepti, Purushottam Jha, Angely Anta (for K.J. John & Co.) Jaideep Gupta, Suruchii Aggarwal, Anish KV for the Respondents.

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The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Claiming to be a Sub-broker with one Yogesh B. Mehta, a Member of the Bombay Stock Exchange (hereinafter referred to "BSE"), the petitioner herein F filed a writ petition before the Bombay High Court under Article 226 of the Constitution against the Union of India, the Securities and Exchange Board of India (hereinafter referred to as the "SEBI") and the BSE, inter alia, for a direction upon the Union of India and SEBI to withdraw the recognition granted to BSE G for alleged non-compliance with the provisions of Sections 7 and 9 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "the 1956 Act"). A further direction was also sought for for cancellation of SEBI registration of all

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relevant 90 members of the Stock Exchange for fraudulently inducing investors to trade in forged scrips of M/s Presto Finance Ltd. and to declare the Rules, Bye- laws and Regulations of the BSE as illegal, void and ultra vires the 1956 Act as also the Constitution of India. Various ancillary and interim reliefs were also prayed for connected with the main reliefs.

2. The case of the Petitioner is that he had been induced by the BSE and its Members to buy 4,50,800 shares of "Presto Finance Ltd." and under the assurance of the Exchange, he had deposited the entire purchase amount, amounting to Rs.71,19,817.30 with the Exchange. It is the Petitioner's further case that the Exchange and its Members had intentionally and deliberately cheated him by giving him delivery of 1,56,100 forged share certificates and refused to cancel the said dealing when the same was discovered and instead asked the Petitioner to go to the Liquidator of Presto Finance Ltd. for claiming damages.

3. Appearing in support of the Special Leave Petition, Mr. Manohar Lal Sharma, learned Advocate, submitted that the SEBI as a statutory body established under Section 3 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "SEBI Act"), was empowered under Section 11 of the Act to protect the interests of the investors in securities and to promote the development of and to regulate the securities market by such measures as it thought fit for prohibiting fraudulent and unfair trade practice relating to the securities market.

4. Mr. Sharma further submitted that the BSE is a body of individuals which has been granted recognition as a "Stock Exchange" under Section 4 of the 1956 Act, subject to the provisions of Section 9 thereof, to function as a Stock Exchange in Bombay. Under Section 12 of the SEBI Act, SEBI has granted registration to the Members of the BSE to deal in the securities market in the country within the ambit of the said Act

A and the Regulations made thereunder. Mr. Sharma submitted that the main object of the BSE is to protect the interests both of the brokers and dealers and of the public interested in securities. Rules, Bye-laws and Regulations had, therefore, been framed by the BSE for trading and settlement of shares
B through the BSE terminal. Mr. Sharma submitted that the said Rules, Bye-laws and Regulations were contrary to the provisions of the 1956 Act, and were, therefore, void and ultra-vires the Act and the Constitution. The Writ Petitioner had, therefore, been compelled to move the High Court in its writ
C jurisdiction, inter alia, for the reliefs indicated hereinabove.

5. Referring to the Prospectus of M/s Presto Finance Ltd., Mr. Sharma pointed out that since it had been indicated out therein that the shares of Presto Finance Ltd. were to be listed both on the Regional Exchange at Ahmedabad and in the BSE,
D the Petitioner and other investors were induced into investing in the shares of the company which were ultimately de-listed from trading in both the Stock Exchanges on account of fraudulent dealings, which left the Petitioner holding a large number of forged shares traded by the Company from the BSE.
E Mr. Sharma urged that the BSE had completely failed to protect the interests of the investors as it was bound to do under Section 4 of the 1956 Act.

6. Mr. Sharma contended that the very existence of the
F BSE and its activities must be held to have been vitiated from its very inception since it had failed to comply with the provisions of Section 4 of the Act of 1956 relating to grant of recognition to Stock Exchanges by the Central Government and, in particular, Sub-section (3) thereof, which reads as follows :-

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> "4(3). Every grant of recognition to a Stock Exchange under this section shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the Stock Exchange is situate, and such recognition shall have effect as from the date of its
H publication in the Gazette of India."

7. Mr. Sharma submitted that since the recognition granted to BSE has neither been published in the Gazette of India or in the Official Gazette of the State, such recognition did not have any effect at all and in addition to the above, ever since its recognition, the BSE has not also complied with the provision of Section 9 of the aforesaid Act and framed Byelaws for the regulation and control of contracts with the previous approval of SEBI. It was submitted that Sub-section (4) of Section 9 also provides for publication of the Byelaws and reads as follows :-

> "9(4). Any Bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed and when approved by the Securities and Exchange Board of India in the Gazette of India and in which the principal office of the recognised Stock Exchange is situate, and shall have effect as from the date of its publication in the Gazette of India:
>
> Provided that if the Securities and Exchange Board of India Government is satisfied in any case that in the interest of the trade or in the public interest any Bye-law should be made immediately, it may, by order in writing specifying the reasons therefor, dispense with the condition of previous publication."

8. Referring to the decision of this Court in *Ritesh Agarwal vs. SEBI* [(2008) 8 SCC 205], wherein the question as to whether proceedings should also be taken against minors in view of Section 11 of the Contract Act, 1872, was under consideration, this Court held that since the father of the minors had committed fraud in their names, it is he who should have been proceeded against. Mr. Sharma urged that once it was shown that a promoter had committed fraud, as in this case, in listing its shares with the Exchange, thereby inducing investors to invest in such shares, it must be held that the Exchange had failed to comply with the provisions of clause (a) of Sub-section (1) of Section 4 of the 1956 Act, which makes it mandatory that

A the Rules and Byelaws of a Stock Exchange have to be in conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors. [Emphasis supplied]

B 9. On behalf of BSE, Mr. Shyam Diwan, learned Senior Advocate, submitted that all Stock Exchanges, including the BSE, acted on the basis of information received from other Stock Exchanges in the country. In the instant case, since the Scrip of Presto Finance Ltd. had been listed for trading on the Ahmedabad Stock Exchange, the same were also listed for C trading on the Bombay Stock Exchange, but as soon as information of fraud was received from the former Stock Exchange, BSE immediately stopped trading in the said Scrip. Mr. Diwan submitted that it was required to be noted that the Petitioner had approached the Court ten years after the D incident, which in itself, was sufficient ground for dismissal of the Writ Petition.

10. Mr. Diwan submitted that the BSE had been established in 1875 as "The Native Shares and Stock Brokers E Association" and was the first Stock Exchange in the country which obtained permanent recognition in 1956 from the Government of India under the 1956 Act and had played a pivotal role in the development of the Indian Capital Market. The recognition granted to the BSE was duly published by the F Ministry of Finance, Government of India, in its Stock Exchange Division in the Gazette of India dated 31st August, 1957. Thereafter, the Stock Exchange Rules, Bye-laws and Regulations were framed in 1957 and advance print of the same, together with all amendments up to date, was sent to the Government of India. Receipt and approval of the same by G the Government of India under the 1956 Act was also conveyed to the Secretary of the Stock Exchange by the Deputy Secretary in the Ministry of Finance, Department of Economic Affairs, by his letter dated 1st May, 1959. Mr. Diwan submitted that the Rules, Regulations and Bye-laws of the Bombay Stock H

Exchange had been acted upon since they were framed and the Petitioner also claims to have traded on the Stock Exchange as a Sub-broker through Yogesh Mehta, said to be a member of the Stock Exchange. Mr. Diwan submitted that when the Rules, Bye-laws and Regulations had been continuously acted upon for more than 50 years, it would be inequitable to hold that the same were not valid on account of non-publication in the Official Gazette or the Gazette of India in terms of Sub-section (4) of Section 9 of the 1956 Act.

11. Mr. Diwan then urged that the scheme of Section 4 of the 1956 Act relating to grant of recognition to Stock Exchanges, makes it clear that before such grant of recognition, the Central Government has to be satisfied that the Rules and Bye-laws of the Stock Exchange applying for registration were in conformity with such conditions as might be prescribed with a view to ensuring fair dealing and to protect investors. Mr. Diwan submitted that under Section 9 of the 1956 Act the recognized Stock Exchange is required to make Bye-laws for the regulation and control of contracts and any Bye-laws made under the said section would be subject to such conditions in regard to previous publication as may be prescribed, and, when approved by SEBI, is to be published in the Gazette of India and also in the official Gazette of the State in which the principal office of the recognized Stock Exchange is situate, and shall have effect as from the date of its publication in the Gazette of India.

12. Mr. Diwan reiterated that it would be amply clear from the above that the Rules and Bye-laws framed by the Stock Exchange before grant of recognition under Section 4 were not required to be published in the manner indicated in Sub-Section (3) of Section 4 of the 1956 Act. Mr. Diwan submitted that only amendments effected to the Rules and Bye-laws after grant of recognition would require publication as provided for in Sub-Section (4) of Section 9 of the above Act. Mr. Diwan also urged that since the BSE had been functioning as perhaps the

most important Stock Exchange in India, since it was granted permanent recognition in 1956, its performance over the past 33 years cannot be diluted and has to be taken into consideration while considering the case sought to be made out by the Petitioner. Learned counsel submitted that, although, the question now sought to be raised had not at any point of time been raised in this Court, the same question did arise before the Bombay High Court in Appeal No.1101/98 arising out of Arbitration Petition No.130/98, *Stock Exchange, Mumbai vs. Vijay Bubna & Ors.*, reported in 1999 (2) LJ 289. In the said decision, where the primary issue was whether an Arbitral Tribunal constituted under the Bye-laws framed by the BSE under the 1956 Act was in contravention of the provisions of Section 10 of the Arbitration and Conciliation Act, 1996, the question arose as to whether the said Bye-laws of the BSE required publication in the Official Gazette. Upon construction of the provisions of the Bye-laws of the BSE and the decision of this Court in *Dr. Indramani Pyarelal Gupta & Ors. Vs. W.R. Natu & Ors.* [AIR 1964 SC 274], the High Court held that the Bye-laws of the BSE were subordinate legislation and that the same were statutory in nature having the force of enactment within the meaning of Sub-Section (4) of Section 2 of the Arbitration and Conciliation Act, 1996. Mr. Diwan drew our attention to paragraph 42 of the judgment in which reference was made to another decision of the Bombay High Court in the case of *V.V. Ruia vs. S. Dalmia* [AIR 1968 Bombay 347], where the question arose as to whether the Bye-laws of the BSE, which were made prior to its recognition under Section 4, needed publication under Sub-Section (4) of Section 9 of the 1956 Act. It was held that the Bye-laws made by the Bombay Stock Exchange prior to its recognition did not require publication in the Official Gazette, on account of the fact that for the purpose of obtaining recognition from the Central Government, the Stock Exchange was required to submit a copy of the Bye-laws and Rules and it is only after scrutiny thereof that recognition was granted under Section 4. It was also mentioned that if, after recognition, any subsequent Bye-

law was made under Section 9 of the Act, then, by virtue of Sub-Section (4) of Section 9 such a post-recognition Bye-law required publication.

13. Mr. Diwan then referred to the decision in *V.V. Ruia's* case (supra,) referred to by the Division Bench of the High Court in the aforesaid judgment, wherein it had been held that the Bye-laws made by the Stock Exchange prior to its recognition in 1956 did not require publication under Section 9(4) of the 1956 Act.

14. Mr. Diwan's next contention was that a procedure, which had been consistently followed over a long period, should not be interfered with except for very compelling reasons as that could otherwise lead to chaos and unsettle the position which had been settled over such period.

15. Referring to the Three-Judge Bench decision of this Court in *Raj Narain Pandey & Ors. Vs. Sant Prasad Tewari & Ors.* [(1973) 2 SCC 35], Mr. Diwan submitted that while interpreting the doctrine of stare decisis, this Court had held that a decision of long-standing on the basis of which many persons would, in the course of time, have arranged their affairs, should not lightly be disturbed by a superior court not strictly bound itself by the decision. It was further observed that in the matter of the interpretation of a local statute, the view taken by the High Court over a number of years should normally be adhered to and not disturbed. A different view would not only introduce an element of uncertainty and confusion, it would also have the effect of unsettling transactions which might have been entered into on the faith of those decisions. It was held that the doctrine of stare decisis can be aptly invoked in such a situation.

16. Apart from being guilty of delay and laches, Mr. Diwan submitted that the petitioner was himself in default, not being a registered sub-broker of the BSE, although, he claimed to be a sub-broker of Yogesh B. Mehta, a member of the Stock

A Exchange. Mr. Diwan submitted that the Special Leave Petition bristled with malice in law and was, therefore, liable to be dismissed with costs.

17. Mr. Jaideep Gupta, learned Advocate who appeared for SEBI, took us through the letter dated 1st August, 1996, B addressed on behalf of the Ahmedabad Stock Exchange to Shri L.K. Singhvi, Executive Director, SEBI, informing him of the Report of the Committee in the matter of Presto Finance Ltd. In the said letter it was indicated that based on a number of complaints received from the investors in the scrip of Presto C Finance Ltd., a Special Committee consisting of three members, including SEBI, and a nominated public representative, had been constituted and after inquiry it had recommended that the trading in the scrip of Presto Finance Ltd. should not be recommended and might be de-listed D permanently. Mr. Jaideep Gupta referred to the inquiry report of the Assistant Police Inspector, General Branch, Crime Branch, C.I.D., Mumbai, submitted to the learned Metropolitan Magistrate, 33rd Court, Ballard Estate, Mumbai, stating that the BSE had acted promptly and diligently to protect the interest E of the market and as such no offence had been committed by BSE and those who were involved in the transactions of the shares of Presto Finance Ltd. in 1996. It was stated that on the contrary, the complainant was not a registered sub-broker of the Bombay Stock Exchange and had himself violated the F provisions of Section 23(h) of the 1956 Act, as he had also dealt with the above transactions as sub-broker, without being registered with the BSE.

18. Mr. Gupta submitted that based on the complaints received from various investors relating to the issuance of fake G and forged share certificates of M/s. Presto Finance Ltd., the Stock Exchange, Ahmedabad, had constituted a Special Committee, as indicated hereinabove, and had found the Managing Director and other Directors of the company to be guilty of irregularities. Accordingly, in a proceeding under H

Section 11B of the SEBI Act, 1992, SEBI had taken stringent measures against the Managing Director and other Directors of the company for having received payments for issuance of fake and forged shares of the company. Mr. Gupta pointed out that on such finding, in the interest of investors in securities and the securities market, SEBI had debarred Shri Hitendra Vasa and the companies promoted by him and the group companies of M/s. Presto Finance Ltd., from accessing the capital market for a period of five years with effect from 22nd April, 1998.

19. Mr. Gupta submitted that as far as SEBI was concerned, on receipt of information about the fraudulent share scrips issued by M/s. Presto Finance Ltd., immediate steps had been by SEBI to have the share scrips of the said company de-listed from the Ahmedabad Stock Exchange as well as from the Bombay Stock Exchange.

20. Mr. Gupta submitted that no fault could be found with BSE in listing the shares of Presto Finance Ltd., since the same had been listed on the Ahmedabad Stock Exchange earlier, but as soon as information was received from the Ahmedabad Stock Exchange that there was an element of fraud involved, and the scrips had been delisted in the Ahmedabad Stock Exchange, BSE took immediate steps to delist the scrips and to close trading of the said shares in order to protect the securities market and the investors who traded in such securities. Mr. Gupta submitted that the entire allegations made by the petitioner against the Bombay Stock Exchange was devoid of any merit and did not warrant any interference in these proceedings.

21. As would be evident from the pleadings and submissions made on behalf of the respective parties, the main question which we are called upon to consider is whether in the absence of publication of the Rules and Bye-laws of the Bombay Stock Exchange, which had been framed prior to its recognition in 1956 under the 1956 Act, its activities could be said to be without authority. The further question which falls for

A consideration is whether it can be said, as has been urged on behalf of the petitioner, that in listing the shares of M/s. Presto Finance Ltd. on the Stock Exchange, the Bombay Stock Exchange had acted in a manner which failed to ensure fair dealing and to protect the investors.

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22. As we have noticed hereinbefore, the scrip of M/s. Presto Finance Ltd. was listed on the Bombay Stock Exchange after it had been listed in the Stock Exchange at Ahmedabad and on receipt of information thereof. However, as soon as information was received that the said company was involved C in fraudulent dealing of its scrip, again on intimation from the Ahmedabad Stock Exchange, the said scrip was delisted and debarred from trading by the BSE. In our view, the Bombay Stock Exchange had not acted in a manner which tended to promote the share scrip of M/s. Presto Finance Ltd. with any D malafide motive. Apart from the above, the delay of 10 years in approaching the High Court over the transactions in the said scrip cannot be ignored since, as observed by this Court in *Raj Narain Pandey's* case (supra) a long standing decision should not be easily interfered with, having regard to the fact that over E the years, people have already settled their business in accordance therewith. Except for the bald allegations that the Bombay Stock Exchange had acted in a manner which was contrary to the interest of the securities market and investors in listing the share scrips of M/s. Presto Finance Ltd. for F trading, there is nothing else to establish any ulterior motive on the part of the aforesaid Stock Exchange in listing the said scrip and, in fact, in terms of remedial measures the Stock Exchange also invited all those who had been given forged scrips, to submit the same to the Stock Exchange for further action.

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23. On the question of non-publication of the Bye- laws, we agree with the views of the Bombay High Court in *V.V. Ruia's* case (supra) that since the said Rules and Bye-laws had been in existence from long before the enactment of 1956 Act and the grant of recognition to the Stock Exchange, the same

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did not require publication in terms of Section 4 of the 1956 Act. In any event, as has been submitted by Mr. Diwan on behalf of the BSE, all amendments to the Rules and Bye-laws made after grant of recognition had been duly published in the Gazette.

24. Upon considering the case made out by the petitioner in the writ petition, the Bombay High Court held that the writ petition, which was lacking in particulars relating to the constitutional challenge, was not the appropriate remedy for the petitioner, who, along with a member of the Stock Exchange, had traded in the shares of the above-mentioned company. The High Court also observed that upon the complaints made to SEBI, action had been initiated against the Company as far back as in 1998-99 under Section 11B of the SEBI Act and SEBI had come to a finding that all the Directors of the Company, including one Hitendra Vasa, were guilty of dealing in fake and bogus shares and cheating the investing public at large. The High Court also observed that the market regulator had taken due steps in the matter of individual transactions and the remedy of the petitioner, who was aggrieved by the acts of the promoters of the company in question, as well as its Directors, would be in approaching the appropriate Court to initiate criminal prosecution against the offenders. Observing that it would not be appropriate to issue any blanket writ, as claimed by the Petitioner, when admittedly his case was restricted to dealing in shares of one of the companies listed at the Stock Exchange, the High Court summarily dismissed the writ petition. While doing so, the High Court also noted that no material had been produced by the petitioner for issuing directions for de-recognition of the BSE or to declare its Rules, Bye-laws and Regulations to be illegal, void and ultra vires.

25. Agreeing with the views expressed by the High Court, we are of the view that the Petitioner has not been able to make out any case of malafides or irregularity on the part of the Bombay Stock Exchange with regard to the listing and

A subsequent de-listing of the scrip of M/s Presto Finance Ltd. and we are also of the view that the publication of the Rules and Bye-laws of the Stock Exchange was not intended in the Securities Contract (Regulation) Act, 1956, as otherwise some provision would have been made in the Act with regard to pre-
B recognition Rules and Bye-laws. While the Act provides for publication of amendments to the Rules and Bye-laws after grant of recognition, the Act is silent with regard to the publication of the pre-recognition Rules or Bye-laws which were already in existence and had been acted upon all along.

C 26. In that view of the matter, we see no reason to interfere with the order of the Bombay High Court impugned in the present Special Leave Petition and the same is, therefore, dismissed, but without any order as to costs.

D 27. Before parting, we would, however, indicate that even if the 1956 Act did not contemplate publication of the pre-recognition Rules and Bye-laws, the position is and would continue to be rather ambivalent if the amended Rules and Bye-laws were published in the Official Gazette while the main Rules
E and Bye-laws remain unpublished. It may, therefore, be in the fitness of things to have the said Rules and Bye-laws also published in the Official Gazette and the State Gazette to prevent questions similar to those raised in this Special Leave Petition from being raised in future.

D.G. Special Leave Petition dismissed.