

**IN THE SPECIAL COURT AT BOMBAY**  
**Constituted under the Special Court [Trial of Offences**  
**Relating to Transactions in Securities] Act, 1992**

**REVIEW PETITION NO.1 OF 2021**  
**IN**  
**CUSTODIAN'S REPORT NO.17 OF 2019**

Hiten Dalal .....Petitioner

V/s.

The Custodian and Anr. ....Respondents

Mr. Devanshu Desai for the Petitioner.

Mr. Gandhar Raikar, with Ms. Shilpa Bhate, i/by Leena Adhvaryu & Associates,  
for Respondent No.1.

Mr. Mirza Aslam Beg, with Ms. Chandni Arora, i/by Mr. Sumant Deshpande, for  
Respondent No.2-SCB.

**CORAM : A.K. MENON, J.**  
**JUDGE, SPECIAL COURT**  
**DATE : 23<sup>RD</sup> JULY, 2021.**  
**[THROUGH VIDEO CONFERENCE]**

**P.C. :**

1. This Review Petition is filed on behalf of respondent no.2 in MA/43/2019 by the notified party seeking review of the order dated 18<sup>th</sup> June 2021 passed on the Custodian's Report No.17 of 2019. Mr. Raikar and Mr. Beg opposed the review petition.

2. Mr. Desai appearing for the review petitioner has sought review of the order on the basis that the order contains errors apparent on the face of it since

the property in question is the attached asset of his client – the notified party. He has invited my attention to MA/141/2012 filed by the respondent no.2-Standard Chartered Bank and a copy of which is annexed to the report. By that MA, SCB has sought a direction against itself to handover certain securities, which were admittedly pledged securities, pledged by the current review petitioner. In fact, there is no dispute as to the fact that the securities forming subject matter of MA/141/2012 and the Custodian's Report No.17 of 2019 are one and the same.

3. MA/141/2012 came to be filed since SCB was in possession of these pledged securities and by virtue of a judgment of the Special Court dated 24<sup>th</sup> December 1998 passed in Suit No.17 of 1994, in which it was clearly held that the securities in question were pledged in favour of SCB, Mr. Desai invites my attention to hold that these pledged securities were surrendered by SCB by making an application viz. MA/141/2012. He invites my attention to paragraph 7 and the prayers in MA/141/2012. He submits that by returning the securities, SCB has effectively surrendered the securities. He therefore states that the averment of SCB in paragraph 7 is misleading and there can be no doubt that SCB has surrendered the securities. Mr. Desai further submits that the moment the securities have been surrendered, they became attached assets of the notified parties and the Custodian therefore must hold on to them and to be dealt with in accordance with law.

4. Mr. Desai has also laid considerable stress on the order passed in MA/141/2012 by the Special Court, whereby, by consent of the parties, the securities in question were allowed to be handed over to the Custodian. He further submitted that the second prayer was not pressed, namely, a direction to the Custodian to dispose of the securities was not pressed and the very fact that a consent order came to be passed and the Custodian took charge of those securities would establish that the securities were not pledged and/or to be pledged. The pledgee had surrendered the securities. That order is dated 30<sup>th</sup> November 2012. SCB itself did not press for sale of the securities. Mr. Desai submits that this clearly indicates that SCB did not wish to recover any of the proceeds of the sale of the securities. Non-prosecution of the MA/141/2012 in terms of prayer clause (b) read with the averments in paragraph 7 thereof, has fueled this review petition.

5. In opposing the review petition, Mr. Raikar has drawn my attention to the various averments in MA/141/2012, whereby the pledge has been reiterated; in particular paragraph 6 thereof. On behalf of SCB also, learned counsel has reiterated that the pledge has not been surrendered. Mr. Raikar has also invited my attention to the fact that not only the Special Court, but SCB being aggrieved by the judgment in Suit No.17 of 1994 had filed a Civil Appeal bearing No.762 of 1999, which was heard and disposed along with the Civil Appeal filed by the notified party bearing No.1878 of 1999. Both these appeals were disposed by

common judgment of the Supreme Court on 18<sup>th</sup> April 2000<sup>1</sup>. That judgment records the background of creation of the pledge, the impugned order of the Special Court and having considered all aspects, including the observations of the Special Court in paragraphs 181 to 183 of the judgment dated 24<sup>th</sup> December 1998 in Suit No.17 of 1994, it records the shares would remain with the pledgee. In particular, the decision of the Special Court that the bonus shares, dividend and interest which had accrued on the pledged shares were not themselves the subject matter of the pledge, was expressly rejected in paragraph 52 of the judgment of the Supreme Court in Civil Appeal No.762 of 1999. This was clearly binding upon the notified party, who feigns ignorance of the effect of this judgment by filing this review petition.

6. Given the limited scope of the review, no case is made out for review. Even on merits, there is absolutely no case made out for review. Hence, the review petition is dismissed.

[A.K. MENON, J.]

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1 (See (2000) 6 SCC 427)