

**IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO
TRANSACTIONS IN SECURITIES) ACT, 1992
MISCELLANEOUS APPLICATION NO. 185 OF 2008
IN
MISCELLANEOUS APPLICATION NO. 343 OF 1994
IN
MISCELLANEOUS APPLICATION NO. 193 OF 1993**

The Custodian appointed under the Special Court (Trial of Offences relating to transactions in Securities Act, 1992) and having his office at 9th floor, Nariman Bhavan, Nariman Point, Mumbai-400 021

Applicant

Vs

- 1 Pallav Sheth, of Mumbai India
Inhabitant, residing at
"Greenfield", M. K. Road,
Churchgate, Mumbai-400 020

- 2 The Commissioner of Income Tax,
Central-III having his office at
Central Building C-10, 6th Fl.,
Pratyakshakar Bhavan, Bandra
Kurla Complex, Mumbai-400 051

- 3 Magan Hotels Private Ltd.
Having its office at 55-C,
Mittal Tower, Nariman Point,
Mumbai-400 021

- 4 Anzug Plastics (P) Ltd., having
its office at 55-C, Mittal Tower,
Nariman Point, Mumbai-400 021

- 5 Klar Chemicals (P) Ltd. having
its office at 55-C, Mittal Tower,
Nariman Point, Mumbai-400 021

- 6 Malika Foods (P) Ltd, having
its office at 55-C, Mittal Tower,
Nariman Point, Mumbai-400 021

- 7 Jainam Securities (P) Ltd, having
its office at 55-C, Mittal Tower,
Nariman Point, Mumbai-400 021

- 8 52 Weeks Entertainment Ltd
Acquacult Limited
3rd Floor, Pandey House,
49-B, August Kranti Marg
Mumbai

- 9 The Official Assignee
1st Floor, G. T. Hospital Compound,
D. N. Road, Mumbai-400 001

Respondents

Mr. Gandhar Raikar a/w. Ms. Shilpa Bhate i/b, Leena Adhvaryu & Associates
for the Applicant/Custodian.

Mr. Datta Pawar for the Respondent.

CORAM : A.K. MENON, J.
Judge, Special Court
Reserved on : 5th March, 2021
Pronounced on : 9th April, 2021

JUDGMENT

1. This Miscellaneous Application is filed by the Custodian for recovery of a sum of Rs. 50,00,000/- along with interest thereon @ 24% per annum or at such other rate this Court fixes from respondent no. 8. Respondent no. 8 was at all material times a Garnishee holding funds borrowed from respondent no.7 an entity said to be set up by respondent no. 1 – Pallav Sheth prior to his being adjudged insolvent on 5th November, 2003.

2. This application has a checkered history. The application was allowed and disposed vide order dated 12th August, 2010. Later respondent no. 8 filed a Miscellaneous Application no. 44 of 2018 claiming that Miscellaneous Application no. 185 of 2008 was not served upon them. They were not heard at the disposal of the application on 12th August, 2010 and seeking that a decree then passed be set aside. Respondent no. 8 had been served by substituted service and the decree passed as prayed in 16 (a) directing the respondent no. 8 to pay the aforesaid sum of Rs. 50,00,000/- along with interest thereon @ 24% per annum. In execution proceedings respondent no. 8 offered to deposit the principal sum of Rs. 50,00,000/-

without prejudice to its right and contentions. This sum was deposited in two instalments albeit with a default. The decree was set aside vide order dated 29th March, 2019 subject to the respondent no. 8 depositing the interest component. The operative portion of the order dated 29th March, 2019 passed in Miscellaneous Application no. 44 of 2018 reads as follows :

(i) Subject to deposit of interest equivalent to 12% on the principal sum of Rs. 50,00,000/- from 12th August, 2010 i.e. the date of the decree till date of this order within a period of 6 weeks from the date this order is uploaded, the decree will stand set aside with liberty to the applicants to file a reply .

(iii) In the event such deposit being made the applicant will be at liberty to file reply / written statement to MA/185/2008 within two weeks thereafter.

(iv) If no deposit is made within six weeks as aforesaid, this application shall stand dismissed without further orders of this Court and the Custodian may appropriate the principal sum of Rs. 50,00,000/- deposited with it along with interest towards part satisfaction of the decree.

(v) Application disposed of in the above terms.

(vi) No costs.

3. The principal sum being secured the decree was set aside on condition of deposit of interest on principal sum of Rs. 50,00,000/- @ 12% per annum. Respondent no. 8 filed a Civil Appeal in the Supreme Court being Civil Appeal No. 2106-2107 of 2001 which appeal came to be summarily dismissed vide order dated 10th August, 2001 . The Respondent thereafter filed

its reply. On 14th February, 2020 the name of the respondent was changed to 52 Weeks Entertainment Limited and that amendment was allowed. The Custodian has since filed his rejoinder. The matter is now called for final hearing and disposal.

A few facts are required to be set out prior to dealing with rival contention of the parties.

4. As stated above respondent no. 1 prior to his being adjudged insolvent was indebted to Fairgrowth Financial Services Limited (FFSL) and had suffered a decree. FFSL was notified under the Special Courts Act and thereupon all assets of FFSL stood attached with effect from 2nd July, 1992. Subsequently Pallav Sheth was also notified under the provisions of the Act with effect from 6th October, 2001. All his assets also stood attached. Respondent no. 1 being adjudged insolvent on 5th November, 2003 the Official Assignee took charge of his properties and they now vest in respondent no. 9.

5. A consent order enforceable as a decree had by then been passed against respondent no. 1 – Pallav Sheth on 24th February, 1994 in Miscellaneous Application no. 193 of 1993. An application was filed for executing that decree. Numerous orders are said to have been passed in execution but the amount outstanding and payable by respondent no. 1 as on 1st June, 1998 was in excess of Rs. 89,90,77,668/-. The Custodian believed

that respondent no. 1 in an attempt to avoid execution of the decree and recover of the balance sums had set up different entities viz. respondent nos. 3 to 7. It is in this scenario that the Custodian filed Garnishee Notice no. 7 of 2001 against respondent no. 8 to recover the sum of Rs. 50,00,000/- that had been borrowed by respondent no. 8 from respondent no.7. Apparently respondent no. 8 had created security in favour of respondent no. 7. Respondent no. 8 had borrowed the aforesaid sum of Rs. 50,00,000/-from respondent no. 7 and had pledged 10,25,200 shares of respondent no.8. reportedly worth Rs.1,02,52,000/- The amount is yet to be repaid. In the meanwhile respondent no. 1 was declared insolvent.

6. The Custodian meanwhile received information from the Commissioner of Income Tax – respondent no. 2 vide letter of 5th May, 1998 about amounts due and payable to respondent no. 1 from various parties. Respondent no. 2- The Commissioner of Income Tax vide letter dated 5th May, 1998 had gathered information that respondent no. 1 was the defacto owner of respondent nos. 3 to 7. He had admitted cash deposit of Rs. 2, 61,35,300/-. Respondent no.1's wife was found to have been director in many of these respondent companies. The Commissioner of Income Tax in an annexure to the letter provided details of debts owing to respondent no. 1 and from amongst various persons listed in the annexure was name of respondent no. 8. Although Garnishee Notices were issued to several

persons including respondent no. 8 many of them did not appear. The Court disposed all the Garnishee Notices on 6th July, 2007 granting liberty to the Custodian to file proceedings under section 9A of the Special Courts Act. That is how the above Miscellaneous Application came to be filed.

7. The Miscellaneous Application having been taken up for hearing and reply having been filed I will briefly refer to the contentions of respondent no. 8. An affidavit in reply dated 20th February, 2020 affirmed by a director of respondent no. 8 is on record. In the reply it is contended that the respondent no.8 was not aware that respondent no. 1 was a judgment debtor of FFSL. The deponent was also aware that respondent no. 1 was the defacto owner of respondent no. 7. Respondent no.8 claims to be unaware of any consent decree having been passed or defaults having been committed by respondent no. 7. No documents have been produced by the applicant and all that is relied upon is statement recorded by respondent no.1's wife. Although the respondent no. 8 was to file a further reply, none has been filed by them. Although respondent no.8 has contended that no documents have been filed, the reply admits of the fact that in the year 1997 respondent no. 7 lent an advance of a sum of Rs. 50,00,000/- as short term loan described as Inter Corporate deposit (ICD). It is contended that towards repayment of the loan post dated cheques were issued and shares worth Rs. 1,02,52,000/-were pledged. The amount was repayable on or before 30th March,1997 but were not repaid. The fate of the cheques is not known. Respondent no. 7 – Jainam

Securities (P) Ltd. could have, but did not file any recovery proceedings during the period of three years. Respondent no. 7 having failed to recover the amount the claim is barred by law of limitation.

8. The Garnishee Proceedings were filed only on 30th April, 2001 although proceedings should have been adopted at least by 30th March, 2000. According to Mr. Pawar Garnishee proceedings initiated in July, 2001 was beyond time. Furthermore the Custodian having relied only upon loose papers referred to by the Income Tax department and a confessional statement of respondent no. 1's wife there is no evidence whatsoever against respondent no. 8. Annexed to the reply is copy of the letter dated 21st January, 1997 recording the fact that considering Jainam advanced a short term loan of Rs. 50,00,000/- till 30th March, 1997. Respondent no. 8 admits to pledging 10,25,200 shares in five tranches of an approximate value of Rs.1,02,52,000/- to secure repayment of the loan and interest to be paid @ 27% per annum. Respondent no. 8 agreed to maintain a security margin of 200% of the amount borrowed i.e. upto Rs. 1,00,00,000/-. Vide clause (5) respondent authorised Jainam Securities to sell the pledged shares and recover their dues including interest. Thus one thing becomes crystal clear that the respondent borrowed funds and they were repayable with interest @ 27% per annum. That some shares were pledged which was intended to secure repayment. The shares were declared to be free of encumbrances.

9. In rejoinder the Custodian has refuted respondent no. 8's contention. The Custodian states that in the process of inquiry into the affairs of Pallav Sheth, Jainam Securities were called upon to disclose their Sundry debtors. The borrowing was never disputed and admittedly the amount has not been repaid. The only defence is the alleged bar of limitation.

10. It is in this background that I have heard the learned counsel for the parties. On behalf of the applicant Mr. Raikar reiterated the claim. He has taken me through the records and submitted that the cause of action to file the above Miscellaneous Application arose only around 12th March, 2001 after disclosures were made by respondent no. 8. Thereafter the Custodian filed several Garnishee Notices, which for various reasons were not served. Eventually the Courts disposed the notices with liberty to the Custodian to file appropriate proceedings. That order was passed on 6th July, 2007. This application has promptly been filed on 24th March, 2008 according to the Custodian at the earliest opportunity after gathering all information. The Custodian clearly had cause of action to be pursued since a decree has already been passed against Pallav Sheth. He was notified and a further decree was passed against respondent no. 8 on 12th August, 2010. Admittedly respondent no. 8 had borrowed from Jainam Securities and had not repaid it. Mr. Raikar submitted that creation of security is not something that will cure the failure to repay the amount.

11. Mr. Raikar has submitted that the claim is not time barred since the Garnishee Notice was filed within good time and the Miscellaneous Application has been filed within a reasonable period of time after disposal of the Garnishee proceedings. Reference was made to the time taken for getting approvals by the Custodian. Mr. Raikar therefore submitted that he is entitled to relief as prayed for. Mr. Raikar has placed reliance on the annexures to the reply being copy of Miscellaneous Application no. 276 of 1998 in Miscellaneous Application no. 343 of 1994 in Miscellaneous Petition no. 193 of 1993 filed by the Custodian against the said Pallav Sheth. Order dated 1st November, 1999 passed by the Deputy Commissioner of Income Tax, Central Circle, Mumbai-8, 281 B(1) of the Income Tax Act read with Rule 48. This was order in relation to Jainam Securities Private Limited. The Assessment of Jainam Securities was pending for a block period of 1st April, 1987 to 11th November, 1997 and in anticipation of substantial liability a provisional attachment had been made. This included in the Schedule of properties, loan and advances and inter corporate loans of various persons. Amongst these is name of respondent no. 8 at item no. 11 of the annexure disclosing that a sum of Rs. 50,00,000/- was recoverable. The ledger of Jainam Securities for the period 1st April, 1994 to 31st March, 1998 also disclosed the aforesaid liability of Rs. 50,00,000/- (Fifty Lakhs).

12. At the hearing of this application Mr. Pawar learned Advocate on behalf of the respondent had submitted that the claim is barred by the law of limitation and therefore the application is not maintainable. He admitted that the short term loan was an advance in the form of an ICD obtained from Jainam Securities. Respondent no. 8 had availed of the ICD prior to Pallav Sheth being notified under the Special Courts Act. Mr. Pawar reiterated that the Custodian had not established a trail of money. The cause of action arose on 1st April, 1997 and the application for recovery was filed only on 31st March, 2000 but the respondent no. 8 had not called upon Jainam to sell the securities or otherwise dispose them.

13. Mr. Pawar submitted that the securities' value at the time they were pledged was over Rs. 1,00,00,000/- and the Custodian has not dealt with the principal objection viz. the bar of limitation. Mr. Pawar submitted that the Custodian is feigning ignorance of the fact that he became aware of the obligation to repay on or about 18th March, 1998. That under the Limitation Act a suit would be barred therefore this application will also be barred. Considering the provisions of Limitation Act, the application would be barred after 1st April, 2000. The Garnishee Proceedings were filed only on 23rd March, 2001 and on 30th June, 2001. These were disposed on 6th July, 2007 but the present application is filed on 24th March, 2008.

14. Mr. Pawar submitted that the action of filing the Miscellaneous Application is in breach of Section 4(1) of the Special Courts Act which mandates that a Miscellaneous Petition will be filed. Mr. Pawar then submitted that the Garnishee Proceedings having been dismissed in July, 2007, the Custodian was granted leave to proceed under section 9A requiring the Custodian to file Miscellaneous Petition but what has been filed is a Miscellaneous Application. A petition would have required the Custodian to lead evidence and that the respondent has been denied the opportunity of cross examination. Mr. Pawar submitted that this is a matter in which substantial rights and claims are involved which require a Miscellaneous Petition to be filed. Whereas the applicants claim filed on loose papers received from Income Tax department and a so called admission is not competent and requires to be rejected.

15. According to Mr. Pawar principles of natural justice have been violated by the procedure adopted by the Custodian filing a summary application. If the application of the Custodian is filed on the basis of an affidavit of director or employee of respondent no. 7- Jainam Securities this respondent will get an opportunity of cross examining the signatory of the affidavit. That the applicant did not have any evidence against respondent no. 8 and has been filed without proper authorisation by the Constituted attorney. He submitted therefore that the application is liable to be rejected and the monies deposited in this Court be repaid to the Custodian.

16. Having heard the matter at length, the fact that Jainam had advanced monies to respondent no. 8 against pledge of securities is not disputed. On the other hand it is admitted. This admission is to be found even in the reply. There is no merit in the contention that rules of natural justice have been violated since it is not the respondent's case that the amount has been repaid. After depositing the decretal amount in Miscellaneous Application no. 44 of 2018 the respondent filed an application for return of pledged shares clearly admitting that the principal debt was secured and seeking the shares which were pledged to be returned. That application was made probably in the mistaken belief that the shares were lying deposited with the Custodian. Assuming this was security and Jainam did not demand the money the respondent no. 8 was obliged to repay the monies in March, 1997 itself. That is a contractual provision as between Jainam and the present respondent no. 8. The pledge is not disputed and it was for the respondent to demand the shares from Jainam against repayment of ICD. After all the respondent no.8 was liable to pay interest @ 27% per annum. No such steps were taken by either party. On the other hand it appears that respondent no. 8 was comfortable in retaining the funds, probably with the knowledge that respondent no. 1 has been adjudged insolvent and as a consequence Jainam would not seek recovery. However what the respondent has lost sight of is the fact that these assets stood attached under the Special Courts Act. FFSL was notified on 2nd July, 1992. FFSL's assets included the receivables. The

amount owed from respondent no. 1 to FFSL was one such receivable being subject matter of the decree dated 24th February, 1994 passed in M.A. No. 193 of 1993 Respondent no. 1 it has been established, operated and controlled by respondent nos. 3 to 7. They were his alter ego. Diversion of funds had been established in an attempt to avoid liability. Upon his notification under the Special Courts Act his properties also stood attached.

17. In Miscellaneous Application no. 276 of 1998 respondent no 1 was sought to be committed to civil prison for committing contempt of Court by breaching orders, dealing with and transferring properties including large sum of cash by setting up (1) Jainam Securities Pvt. Ltd. (2) Magan Hotels Private Limited (3) Anzug Plastics Private Limited (4) KLAR Chemicals Pvt Ltd and (5) Malika Foods Pvt. Ltd. All of them had a common office at 55 Mittal Tower, Nariman Point, Mumbai. This diversion was conclusively established and respondent no. 1 was convicted. His conviction was later upheld by the Supreme Court which has rejected his Civil Appeal no. 2106 and 2107. He was convicted for having committed civil contempt as defined under section 2(b) of Contempt of Courts Act, 1971 and was sentenced to simple imprisonment and fine of Rs.2000/-. That conviction dated 31st January, 2001 by the Special Court held Pallav Sheth in contempt. The Court found that it was a continuing wrong committed by Pallav Sheth and hence action was not barred by limitation. In the Civil Appeal it was held that the Special Court had the power to convict for contempt. It construed section 20 of the

Contempt of Court Act and held that the Custodian learnt of the respondent Pallav Sheth having committed contempt by benami funding and transferring funds to those companies respondent nos. 3 to 8 and operating their accounts.

18. In May, 1998 / June 1998 the Custodian filed an application for initiating contempt action. Section 17 of the Limitation Act was referred to which provides that if knowledge pertaining to any cause of action consolidated by fraud was involved, the period of limitation was not to run/commence till the plaintiff discovered the fraud and mistake. The Supreme Court found that the fraud perpetrated by Pallav Sheth was only unearthed when the Custodian received information. Sheth's Civil Appeal came to be dismissed and Pallav Sheth respondent no. 1 was directed to serve the sentence awarded by the Special Court. Thus there is a categorical finding that respondent no. 1 had diverted funds to those other entities which were found to be his alter ego.

19. Meanwhile, in Miscellaneous Application no. 276 of 1998 a director of Jainam Securities one Claud Monsurate filed an affidavit dated 12th March, 2001 affirming and disclosing that the only assets of the company were its sundry debtors. Jainam Securities through its director approved the list furnished by the Income Tax authorities. under its order under section

281B(1) of the Income Tax Act. From amongst the sundry debtors is the respondent at item no. 11 in the list. Several others in the list have also been proceeded against by the Custodian and they have paid amount under the decrees. Thus even as late as March 2001 there is clear evidence that the amounts advanced had not been repaid. Respondent no. 8 could have redeemed the pledge within a reasonable period of time but chose not to. It continued to incur interest liability under the ICD. The property in the ICD was already attached property by virtue of notification of FFSL and Pallav Sheth and Jainam Securities. Under Article 70 of Part VI of the Schedule of the Limitation Act where movable property is deposited suits are required to be filed within three years of the date of refusal / date of demand. In the present case there is no record of any demand by Jainam Securities for repayment of the ICD nor is there any demand from the respondent to hand back the pledged shares against payment. Limitation would run after date of refusal of such demand and in the present case I am unable to accept the contention that the claim became time barred. Jainam's remedy could not be barred by limitation unless the respondent no. 8 was able to demonstrate that Jainam had made a demand and failed to initiate proceedings within three years after respondent refused to repay the ICD. Likewise respondent no. 8's claim against Jainam for recovery of the shares would have been barred by limitation only if the respondent had demanded return of the pledged shares against repayment and had failed to file a suit within three years of Jainam

refusing to return the shares. Both these situations have not arisen. Both Jainam and respondent no. 8 remained complacent, neither demanded performance of the other obligations. In these circumstances it is not possible to accept the contention of Mr. Pawar that the application was barred by limitation. Moreover Custodian entered the picture only upon notification of Pallav Sheth on 5th January, 2001 The Garnishee Notices were issued on 30th June, 2001.

20. Mr. Pawar's contention that the cause of action arose on 1st April, 1997 and that Jainam did not sue till 31st March, 2000 that it neither called upon the respondent to repay the ICD nor return the pledged shares, will not come to the assistance of the respondent. The contention of the respondent no. 8 that the claim was barred by limitation is therefore unacceptable. As a corollary Mr. Pawar contended that the Custodian became aware of the liability of respondent no. 8 to Jainam from a letter of 5th May, 1998 issued by the Income Tax department and initiated proceeding in 2001, but Garnishee proceedings were filed only on 30th June, 2001, once again beyond the period of limitation. This submission also has no merit since the claim was not barred in the first place in the absence of demand and failure or refusal to pay. Mr. Pawar appears to have relied upon Article 19 of the Limitation Act which deals with suits for money lent and provides for a period of limitation

of three years from the time when the loan is made. That is clearly not applicable in the present case.

21. Furthermore it is the case of the Custodian that limitation did not start in May 1998 since Custodian did not receive any information. Conclusive proof of diversion of funds were available only when the Special Court passed its order in Miscellaneous Application no. 276 of 1998 on 31st January, 2001 when it held that its proved beyond doubt that all five companies – respondent nos. 3 to 7 were used to divert credit and avoid payment of decretal amount of Rs. 50,00,000/- under the decree dated 24th February, 1994. All five companies held to be benami companies of Pallav Sheth and the admission made before the Income Tax Authorities that it was only a device adopted to defraud creditors and avoid payment. The corporate veil was thus lifted. Pallav Sheth had meanwhile admitted that Rs. 2,61,35,300/- was his undisclosed income and that the entire purpose of acquiring these companies was to operate bank accounts and divert funds which he did by depositing the sums in cash. The Conclusion in paragraph 18 of that judgment was to the effect that the Custodian had proved civil contempt committed by Pallav Sheth and consequently Sheth was convicted for contempt. As a result respondent nos. 4 to 8 viz. the respondent nos. 3 to 7 herein were directed to disclose all assets. vide paragraph 22 . It is pursuant to this disclosure that Jainam Securities revealed the amounts due

from its sundry debtors by filing the affidavit of Claud Monsurate dated 12th March, 2001 which is seen to be verified only on 3rd May, 2001. Thus there is obviously no merit in the contention of the respondent that the claim would be time barred in the year 2000.

22. One other issue that has been urged is that the respondent no. 8 has been denied the benefit of rules of natural justice. That is once again misconceived. It had been always open for the respondent no. 8 to demand return of the pledged shares by offering to repay the ICD. That it did not do. It was again open to the respondent to repay the debt and cancel the pledged shares after notice to Jainam Securities and thereby retrieve its security which also it did not do. Thirdly it was open to the respondent no. 8 to lead evidence itself at the hearing of this application. No application was made to lead evidence. On all these counts therefore the respondent cannot succeed in avoiding the Custodian's attempt at recovery. Lack of knowledge that respondent no. 1 was adjudged insolvent or that FFSL was notified party or that decree in favour of FFSL which was sought to be executed against Pallav Sheth is not a ground that can be taken by respondent in its defence. Equally it is incorrect to state that the claim is based only on letter dated 5th May, 1998 issued by the Income Tax department. There is no substance in the contention that the Custodian is "*silent about the trail of transactions*" as contended by the respondent in its written submissions. Other contentions

are that the Custodian should have filed a petition and should have led evidence has once again no merits since none of these attached assets vests in the Custodian. That is a well established and is no longer res integra. The Custodian is merely nominated as Custodian of the assets of the notified parties. In this case assets of FFSL, Jainam Securities amongst others.

23. As far as right of cross examination is concerned the Custodian not being a contesting party there is no question of Custodian leading evidence. The Custodian has placed before the Court all relevant material leading the Custodian to believe that he was entitled to recover monies due to the notified parties. Respondent no. 8 was at liberty to lead evidence if it so desired. Strict rules of procedure under the CPC are not attracted in case of proceedings in the Special Courts Act just as Limitation Act does not apply.

24. On analysing the defence it is clear that the principal line of defence is one of limitation. According to Mr. Pawar Jainam Securities had not taken any action to recover the amount of the debt. They neither exercised the option to enforce the pledge by sale of the shares nor did Jainam seeks transfer of shares to its own name. Since the period of three years had expired after the debt was repayable Mr. Pawar contended that the claim that Jainam would have had against respondent no. 8 would be clearly barred by limitation and therefore once Jainam had lost its remedy as against

respondent no. 8, the Custodian could not step into the shoes of Jainam and/or that of the original respondent no. 1 and recover debt. Ordinarily if a Garnishee was protected under the law of limitation this argument may have been sustainable. However, in the instant case it is not a simple loan that was advanced but that loan was secured by a pledge.

25. A pledge which would be governed under Chapter 9 of the Indian Contract Act, 1872 and in particular bailments of pledges which are covered by Section 172 to 177 of the Contract Act. Section 172 defines a pledge as *“Bailment of goods as security for payment of debt or performance of a promise.”* The bailor is the Pawnor and the bailee a Pawnee. It cannot be disputed that for a pledge to take effect there must be delivery of property. A mere agreement to give possession would not operate as a pledge and in the instant case a valid pledge is clearly established since the shares of respondent no. 8 were delivered to respondent no. 7 to secure repayment of the amount of Rs. 50,00,000/-. Constructive delivery is adequate to constitute a pledge, but in the case at hand the shares have been physically handed over to Jainam Securities. Section 173 provides for the pawnee's rights of retainer. A pawnee of goods pledged may retain the goods not only for payment of debt but also for payment of interest on the debt and all expenses incurred by the pawnee in respect of possession and preservation of the goods pledged. In the instant case respondent no. 8 was the pawnor and Jainam Securities the

pawnee . Till such time the amount of Rs. 50,00,000/- and was interest thereon not paid over to Jainam, Jainam continued to have the right to retain the shares.

26. The fact that the shares were retained by Jainam Securities cannot be disputed since respondent no. 8 had filed application in this Court to seek recovery of the shares from the Custodian upon depositing the amount of Rs. 50,00,000/- in this Court. The contention of respondent no. 8 was that since the debt had been secured the shares would have to be returned. This establishes that the bailment continued to be in effect and the pawnee's right of retainment was co-extensive till with such time the debt had not been paid. There is no question therefore of the recovery of the amount of Rs. 50,00,000/- being barred by the law of limitation. Section 175 of the Contract Act provides that the pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for preservation of the goods. This may not apply in the facts of the present case since the goods pledged were only shares but Section 176 grants the pawnee a right upon default in payment of the debt. It provides that if the pawnor defaults in repayment of the debt at the time stipulated, the pawnee may bring a suit against the pawnor upon debt promised and retain the goods as collateral security or he may sell the shares pledged with reasonable notice to the pawnor. In the instant case Jainam Securities has apparently not taken any steps. It

continued to hold the shares and there is nothing to indicate that a demand was made on the pawnor for payment nor any evidence to suggest that the shares were sold. Indeed the shares were not tradeable at the material time and it is not the case of respondent no. 8 that shares had been sold. If the shares had been sold respondent no. 8 would not have filed its Miscellaneous application seeking relief against the Custodian.

27. 11. In this state of the facts an application had been made by the respondent being M. A. No. 41 of 2018 seeking the following prayers:

- a. This Hon'ble court be pleased to direct the Original Applicant i.e. the office of the Custodian to release the Pledge Shares;*
- b. In the alternative to prayer clause (a) this Hon'ble Court be pleased to direct the Respondent No. 10 to de-pledge and release the Pledged Shares.*
- c. In alternative to prayer clause (a) and (b) this Hon'ble court be pleased to permit the Applicants to issue duplicate shares in lieu of the Pledged Shares.*
- d. To direct the Office of the Custodian not to enforce the Pledge created by the Applicant Company;*
- e. Such other and further Order in the interest of Justice.*

This application came to be withdrawn on or about 12th April, 2019 when the the Custodian confirmed that no such shares were in their possession. Thus the

pledge continued to be valid according to the respondent no. 8 as evident from the prayers. Thus the time for filing a suit or other legal proceeding for recovering the debt had not begun to run till a demand was made and the respondent no. 8 defaulted in compliance. It was always open for respondent no. 8 to file a suit for redeeming the pledge but no steps have been taken. Respondent no. 8 also did not offer to repay the debt and it is not the case of the respondent no. 8 that despite its offer to return the monies the pawnee i.e. Jainam did not return the shares. There can be no doubt that the shares are treated as movable property and that once such shares are handed over and along with blank transfer forms the pledge of shares can be given effect to by lodging the shares with the company to obtain a transfer in favour of the pawnee and to exercise rights as a shareholder. The right to enjoy the shares vests in the pawnee as long as the amount is not repaid by the pawnor. No doubt in the instant case amount of Rs. 50 lakhs was advanced for a particular period but, notwithstanding the failure of the pawnee to bring a suit, the security in the shares continues to vest in Jainam. It matters not that the value of the security may have eroded over a period of time but the concept of pledge would entail a vested right in the pawnee i.e. Jainam to retain the shares as security till repayment. Repayment not having been made the rights of Jainam to invoke the pledge would continue to vest in it. Applying the aforesaid to the facts at hand it is more than obvious that Mr.Pawar's contentions that the claim is barred by law of limitation cannot

be sustained. The pledged shares continued to remain as an effective bailment of the shares in favour of Jainam. The fact that Jainam was an alter ego of Pallav Sheth is established. Jainam Securities was a “front” company or alter ego of Pallav Sheth and Pallav Sheth's adjudication as an insolvent would not effect Jainam's claim which is said to be duly secured by the aforesaid pledge.

28. In *Karnataka Pawn Broker Association vs State of Karnataka*² the Supreme Court while considering the rights of a pawn broker under the Contract Act observed that a Pawn Broker has special property rights in the goods pledged. A right that is higher than a mere right of detention of the goods but lesser than general property right in the goods. The pawnor, at the time of the pledge, transfers to the pawnee the special rights in the pledge and also passes on his rights to transfer the general property rights in the pledge. In the event the pledge remains unredeemed resulting in sale of the pledge goods by public auction through an approved Auctioneer. Thus the pawnee it was observed, holds not only absolute special property right in the pledge but also the conditional general property interest in the pledge. The condition being that he can pass on that general property only in the event of pledge being brought to sale by public action. This observation was made in connection with provisions of Karnataka Pawn Brokers Act, 1961. However the general principles of law governed by section 172 to 177 of the contract

² (1998) 7SCC 707

Act would apply and therefore the pledge in the instant case continues to remain duly enforceable and the passage of time cannot be said to have defeated the right of the Custodian to recover the amount of debt owed by respondent no. 8 to Jainam Securities.

29. Even otherwise from the date of notification the Custodian's right to recover amounts arose from date of notification and in *L.S. Synthetics vs. Fairgrowth Financial Services Limited*¹ the Supreme Court has held that the provision of the Limitation Act 1963 has no application in relation to proceeding under the Special Courts Act. In Paragraph 38 the Supreme Court held as follows :

38. A Special Court having regard to its nature and functions may be a court within the meaning of Section 3 of the Indian Evidence Act, 1872 or Section 3 of the Limitation Act, 1963 but having regard to its scope and object and in particular the fact that it is a complete code in itself, in our opinion, the period of limitation provided in the Schedule appended to the Limitation Act, 1963, will have no application. For the applicability of Section 29(2) of the Limitation Act, the following requirements must be satisfied by the court invoking the said provision :

(1) There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application.

¹ (2004) 11 SCC 456

(2) Such prescription of the period of limitation under such special or local law should be different from the period of limitation prescribed by the Schedule to the Limitation Act, 1963.

There is no Local law or Special Law in connection with the ICD or the recovery of shares or by redeeming the pledge that has been pressed into service and in all respects it is not possible to accept respondents contention that the claim is barred by law of limitation. This aspect of the controversy must rest. I am of the view that we must not lose sight of the fact that the attempt of the Custodian is to recover the amounts due of banks and financial institutions which were involved in the scam. These funds are to be recovered. Part of these funds were in the control of respondent no. 1 Pallav Sheth but he had diverted these funds through the above machinations. Through Jainam these funds found their way into the hands of the present respondent no. 8 and the Custodian is duty bound to recover the same.

30. In the facts of the case therefore I am of the view that the claim of the Custodian is not barred by the law of limitation. Thus in my view the principal defence of respondent no. 8 that the claim is barred by law of limitation must fail and is hereby rejected. In these circumstances I am of the view that the application is liable to be allowed and I pass the following order :

- (i) Miscellaneous Application is made absolute in terms of prayer clause 16(a).
- (ii) The amount deposited by the respondent shall be appropriated by the Custodian in the account of the notified party. If it is invested the same shall continue to be invested in a nationalised bank in the usual course .
- (iii) No costs.

At this stage Mr. Pawar seeks stay of the order. At his request operation of the order is stayed for eight weeks.

(A. K. MENON, J.)