

**IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO
TRANSACTIONS IN SECURITIES) ACT, 1992
MISCELLANEOUS APPLICATION NO. 28 OF 2021
IN
MISCELLANEOUS PETITION NO. 3 OF 1996**

Dhanraj Mills Pvt. Ltd.	...	Applicant
<u>In the matter between</u>		
The Custodian	...	Petitioner
vs.		
V. Krishnakant & Ors.	...	Respondents

Mr. Amrut Joshi a/w. Ms. Radha Ved and Mr. Nipkesh Jain i/b. M/s. Kiran Jain & Co. for the Applicant.

Mr. J. Chandran i/b. M/s. Shilpa Bhate & Associates for the Custodian/Petitioner.

Mr. Rashid Khan a/w. Mr. Ayaz Bilawala and Ms. Dhanashree Gaikawaiwari i/b. M/s. Bilawala & Co. for Respondent no.1.

Mr. Romin Sangoi i/b. M/s. Shah & Furia Associates for Respondent nos. 3A to 3E.

Mr. Rajiv Kumar, Senior Advocate a/w. Mr. Anagh Pradhan and Mr. Anand Iyer i/b. M/s. Divya Shah and Associates for Respondent no. 4.

Mr. Limosin A. Sr. P.P. for CBI on notice.

CORAM : A.K. MENON, J.

Judge, Special Court

DATE : 26th NOVEMBER, 2021

P.C. :

1. This Miscellaneous Application seeks issuance of witness summons to State Bank of India, SME, Backbay Reclamation Branch for production of Ledger Book / Statements, Books of Accounts and Bank Statement of the F.Y. 1990 to 1991 and

1991 to 1992 pertaining to Current Account No. 13427 held by Respondent No. 2 with the State Bank of Hyderabad, Backbay Reclamation branch at Nariman Point. In the alternative a direction is sought to the bank to depute an officer who is presently in State Bank of India and formerly employed with State bank of Hyderabad which has since merged with State Bank of India.

2. The application is opposed by respondent nos. 1 and 4 on the basis that an officer of the bank has already been examined on oath on 8th October, 2021 and she has in no uncertain terms stated that the SME Backbay Reclamation bank does not have record pertaining to the account for the period 1990-91 and 1991-92 since according to her electronic records were migrated only from the year 1996. It is further submitted on behalf of respondent no. 4 that in view of the deposition of the Service Manager of State Bank of India on 8th October, 2021 this application should be rejected since it effectively seeks the same relief.

3. On behalf of the applicant Mr. Joshi has invited my attention to the order dated 7th December, 2018 passed in Miscellaneous Petition No. 2 of 1996 which directed the bank to produce the certified statement of the current Account in question. The Court found that the banks contention that records are not traceable could not be accepted and the bank was directed to produce the record. In addition he relies upon the fact that State Bank of India has vide its communication dated 7th May, 2019 Exhibit E to the affidavit in reply of respondent no. 4 in which the bank has informed the registry of the Special Court as follows :

“With reference to captioned subject, we have to inform you that we are unable to provide the statement of the captioned account no. for the period 01.04.1991 to 31.01.1992 as the record pertains to manual banking operations and same in not traceable”*

** sic*

4. The request today in the present application is to direct the bank to depute a witness and produce the relevant manual records since evidence recorded on 8th October, 2021 makes it clear that the electronic record does not reflect any of these entries. In this respect I am inclined to agree with Mr. Joshi. One more opportunity should be granted in the matter by permitting the applicant to examine the bank and for the bank to produce manual records available with the bank. Accordingly, I pass the following order :

(i) Issue witness summons to State Bank of India, SME, Backbay Reclamation Branch, Mittal Court, B-Wing, Ground Floor, Nariman Point, Mumbai 400 021 directing them depute an officer conversant with the facts of the case pertaining to the aforesaid current account and to produce manual records including Ledger Book , Statement, Books of Accounts and Bank Statement of the Financial Year 1990 to 1991 and 1991 to 1992 pertaining to Current Account No. 13427 then held by Dhanraj Mills Pvt. Ltd. with State Bank of Hyderabad, Backbay Reclamation Branch, Nariman Point, Mumbai. Notice returnable on 10th December, 2021.

(ii) It is made clear that all records pertaining to this matter will have to be produced on that date.

(iii) Miscellaneous Application no. 28 of 2021 is disposed in the above terms.

(A.K. MENON, J.)