

**IN THE SPECIAL COURT AT BOMBAY**

*Constituted under the Special Court [Trial of Offences Relating to Transactions in Securities] Act, 1992*

**MISCELLANEOUS APPLICATION NO.12 OF 2021**

**ALONG WITH**

**MISCELLANEOUS APPLICATION NO.16 OF 2021**

**IN**

**MISCELLANEOUS PETITION NO.3 OF 1996**

Dhanraj Mills Pvt. Ltd. ....Applicant–Org. Resp. No.2  
*In the matter between*  
The Custodian ....Petitioner  
V/s.  
V. Krishnakant & Ors. ....Respondents

Mr. Mayur Khandeparkar, with Mr. Ish Jain, Ms. Radha Ved and Mr. Nipeksh Jain, i/by Kiran Jain & Co., for the Applicant–Original Respondent No.2.

Mr. J. Chandran, with Ms. Shilpa Bhate, i/by Leena Adhvaryu & Associates, for the Petitioner–Custodian.

Mr. Rashid Khan, with Ms. Dhanashree Gaikaiwari and Mr. Ayaz Bilawala, i/by Bilawala & Co., for Respondent No.1.

Mr. Gautam Mehta, with Mr. Virendra Pereira and Mr. Anagh Pradhan, i/by Divya Shah Associates, for Respondent No.4.

Mr. Limosin A. for Central Bureau of Investigation.

**CORAM : A.K. MENON, J.**

**JUDGE, SPECIAL COURT**

**DATE : 23<sup>RD</sup> JULY, 2021.**

**[THROUGH VIDEO CONFERENCE]**

**P.C. :**

1. Miscellaneous Petition No.3 of 1996 (**MP No.3**) is filed by the Custodian against one V. Krishnakant, Dhanraj Mills Private Ltd. (**DMPL**), T.B. Ruia (since

deceased) and one Suresh Jajoo who was added as a party–respondent by way of an amendment in 2001. DMPL and T.B. Ruia were notified parties. M/s. V. Krishnakant is a Partnership Firm. On behalf of DMPL, the Custodian seeks to recover a sum of Rs.2,28,58,274/- along with interest @ 24% p.a. from respondent no.1–V. Krishnakant. He also seeks deposit of the said amount in court. In the course of proceedings, respondent no.4 was impleaded.

2. In Miscellaneous Application No.12 of 2021, DMPL seeks issuance of witness summons to the Deputy Commissioner of Income Tax to produce certain documents, believed to be in the possession of the Income Tax Department. In Miscellaneous Application No.16 of 2021, DMPL seeks issuance of witness summons to the Central Bureau of Investigation to produce the very same documents. Both the applications were taken up for hearing together.

3. In support of the applications, Mr. Khandeparkar states that it is necessary for the applicant to establish its case by referring to certain documents, which have been seized by the CBI along with the Income Tax Department. After having written to the authorities, the applicant has only received a copy of the Cash Book for the year 1991–92 from the Income Tax Department. None of the other documents have been received. He therefore submitted that it is necessary to issue summons to the Deputy Commissioner of Income Tax to produce the remaining documents. In SPMA/16/2021, for the

same reasons as in SPMA/12/2021, the applicant seeks issuance of witness summons to the CBI.

4. Mr. Khandeparkar submitted that unless these documents are forthcoming, the applicant's case will be prejudiced. He has invited my attention to the letter dated 19<sup>th</sup> October 2018 written by the applicant's Advocates to the Income Tax Department and the letter dated 24<sup>th</sup> April 2021 written to the CBI. He has also invited my attention to the Search List prepared by the CBI enumerating items said to have been seized upon search being carried out in 1992. He has then invited my attention to certain items in the list which are said to be the documents that are now sought to be produced by the witness. He therefore urged the court to allow both these applications.

5. On behalf of respondent no.1, Mr. Khan supported the applicant. He submitted that he has no objection to the summons being issued and the documents being produced. Respondent nos.3(a) to 3(e) are not represented today. They are the heirs of erstwhile respondent no.3-T.B. Ruia. Their Advocate's name is appearing on board, but they have not been represented today. Mr. Chandran for the Custodian has submitted to the orders of the court.

6. Mr. Mehta on behalf of respondent no.4 firmly opposed both the

applications on the basis that this is nothing but a fishing enquiry. He pointed out and in my view correctly that both the applications are identical in terms of the documents of which DMPL seeks production. Inviting my attention to the averments in the applications, he submitted that the very same documents cannot be in the custody of both the Income Tax Department and the CBI. Specific reference is made to paragraph 4 of SPMA/12/2021, in which it is averred that the documents are *“till date in the custody of the Income Tax Department”*. In SPMA/16/2021, the very same documents are said to be *“till date in the custody of the CBI (Special Crime Branch)”*.

7. Thus, Mr. Mehta submitted that it is impossible for both the Income Tax Department and the CBI to have the originals. Besides, inviting my attention to the affidavit-of-documents filed on behalf of the applicant, Mr. Mehta pointed out that there were two affidavits filed on behalf of the applicant; the first is of one Narendra C. Dangarwala dated 13<sup>th</sup> August 1999, in which certain items are disclosed in Part-I of the Schedule annexed thereto, and the second affidavit dated 13<sup>th</sup> January 2003 is of Brijesh Khandelwal, both of which persons were directors of the applicant at the material time. The very same items are mentioned in Part-I of the Schedule in both affidavits. Mr. Mehta thus submitted that it is not possible to believe the averments of the applicant in the present applications since at-least some documents viz. original Ledger Account and

Cash Book for the year 1992-93 are said to be in the possession of the deponent or in the possession of the applicant, as stated in both the affidavits of documents.

8. According to Mr. Mehta what the Income Tax Department has provided on 20<sup>th</sup> December, 2018 is only a copy of the Cash Book for the year 1992-93. Even assuming that it has originals in its possession, there is no explanation why the applicant is today seeking production of original Ledger Account and Cash Book for the year 1992-93 from the Income Tax Department and/or the CBI. Those documents are referred to in paragraph 5, respectively, of these two applications and the documents include the original Ledger Account and Cash Book for the year 1992-93, which, according to the deponents of the affidavits-of-documents, are in possession of the applicant itself.

9. Mr. Mehta thus sought to establish that this is merely a fishing enquiry. Furthermore, Mr. Mehta submitted that the document said to have been received from the Income Tax Department is not a certified copy, since it does not bear any certification. The provisions of Order XII, Rule 7 of the Civil Procedure Code requires the respondent to file photocopies of all documents along with written statement, which has not been done. He has also invited my attention to the provisions of the Special Court's Act, particularly Section 9A(5)

and submitted that while dealing with claims under Section 9A, this court shall be empowered in the same manner as the civil court under the CPC while trying a suit. He submitted that these are not public documents or record of the public document, as contemplated under the Evidence Act. These are private documents which are sought to be relied upon and strict disclosure was called for since the affidavit-of-documents was filed. Even otherwise, Mr. Mehta submitted that absent a proper explanation as to the inconsistent contents of the applications, no relief should be granted. He therefore submitted that both the applications must be dismissed as a fishing enquiry.

10. I have heard learned counsel for the parties at length, especially in view of the strong opposition put up by Mr. Mehta. I have no doubt that both the applications are belatedly filed. Considering the arguments on legal aspects of the applications, I am unable to agree with Mr. Mehta that the disclosure under Order XII, Rule 7 of CPC was required to be made and in due time. The provisions referred to pertain to the Commercial Court and not a civil court, as contemplated under the Code of Civil Procedure. Moreover, Section 9A(4) of the Special Court's Act makes it clear that while dealing with cases under Section 9A(4), this court is not bound by the CPC, but would be guided on principles of natural justice and the rules of the Special Court. It is in this behalf that the regulations framed by the Special Court become relevant. Those rules are set out

in “Regulations Relating to Procedure for Civil Cases under Section 9A(4) of the Special Court’s Act, 1992” (“**Regulations**”). Some provisions of the CPC have been specifically adopted. Although Mr. Mehta submitted that in appropriate cases, provisions of the Code must be made applicable and as contemplated in the Regulations, I find that Regulation 16 requires a party relying on documents in the possession of and third party, including the Custodian, CBI or the Income Tax Department, to simultaneously file a pleading making a written application for production of those documents in the court for enabling inspection thereof and on such application, appropriate orders will be passed. A party is thus not excused from filing pleadings merely because the documents are in the possession of these three authorities. In my view, Regulation 16 does not appear to have been followed in letter. However, given that the parties must be given a full opportunity of presenting their case and thus respecting the rules of natural justice and on the facts of the present case, I am inclined to consider both the applications on merit.

11. On behalf of the Income Tax Department, Mr. Chatterji learned Senior Counsel, appears on notice and on behalf of CBI, Mr. Limosin likewise appears on notice. Mr. Chatterji submitted that the Income Tax Department has parted with whatever documents it had in its possession. He submitted that there are no documents with the department that conform to the description in the

applications. On behalf of the CBI, Mr. Limosin submitted that certain documents were in the possession of the CBI, in particular the Bank Statement filed for the year 1991-92, being item 77 in the List of Documents seized, State Bank of Hyderabad Cheque Record Slip for Account No.13427, being item no.116 collected during search. As far as Cash Books and Ledger Accounts for the years 1991-92 and 1992-93 are concerned, although these were seized at the relevant time, these documents had been tendered in court on 13<sup>th</sup> March 2003 pursuant to an order passed on 10<sup>th</sup> March 2003 in Miscellaneous Petition No.195 of 1995. Mr. Khandeparkar countered this submission by contending that the statement of the CBI does not appear to be correct since against the final order passed in MP No.195 of 1995, a Civil Appeal came to be filed in which the Supreme Court noted that the documents directed to be produced by the Special Court had not been filed.

12. That having been said, I was unable to fathom why the two applications are identical. My attention was invited to the Search and Seizure Report dated 23<sup>rd</sup> June 1992 and overleaf, the report records that the Income Tax Department was informed about the search and they also had come along with the party for necessary action being taken. According to Mr. Khandeparkar, the applicant was unsure in whose custody the documents now lie, with the CBI or with the Income Tax Department; thus, explaining why both the applications were filed.



13. Prima facie, it did appear that there is some confusion as to the custody of these documents; however, what is material is that a Search List is prepared by the CBI. The seizure is by a police officer acting under the provisions of Section 103 or 165 of the Cr.P.C. The search was conducted by the CBI pursuant to a search warrant issued by the Special Court. The presence of the Income Tax Department's personnel appears to be sought because certain jewellery was also found in a chamber at the site of the search. These were not seized by the CBI but the Income Tax Department was informed of the same for necessary action.

14. Items 69, 77 and 116 in the List of Documents appear to be the relevant documents of which production is now sought. The request for issuance of witness summons and the statement of Mr. Limosin on behalf of the CBI to the effect that certain documents had already been produced in the Special Court, caused me to enquire with the registry and upon a scrutiny of the record, I find that the versions of Mr. Limosin and that of Mr. Khandeparkar are not correct.

15. The record of this Court reveals that on 22<sup>nd</sup> December 2005, this court noted that pursuant to order of 10<sup>th</sup> July 2003, the CBI had submitted the documents in the office of the Special Court and respondent no.1 (*presumably Excel and Co.*) appears to have suppressed this fact from the Supreme Court. Thus, the order passed by the Supreme Court and referred to by Mr.

Khandeparkar does not record that the documents were deposited, as directed on 10<sup>th</sup> March 2003. The following documents were deposited by the CBI, but were later taken back :-

Sr.No.	Description of Documents
(i)	Cash Book – 1 of M/s. Dhanraj Mills Pvt. Ltd. from 1.4.91 to 31.3.92 covered upto 12 <sup>th</sup> March.
(ii)	Cash Book – 2 of M/s. Dhanraj Mills Pvt. Ltd. from 13.3.92 to 31.3.92.
(iii)	Ledger of M/s. Dhanraj Mills Pvt. Ltd. from 1.4.91 to 31.3.92.
(iv)	Journal of M/s. Dhanraj Mills Pvt. Ltd. from 1.4.91 to 31.3.92 (pg.no.1 to 8 written).
(v)	Cash Book of M/s. Dhanraj Mills Pvt. Ltd. from 1.4.92 to 31.3.93 (upto 30 <sup>th</sup> April 1992).
(vi)	Ledger of M/s. Dhanraj Mills Pvt. Ltd. for the period 1.4.92 to 31.3.93 (blank).
(vii)	Petty Cash Book of M/s. Dhanraj Mills Pvt. Ltd. for the period 1.4.92 to 18.6.92.
(viii)	Photocopy of Bank of Karad statement relating to M/s. Dhanraj Mills Pvt. Ltd., pages 1 to 82.
(ix)	Bank of Karad statement for 1990-91 to February 1992 regarding account of M/s. Dhanraj Mills Pvt. Ltd., pages – 1 to 109.

16. I am unable to accept Mr. Mehta's submissions that the applications are merely fishing enquiries and deserve dismissal. This is for the reason that in MP/195/1995, this court (S.H.Kapadia, J. as he then was), ordered filing of the original documents in court. CBI complied on 13<sup>th</sup> March 2003. A List of

Documents tendered in court was also submitted. To that extent, Mr. Limosin was correct in his submission that the CBI's record (a register entry) indicates that the documents were submitted in this court; however since he did not have an acknowledgment, further enquiries revealed that these documents are all returned to the CBI under an administrative order passed on 4<sup>th</sup> March 2014 with a direction to produce them as and when required. The CBI thereafter deputed an officer from its BS & FC Branch, Delhi, who collected the documents on 25<sup>th</sup> April 2014. Thus, the documents tendered in court were all returned to the CBI through its nominated officer, who has acknowledged receipt of the documents having collected the same from the registry of this court.

17. It was the applicant's duty to make a written application for production of documents when it filed its replies, which is evident from Regulation 16. Not having done so and since the Miscellaneous Petition No.3 of 1996 is to be heard on merit, I am of the view that the request of the applicant to the extent of production of these documents is liable to be allowed. However, it is now evident that none of these documents are with the Income Tax Department, which the applicant could have realized in revision and in my view, an order of costs would be justified. In these circumstances and considering the submissions of the CBI and the fact that possession of documents is now established, I pass the following order :-

- (i) SPMA/12/2021, seeing issuance of witness summons against the Income Tax Department, is dismissed.
- (ii) SPMA/16/2021 is allowed in terms of prayer clause (a).
- (iii) CBI is directed to produce originals of the documents listed above in this court by filing the same in the registry on or before 5<sup>th</sup> August 2021.
- (iv) Upon the documents being deposited, liberty is granted to the parties to take inspection in the registry. Inspection shall be completed on or before 9<sup>th</sup> August 2021.
- (v) Applicant–Dhanraj Mills Pvt. Ltd. to pay costs of Rs.20,000/- to each of the Respondents within two weeks from today. If costs are not paid within the stipulated time, the Miscellaneous Petition No.3 of 1996 is liable to be dismissed.
- (vi) List the Miscellaneous Petition No.3 of 1996 on 13<sup>th</sup> August 2021. No adjournment will be granted on that day.
- (vii) In view of this order, recording of evidence in Miscellaneous Petition No.3 of 1996 stands adjourned to 13<sup>th</sup> August 2021.
- (viii) Both the Miscellaneous Applications are disposed in the above terms.

[A.K. MENON, J.]