IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) ACT, 1992 AT BOMBAY

SUIT NO. 4 OF 2007

1. Canara Bank, a body corporate
constituted by the Banking Companies
(Acquisition and Transfer of Undertakings)
Act, 1970 as Principal Trustee of
Canbank Mutual Fund a trust having its
office at Construction House, 5, Walchand
Hirachand Marg, Ballard Estate,
Mumbai – 400001.

2. K. K. Rai
residing at 960, 8th A main, SRS Nagar,
Bilekahalli, Bannerghatta Road,
Bangalore – 560 076.

3. Ashok Pradhan,
residing at 504, Silver Arch Apartment,
22, Feroze Shah Road, New Delhi – 110 001.

4. Raj Kumar Aggarwal,
BM-49(West), Shalimar Bagh,
Delhi- 110 088.1 .. Plaintiffs

v/s.

1. Hiten P. Dalal,
residing at 201, Shanti Towers,
Military Road, Marol, Andheri(East),
Mumbai – 400 069.

2. The Custodian appointed under Section 3(1)
of the Special Court (Trial of Offences
Relating to Securities) Act, 1992, having
his office at the 3rd floor, Bank of Baroda
Bhavan, 16, Parliament Street,
New Delhi- 110 001,
and having his Bombay office at 9th floor,
Nariman Bhavan, 227, Vinay Shah Marg,
Nariman Point, Bombay-4000 021. .. Defendants

Mr. Shrinivas Deshmukh a/w Sridhar Chari i/b. DSK Legal for the plaintiffs.

Mr. Sunil Kale for defendant no.1.

Mr. J. Chandran a/w Ms. Shilpa Bhate i/b. Leena Adhvaryu & Associates defendant no.2-Custodian.

CORAM : A.K. MENON
JUDGE, SPECIAL COURT
RESERVED ON : 12TH FEBRUARY, 2021
PRONOUNCED ON : 9TH APRIL, 2021.

JUDGMENT

1. The present suit has been filed by Canara Bank, the principal trustee of Canbank Mutual Fund ("CMF") and three trustees (collectively "the plaintiff") for recovery of a sum of Rs.173,85,34,872.67 from defendant no.1 as more particularly set out in the particulars of claim Exhibit 'K' with further interest on the principal sum of Rs.46,01,23,287.67 @ 18% from 1st August, 2007 till payment or realization. Defendant no.1 is a person notified under Section 3(2) of the Special Court (Trial of offences Relating to

Transactions in Securities) Act, 1992 ("Special Courts Act"). He acted as a share stock broker dealing in stocks, bonds and government securities. Defendant no.2 is the Custodian appointed under Section 3(1) of the Special Courts Act. Assets of notified parties and others which stand attached pursuant to the Act are managed by the Custodian.

FACTS

2. The plaintiff claimed that it had purchased 9% Nuclear Power Corporation of India Ltd. ("NPCL") bonds of a face value of Rs.50 crores. The said purchase was apparently made pursuant to an order for purchase placed on 27th February, 1992. The bonds were to be purchased @ Rs.92/- each and a total of Rs.46,01,23,287.67 was payable towards the purchase of these bonds. Of this, a sum of Rs.46 crores was towards the purchase price of the bonds and Rs.1,23,287.67 was towards the accrued interest on the bonds for the period one day from 26th February, 1992 to 27th February, 1992.

3. The defendant no.1 is said to have issued a Contract note on 27th February, 1992 in respect of bonds bearing no.E2800001 and E3300000(Suit Bonds) but in fact the document is a Bill. The Bill dated 27th February, 1992 bearing no.1290 has been relied upon and a copy is annexed at Exhibit 'A' to the plaint. The aforesaid purchase transaction has been set aside by the Supreme Court by an order dated 5th May, 2006 passed in Civil Appeals no.2275 and 2276 of 2002 ("the Civil Appeals") in the matter of Standard

Chartered Bank ("SCB") v/s. Andhra Bank Financial Services Ltd.("ABFSL"). The plaintiff was not a party to those Civil Appeals.

4. According to the plaintiff, when an order to purchase the suit bonds was placed on 27th February, 1992, the plaintiff is said to have prepared an Investment Deal Slip recording the purchase. This was then forwarded to its Fund Manager. On the same date, the plaintiff is believed to have entered into three more transactions "for purchase/sale" relating to certain other bonds through defendant no.1 and since the amounts receivable on account of the sale of those bonds exceeded the amount payable on account of purchase of the suit bonds, the plaintiff was entitled to receive a sum of Rs.3,87,46,575.35. Receipt of this amount has been acknowledged by the plaintiff in the plaintiff's account with the RBI vide a cheque payment. The plaint sets out particulars of sale and purchase of the other bonds as well.

5. On 14th July, 1992, the plaintiff claimed to have applied to NPCL for transfer of the suit bonds along with duly executed transfer deeds. The plaintiff then reminded NPCL to effect the transfer in August 1992 and in September 1992. On 8th September, 1992 NPCL informed the plaintiff that they had received a request from SCB to issue a duplicate letter of allotment on the basis that the suit bonds were purchased by SCB from ABSFL. On 30th September, 1992 NPCL informed the plaintiff that they could not transfer the bonds to the plaintiff in view of the claim made by SCB.

6. On or about 27th November, 1992 the plaintiff filed a petition in the Company Law Board against NPCL seeking transfer of the suit bonds. SCB meanwhile filed a suit seeking a declaration that they were entitled to the suit bonds. The Company Petition filed by the plaintiff was transferred to this Court upon enactment of the Special Courts Act. On or about 14th June, 1996 defendant no.1 filed an affidavit in reply in Special Court Misc. Petition no.81 of 1995 (upon its transfer from the CLB) in which the defendant no.1 contended that he had acquired the suit bonds from SCB against sale of Cantriple units by him to SCB and sold the bonds of face value of Rs.50 crores to the plaintiff on 27th February, 1992. Defendant no.2 had issued his cost memo dated 27th February, 1992 and consideration in respect thereof was adjusted against other purchases leaving a difference of Rs,3,47,00,000/- which was paid to the plaintiff. The plaintiff claims that the defendant no.1 having acknowledged receipt of the funds on account of purchase of 9% Nuclear Power Corporation of India Ltd. (NPCL) Bonds is bound to repay the amount. The plaintiff relies upon this admission and now seeks a decree on that basis. In the meantime, it appears that suits filed by the plaintiff and SCB came to be dismissed by the High Court. The dismissal was challenged and the Supreme Court remanded the matter to the High Court for *de novo* trial.

7. The Special Court allowed the Misc. Petition no.81 of 1995 filed by the plaintiff and dismissed suit no.11 of 1996 filed by SCB. Appeals were filed by

SCB in the Supreme Court which reversed the decision of this Court and held that the plaintiff was not entitled to the suit bonds and the real purchaser of the bonds was SCB. Further it held that defendant no.1 had not acquired title to the suit bonds and therefore defendant no.1 could not pass title to the plaintiff. The suit bonds were therefore adjudged to be the property of SCB. A review petition filed by the plaintiff was rejected on 21st November, 2006. The plaintiff has relied upon the finding of the Supreme Court holding that the defendant no.1 did not have title to the suit bonds and now claim to be entitled to refund of Rs.46,01,23,287.67 paid towards the price of the suit bond. It now seeks a decree for a sum of Rs. 173,85,34,872.67 and further interest on the principal amount of Rs. 46,01,23,287.67.

8. Written statements have been filed on behalf of both the defendants. Defendant no.1-notified party has contended that the suit is barred by the law of limitation. Defendant no.1 contends that the Supreme Court did not set aside the transaction as alleged by the plaintiff and that the proceedings before the Supreme Court in Civil Appeal nos.2275 and 2276 of 2002 arise out of original proceedings being Suit no.11 of 1996 filed by SCB against the plaintiff. In Suit no.11 of 1996, SCB claimed benefit of transaction relating to the suit bonds with ABFSL and claimed title on the basis that they had paid consideration to ABFSL. The defendant no.1 was involved only as a broker. The plaintiff had relied upon a Cost Memo containing a direction to issue a

cheque in favour of ABFSL. ABFSL disowned the transaction with the plaintiff and therefore the plaintiff did not succeed. The defendant no.1 has contended that the Supreme Court had confirmed this finding while rejecting the plaintiff's claim of title. The plaintiff was seeking a decree based on a case that has not been pleaded and therefore not entitled to any relief. The defendant no.1 has also contended that the suit is bad for non-joinder of a necessary party viz. ABFSL. The suit is also said to be bad for want of a valid cause of action since a suit for refund would have to be filed within 3 years.

9. Defendant no.1 has also contended that the plaintiff has not disclosed the name of the counter party to the contract and that the document referred to as a contract note in the plaint is not so. It is only a Cost Memo of the defendant no.1 in respect of the suit transaction. In paragraph 7 the plaintiff claims that their contract was with ABFSL yet, it had not joined ABFSL as a party to the suit. The plaintiff describes the defendant no.1 as a broker. He admits that three transactions set out in paragraph 8 of the plaint are substantially correct. While Suit no.11 of 1996 and Misc. Petition no.81 of 1995 were heard upon remand by the Supreme Court, the defendant no.1 could not participate since he was in custody and the Supreme Court had directed the suit to proceed with the array of parties as originally filed. Defendant no.1 was not a party in Suit no.11 of 1996 and thus the decision in Suit no.11 of 1996 resulted in Misc. Petition no.81 of 1995 being rejected. It

is also contended that first defendant's case was not considered. Defendant no.1 had also contended that the finding in Civil Appeal nos.2275 and 2276 of 2002 conflicts with findings recorded in Suit no.17 of 1994 between defendant no.1 and SCB. The defendant no.1 also claimed that the suit is barred by the law of limitation since the decision of the Supreme Court is dated 5th May, 2006 and the suit is filed only on 13th August, 2007 whereas a suit for cancellation of the transaction and recovery of the consideration should have been filed within one year.

10. On behalf of the Custodian, a written statement has been filed contending that the suit is barred by limitation being filed 15 years after the "contract note" dated 27th February, 1992. That suit appears to be based on the judgment and order of the Supreme Court in two civil appeals referred to above and proceeds on the basis that the said judgment enables the plaintiff to reopen the transaction and pursue a claim against defendant no.1. According to the Custodian, if the plaintiff was aggrieved it could have filed a suit against defendant no.1 without awaiting the decision of the Supreme Court in the civil appeals. According to the Custodian, SCB was a necessary party and the suit is bad for non-joinder of necessary parties. The Custodian did not have any personal knowledge of these transactions and put the plaintiff to strict proof thereof. The Custodian has contended that the Supreme Court found that the plaintiff had not paid consideration for

acquisition of the suit bonds from defendant no.1 and plaintiff acquired no right whatsoever in the suit bonds. For these reasons, the Custodian has contended that the plaintiffs' suit is liable to be dismissed.

11. On the aforesaid pleadings, following issues were framed on 23rd September, 2011 and arise for my consideration;

(1) Whether the suit is filed within limitation?

(2) Whether the plaintiffs' pleas has raised in paragraph 3 of the plaint has been considered and accepted by the Hon'ble Special Judge as well as the Hon'ble Supreme Court of India in the case of Standard Chartered Bank Vs. Andhra Bank Financial Services Limited in Suit no.11 of 1996?*

**(13)*

(3) Whether the plaintiffs prove that they are entitled to refund/return of the amount of Rs.46,01,23,287.67 from the defendant no.1 as the defendant no.1 did not have title to the said bonds?

(4) Whether the plaintiffs prove that the plaintiffs paid consideration to the defendant no.1 for entire title to the suit bonds?

(5) Whether the suit is bad for non-joinder of necessary party i.e. Andhra Bank Financial Services Ltd. as stated in the written statement?

(6) Whether the judgment of the Hon'ble Supreme Court in Civil Appeal No.2275 of 2002 arising from the decree in Suit No.11 of 1996 is binding on the defendant no.1?

(7) Whether the suit as framed is maintainable without seeking declaration as to the status of contract?

(8) What order and decree?

12. Neither party has led any evidence but when the suit was taken up for marking documents, the plaintiff filed a compilation of documents on 17th November, 2017. The following documents came to be marked by consent.

(i) ***Exhibit P-1*** *: Certified copy of Bill no.1290 dated 27th February, 1992 issued by the defendant no.1 to the plaintiff.*
(The original document was marked as Exhibit- 22 in Special Court Miscellaneous Petition No. 11 of 1996 on 4th July, 2001).

(ii) ***Exhibits P2(1) to P2(4)*** *: Certified copies of Four deal slips bearing no. 1529, 1530, 1531 and 1532 dated 27th February, 1992 issued by CMF to the Fund Manager CANSTAR.*
(The original deal slips are marked as Exhibit 20 (colly) in Special Court Miscellaneous Petition No. 11 of 1996 on 4th July, 2001).

(iii) ***Exhibit P-3*** *: Certified copy of Bill no.1289 dated 27th February, 1992 issued by defendant no.1 to plaintiff.*
(The original is said to be marked as Exhibit 22 in Special Court Miscellaneous Petition No. 11 of 1996).

(iv) ***Exhibit P-4*** *: Certified copy of Plaintiff's Voucher LG No. 5221 dated 27th February, 1992 issued by plaintiff.*
(The original is marked as Exhibit 19 (colly) in Special Court Miscellaneous Petition No. 11 of 1996).

(v) ***Exhibit P-5*** *: Certified copy of the affidavit dated 14th June, 1996 filed by Mr. Hiten P. Dalal in Miscellaneous Petition No. 81 of 1995.*
(The original is filed in Special Court Miscellaneous Petition no.81 of 1995).

13. Mr. Deshmukh on behalf of the plaintiff stated that no oral evidence was being led and that they would proceed on the basis of the documents alone. On 12th January, 2018 defendant no.1 also submitted that he does not intend to lead any evidence and he relies only on a judgment passed by the Supreme Court in Civil Appeal no.2177 of 1998 and 2178 of 1998. This document was marked as ***Exhibit "D-1-1"***. The Custodian also was not expected to lead evidence.

14. On behalf of the plaintiff, Mr. Deshmukh submitted that the plaintiff has received a net amount of Rs.3,87,46,575.35 vide cheque no.143941 on 27th February, 1992 after the adjustment pleaded. Thereafter on 14th July, 1992 the plaintiff applied for transfer of the bonds. On 8th September, 1992, SCB had requested for issuance of duplicate allotment letter. NPCL meanwhile informed the plaintiff that the bonds could not be transferred to the plaintiff. On 27th November, 1992 the plaintiff filed a petition in the Company Law Board which later came to be numbered seeking registration of the bonds in favour of the plaintiff. SCB meanwhile filed suit no.3808 of 1992 seeking a declaration that it was entitled to transfer of the bonds in its

favour. On the same date 27th November, 1992 the Company Petition and the suit filed by SCB were transferred to the Special Court. The Plaintiff's petition came to be renumbered as Misc. Petition no.81 of 1995 and the SCB suit came to be renumbered as Suit no.11 of 1996.

15. On 14th June 1996, defendant no.1 filed an affidavit (Exhibit P-5) stating that he had sold the bonds to CMF and had received consideration. The suit proceeds only on the basis of the statement in Exhibit P-5. Mr. Deshmukh had submitted that there is no defence to the claim. The suit being filed in time within a period of three years from the decision of the Supreme Court holding that the defendant no.1 had no title to the suit bonds. Reliance is also placed on Section 14 of the Sale of Goods Act which according to Mr. Deshmukh would in any event save limitation. According to Mr. Deshmukh there is an implied warranty on the part of the seller, in this case defendant no.1, that he had the right to sell the bonds and this right was believed to subsist till the Supreme Court decided that defendant no.1 had no title to the bonds. Thus, read with Article 113 of the Limitation Act which provides for limitation of three years, the suit is stated to be within time.

16. Mr. Kale representing defendant no.1 submitted that the defendant no.1 was not a party to suit no.11 of 1996 and that the virtue of the order of the Supreme Court dated 21st April, 1998 passed in the Civil Appeals, Suit no.11 of 1996 and Misc. Petition no.81 of 1995 were remanded to the Special

Court to be decided *de novo* on the basis of pleadings as they stood and with the original array of parties. The Supreme Court order also provided that the evidence had already been recorded by the Special Court and that the additional evidence could be led if so advised.

17. Mr. Kale therefore submitted that not being a party in the suit and the Supreme Court's order directing that the suit would be tried *de novo* with the original array of parties, there was no occasion for the defendant no.1 to appear and participate in the hearing. According to Mr. Kale, the decision of the Supreme Court would not be binding upon them. Mr. Kale submitted that Mr. Deshmukh's contention that the defendant no.1 was the seller has not been made out. Defendant no.1's title to the bonds is not the case with which the plaintiff had filed the suit. He therefore submitted that defendant no.1 not being a vendor or a counter party, no relief can be granted against the defendant.

18. The learned counsels for the parties have taken me through the pleadings and the documentary evidence and prior orders of the Supreme Court. The plaintiff and defendant no.1 have both proceeded on the basis of these documents. Neither of them wished to lead oral evidence. In his opening argument, Mr. Deshmukh submitted that the suit is not time barred having been filed within the period of limitation. The plaintiff had purchased the Suit Bonds on 27th February, 1992 from defendant no.1. He referred to

Exhibit P-1 contending that it was a contract note. On 27th November, 1992 the plaintiff filed Misc. Petition no.81 of 1995 in the Company Law Board and on the same date SCB filed suit against ABFSL, the plaintiff and NPCL claiming that said bank was entitled to the suit bonds. On 17th February, 2002 the Special Court dismissed SCB's suit no.11 of 1996 and allowed Misc. Petition no.81 of 1995 holding that defendant no.1 had sold the suit bonds to the plaintiff and that the plaintiff was the owner. This judgment of the Special Court came to be reversed on 5th May, 2006 by the Supreme Court which held that defendant no.1 was not owner of the bonds. Mr. Deshmukh submitted that the cause of action arose only upon this judgment being delivered by the Supreme Court on 5th May, 2006 and therefore right to sue accrued only on 5th May, 2006. Therefore, under Article 113 of the Limitation Act, the suit is filed within the period of limitation on 13th August, 2007. He therefore submitted that issue no.1 is liable to be answered in the negative and in favour of the plaintiff.

19. As far as issue no.1 is concerned, Mr. Kale submitted that the plaintiff's contention that the cause of action arose only when the Supreme Court reversed the judgment of the Supreme Court is not correct. According to him, the cause of action if any arose when the statement was first made by defendant no.1 in his affidavit. Therefore there was no occasion for the plaintiff to wait till the verdict of the Supreme Court. Moreover, if the

plaintiff was to make out a case on the basis of the affidavit, that could have been done when the affidavit was filed and within a period of three years from such admission. There is no occasion to hold the defendant no.1 liable today. He submitted that the suit is clearly time barred since the admission is of the year 1996 and the suit is filed only in 2006. On behalf of the Custodian, Mr. Chandran also submitted that the suit is barred since it is filed about 15 years too late.

20. The first issue commonly agitated as between the parties in my view, is liable to be answered in the affirmative inasmuch as the suit in my view squarely barred under the law of limitation. In order to put the issue in prospective, it is necessary to consider at what stage the cause of action arose in favour of the plaintiff. Admittedly, the transaction took place in the year 1992. The suit is filed in the year 2007. Mr. Deshmukh had placed reliance on Section 14 of the Sale of Goods Act by contending that the contract of sale of the suit bonds carried implied conditions on the part of the defendant no.1 that he had right to sell the goods and that he had the right to sell the goods at the time when property is to pass. He submitted that no different intention can be derived in relation to the sale of bonds. According to Mr. Deshmukh implied warranty entailed that the buyer shall have the secured possession of the goods and that the goods should be free of charges, encumbrances in favour of any third party. This Section will not come to the assistance of the plaintiff since the case at hand the plaintiff relied on the alleged implied

warranty on behalf of defendant no.1 to the effect that defendant no.1 had the right to sell the bonds but the payment has not been made to defendant no.1 but to ABFSL. There is no denial of that fact.

21. The learned counsel for the plaintiff also placed reliance on Article 113 of the Limitation Act which provides for a limitation period of three years to file the suit when the right to sue accrues. In my view however, in the instant case, the cause of action arose immediately upon ABFSL informing the plaintiff that they would not be able to transfer the bonds since they had been purchased by SCB. The plaintiff was thus immediately put to notice at that early stage itself that defendant no.1 may not have title to the bonds. It is therefore evident that the suit should have been filed within three years of such knowledge. These three years should be computed from either 8th September, 1992 when NPCL informed the plaintiff of SCB's claim or from 30th September, 1992 when NPCL first informed the plaintiff of the transfer claimed by SCB. This would have given the plaintiff notice that there was likelihood of the bonds not being transferred. The inaction on the part of the plaintiff will in my view be fatal to the suit. Let us see examine a scenario wherein we assume that the plaintiff relied only and entirely upon the representations of defendant no.1 that it was the owner and had title to the suit bonds. The document executed contemporaneously being Exhibit P-1 does not indicate any representation by defendant no.1 that it was the owner

of the bonds. It was clearly an allotment letter that was in contemplation. The instruction on Exhibit P-1 is to issue the bankers cheque in favour of ABFSL. There were other transactions as well all of which are on the same date which I will deal with later in this judgment. The plaint proceeds on the basis that the cause of action arose only upon the Supreme Court rejecting the plaintiff's case. The plaintiff was bound to secure themselves in respect of the suit bonds even prior to 14th July, 1992 and there is no explanation for the delay in applying for transfer of the bonds between 26th /27th February, 1992 and 14th July, 1992 and it would appear that the plaintiff was not too concerned about obtaining the bonds in their name. There was absolute lack of diligence.

22. The other scenario one has to consider is on the basis that the plaintiff proceeded on the representation of defendant no.1 as a broker and not a counter party in the sale. The defendant no.1 claimed that he had acquired rights in the bonds as a result of certain dealings in Cantriple Units as between the defendant no1 and SCB. That admission is to be found in the affidavit dated 14th June, 1996. The contents of the affidavit appear supportive of the defendant's contention that he had acquired a right in the suit bonds on the basis of certain other transaction with ABFSL. Defendant no.1 claimed that he was entitled to the bonds but contractually speaking he has never sold the bonds to the plaintiff but has only facilitated sale of the

bonds in his capacity as broker apparently from ABFSL. If it was the plaintiff's case that defendant no.1 had represented he was entitled to the bonds in his own right and that instead of transferring the bonds himself, the bonds would be transferred directly by ABFSL to the plaintiff, an appropriate declaration would have to be sought that there existed such a contract and that the suit is based on such a contractual representation. However, that is not the case of the plaintiff. The plaintiff has only proceeded on the basis of admission in an affidavit which bereft of any particulars and which appears to have been obtained for the purpose of seeking relief against NPCL.

23. The rejection of the plaintiff's case in Miscellaneous Petition no.81 of 1995 by the Supreme Court does not give rise to a fresh cause of action. A cause of action would have arisen against the defendant no.1 the moment NPCL declined to transfer the bonds in view of the claim made by SCB but the plaintiff continued to rely on representation apparently made by defendant no.1 that he had good title with him. Even assuming he believed he had good title, upon NPCL informing the plaintiff that they would not transfer the bonds vide their letters dated 30th September, 1992 Exhibit G to the plaint the plaintiff could have sued defendant no.1. In its communication dated 30th September, 1992 NPCL states that Andhra Bank had sold the bonds to SCB and that NPCL cannot comply with the requisition seeking transfer of the bonds in favour of the plaintiff. The plaintiff was thus put to notice that they

should take up the matter with SCB. In this behalf, the last paragraph of the letter dated 30th September, 1992 reads thus;

> *"In the event of this letter, you will appreciate it will not be open for us to transfer the bonds. Consequently, we regret, we cannot comply with the requisition contained in the concluding para of your Advocates letter and we suggest that you take up the matter with SCB so that the dispute can be resolved."*

24. This communication admittedly received by the plaintiff on the same day as evident from the rubber stamp on Exhibit G-2 to the plaint would have immediately revealed that defendant no.1 was not the counter party and either SCB or ABFSL may have been counter parties. NPCL had relied upon correspondence between SCB and ABFSL to show that ABFSL had issued two bankers receipts to be paid by SCB to ABFSL for purchase of the bonds. NPCL sought to refer the dispute to arbitration but the plaintiff chose to ignore it. It did not then believe that defendant no.1 is liable to repay the price paid in respect of those bonds. The plaintiff, thus, did not act against defendant no.1. It did not plead an alternative case against defendant no.1. At this stage, the plaintiff would have collected of documentation to support its case against NPC that the bonds were validly acquired from ABFSL through defendant no.1 or defendant no.1 himself. As a consequence of the contents of the affidavit dated 14th June, 1996, if the plaintiff continued to believe that

defendant no.1 had right title and interest to pass in the bonds, two questions arise; if defendant no.1 had title and such title was implied as canvassed by Mr. Deshmukh the plaintiff was bound to lead evidence to show that defendant no.1 had the right to offer the bonds for sale by relying on evidence of the transaction between the defendant no.1. If the transaction between the defendant no.1 and SCB had fructified on account of sale of Cantriple units by defendant no.1 to SCB, why was payment, if any, made by the plaintiff to ABFSL under Exhibit P-1? The plaintiff offers no answers and indeed the plaintiff has failed to make an effort to establish this. Thus, even in 1996 upon reading the affidavit of the defendant no.1, plaintiff would have collected sufficient evidence to support its plea that they had acquired good title in the bonds through defendant no.1. The averments in the plaint are vague, such as paragraph 5 in which the plaintiff states that it placed an order for purchase of the suit bonds but does not disclose with whom. In paragraph 8, the plaintiff states that it entered into three more transactions in bonds "through" defendant no.1. Thus, there is no averment to the effect that the contract of purchase for bonds was "with defendant no.1" or "between plaintiff and defendant no.1".

25. In this behalf, it will be useful to consider the observation by the Supreme Court in the judgment dated 5th May, 2006. The Supreme Court held that CMF had utterly failed to prove its story that it had paid

consideration for purchase of suit bonds on 27th February, 1992. Both CMF and SCB are held to have fudged their accounts. The findings of the Special Court were described as conjectural and the Supreme Court held that the material evidence on record shows that SCB had purchased the suit bonds from NPCL by paying good money. The Supreme Court observed that the other side of the story is that the CMF claimed to have acquired the suit bonds on 27th February, 1992 by paying consideration for them but does not shown as to who the counter party was, from whom the purchase was made. That CMF's stand on its counter party keeps *"changing from beginning to end"*. The Court observed that despite exercise of their imagination, the Court was unable to support the conclusion that CMF paid consideration for acquisition of the bonds from defendant no.1 or that Hiten P. Dalal became the owner of the bonds by virtue of his own 15% arrangement, alluding to the brokerage arrangement. The Miscellaneous Petition was thus dismissed.

26. Despite dismissal of the Miscellaneous Petition, CMF took no action against defendant no.1 but waited till August 2007 to file this suit. The cause of action according to CMF for recovery arose only upon the Supreme Court holding that the plaintiff is not the owner of the bonds. This contention is flawed. I am of the view that the suit is ex-facie barred by the law of limitation. The cause of action could not arise from the judgment of the Supreme Court but only contractual relations between the parties. Nothing

has been shown to me as constituting any attempt by the plaintiff to recover the amount from defendant no.1. No demand was made nor was any legal proceeding adopted for recovery of the amounts from defendant no.1. One has to keep in mind that the plaintiff had not paid consideration to defendant no.1 but it was paid to ABFSL. The adjustment pleaded has also resulted in a sum of Rs. 3,87,46,575.35 been paid by ABFSL not by the defendant no.1. Even otherwise under Section 14 of the Sale of Goods Act an implied condition would be attracted only if there is nothing to show a different intention. In the present case there are several transactions on the same day and these several transactions were all intermingled at least for the purposes of adjustment of payments that would entail a collective assessment of the legal effect of these transactions and for that reason also I am unable to agree with Mr. Deshmukh's contention that an implied condition under section 14 of the Sale of Goods Act would save limitation and entitle the plaintiff to sue at this belated stage. Thus, I am unable to accept Mr. Deshmukh's contention that by virtue of Section 14 of the Sale of Goods Act and Article 113 of the Limitation Act, the claim is not time barred or that the right to sue to accrued only when the Supreme Court rejected the plaintiff's case. For all the aforesaid reasons I answer issue no.1 in the negative.

27. As far as issue no.2 is concerned, Mr. Deshmukh submitted that the order of the Supreme Court clearly held that the plaintiff's case in paragraph

13 of the plaint has been upheld. He therefore submitted that the issue no.2 is liable to be answered in the affirmative. Reference was made to paragraph 22 of the judgment in support of the contention that the issue may be answered in the affirmative. I am unable to accept the contention of Mr. Deshmukh that the plaintiff's plea raised in paragraph 13 (incorrectly stated as paragraph 3 in the issues) has been considered and accepted in the decision of the Supreme Court. The averment in paragraph 13 is to the effect that defendant no.1 has admitted having received consideration from the plaintiff on account of sale of bonds. The plaintiff has pleaded a fraudulent representation by defendant no.1 of having title to the bonds and that the Supreme Court having held that defendant no.1 did not acquire the title, the amount received by defendant no.1 for sale become due and payable but the plaint overlooks the fact that the payments have never been made to defendant no.1 but apparently to ABFSL. The purchases were made through defendant no.1 and the statement in the affidavit that defendant no.1 "received" the amounts will not change the fact the defendant no.1 contends that the payment was made to ABFSL. If payment was made to ABFSL on account of transactions between defendant no.1 and ABFSL as a result of which a payment is made to the account of defendant no.1, that aspect would have to be established by leading evidence but the plaintiff has chosen not to lead evidence. The Supreme Court observed that the pleadings of CMF on the issue of consideration appear to be "confusing and shifty" but the exercise

carried out by the Special Court in Miscellaneous Petition no.81 of 1995 analyzing several transactions shows payments back and forth between the CMF and defendant no.1. The ledger folio produced was not reliable and even CMF's witness had no explanation except for professing ignorance. When cross examined CMF's witness did not remember whether any documents were received from ABFSL in support of the four general vouchers dated 27th February, 1992. The Court further observed that there was no credible evidence on which payments of consideration by CMF could be proved and fully justified. In conclusion the Supreme Court observed that CMF utterly failed to prove its story that it had paid consideration for purchase of the suit bonds on 27th February, 1992. The issue of ownership of the suit bonds could not have been decided on any basis other than what the legal evidence showed. The Supreme Court held that the suit bonds always remained the property of SCB irrespective of how they found their way into the hands of CMF.

28. All of this indicates that the plaintiff produced no evidence at all at the material time when these matters were urged before the Special Court. It was therefore imperative that the plaintiff led evidence in this suit since this is the substantive action the plaintiff has chosen to adopt for recovery but for reasons best known to the plaintiff it has proceeded go to final hearing without deposing to the transaction thereby preventing effective

determination of the issues, indirectly suppressing the true nature of the transaction.

29. In the second round upon remand, the plaintiff produced no evidence and even now before this Court, despite a full opportunity being available the plaintiff avoids presenting its best case. I am therefore unable to agree with Mr. Deshmukh's contention that issue no.2 is liable to be answered in the affirmative. His reliance on paragraph 22 of the judgment is of no consequence. Paragraph 22 holds that the Special Court having held that the SCB had purchased the suit bonds from ABFSL but dismissed SCB's suit and allowed the plaintiffs' petition under the existing 15% arrangement between the SCB and defendant no.1. SCB had purchased the suit bonds on behalf of the defendant no.1. That defendant no.1 was accordingly entitled to deal with the bonds and had sold the bonds to CMF. The role of ABFSL is not explained by the plaintiff even at this stage and that was necessary because even going by what the Supreme Court recorded in paragraph 22 of the judgment the 1st defendant's arrangement was said to be with SCB, why then he made remittances to ABFSL is not clear and is indeed appears to have been suppressed. The deal slips as I have already noted indicate those transactions with ABFSL whose name appears against the words "Name of party" and the name of defendant no.1 appears against the description "Name of broker". For all of these reasons issue no.2 is answered in the negative.

30. Issue no.3 is whether the plaintiff proves that they are entitled to return an amount of Rs. 46,01,23,287.67. Mr. Deshmukh contended that defendant no.1 had no title to the suit bonds since the Supreme Court had dealt with paragraph 98 and 99 of the judgment and held that defendant no.1 did not become owner of the suit bonds. He submitted that the defendant no.1 is now liable to repay the sum of Rs.46,01,23,287.67 since there was a clear admission by defendant no.1 in his affidavit dated 14th June, 1992 that monies had been received by defendant no.1. He submitted that the third issue may be answered in the affirmative.

31. Mr. Kale and Mr. Chandran have reiterated their case that there is no liability to pay and justifiably so since in my view absent any evidence that the amounts were paid over to defendant no.1 and/or paid over to ABFSL to the account of defendant no.1, it is not possible to hold that the plaintiff paid the price of the suit bonds to defendant no.1 and defendant no.1 is liable to refund the same. The admission in the Miscellaneous Petition would have to be tied in with the plaintiff's positive assertions in this suit supported by evidence which is not forthcoming. It was necessary in my view, for the plaintiff to establish that the actual remittance was made to defendant no.1 for the plaintiff to clinch the issue. But what I find is that the plaintiff has not put its best foot forward. It has not led any evidence but relies upon the contents of Exhibit P-5 affirmed as far back as 1996 in a prior proceeding in which the plaintiff did not succeed. That does not constitute a proof nor is it

analogous to an admission under Order 12 Rule 6. The affidavit relied upon is not a pleading in this Suit. The Evidence Act defines an admission as a statement which suggests any inference as to any fact in issue or relevant fact made by persons referred to in Section 17 and 18. Thus, the contents of the affidavit by itself do not in my opinion constitute either an admission contemplated in the Indian Evidence Act or an independent unconditional admission which is actionable in a summary manner without evidence. Issue no.3 is therefore answered in the negative.

32. According to Mr. Deshmukh issue no.4 must be answered in the affirmative since defendant no.1 had in his affidavit Exhibit P-5 admitted that he sold the bonds to the plaintiff and received consideration for the bonds. Mr. Deshmukh contended that he is entitled to a decree on admission. As far as issue no.4 is concerned, there is nothing on record to show that amounts were paid to defendant no.1 or to a third party on account of defendant no.1. This could have been done by the plaintiff but it has deliberately omitted to do so. In view of the answers to issue nos.2 and 3 I am of the view that issue no.4 must be answered in the negative. Accordingly I answer the issue no.4 in the negative.

33. The 5th Issue is whether the suit is bad for non-joinder of parties since ABFSL was not impleaded. Mr. Deshmukh submitted that ABFSL is not a necessary party at all in view of the admission by defendant no.1 that he had

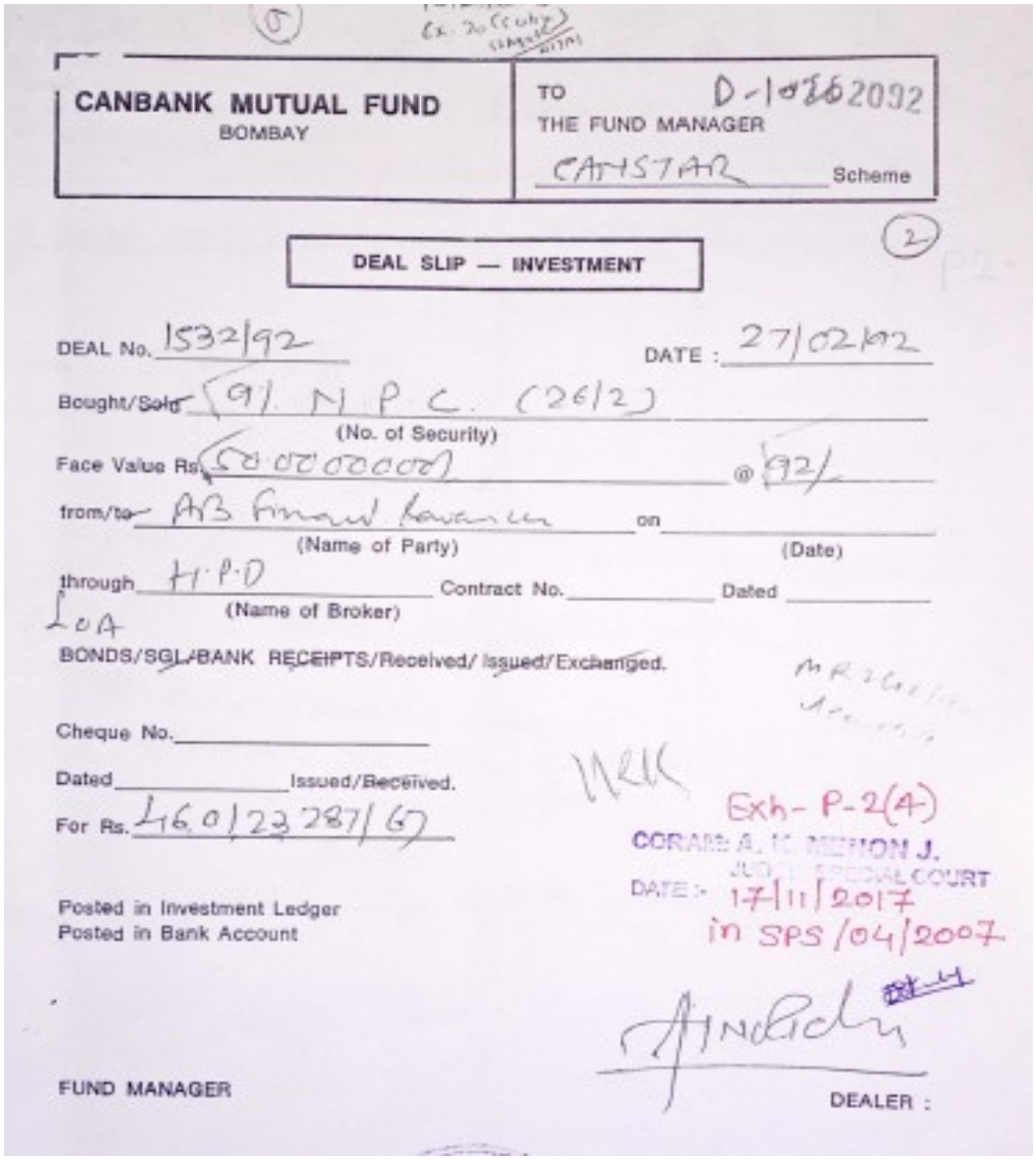
received consideration from plaintiff and the amount has now to be repaid. He therefore submitted that the issue be answered in the negative. Mr. Kale submitted that ABFSL was very much a necessary party. The suit contains no explanation as to how the consideration was paid. The plaintiff does not even claim title from the defendant no.1. In paragraph 6 of the plaint, the plaintiff does not mention from whom they purchased the bonds. This is an aspect which only ABFSL could have clarified. Mr. Chandran on behalf of the Custodian submitted that SCB is also a necessary party relying upon the Custodian's written statement.

34. When one analyzes the claim in the suit, the plaintiff has contended that there were four transactions that the plaintiff had entered into on 27th February, 1992. The first transaction was pertaining to 17% NPCL Bonds of face value of Rs.50 crores. The suit transaction relating to 9% NPCL bonds appears to be the second transaction. This is evident from Exhibit P-3 which Bill bears serial No.1289 whereas Exhibit P-1 bears Bill no.1290. All these bonds were said to have been acquired through defendant no.1. The averments in the plaint are delightfully vague. It will be useful to refer to some of the averments in the plaint. Paragraph 5 reads thus;

"On February 27, 1992 the plaintiffs placed an order for purchase of the bonds."

Though expression "the bonds" makes reference of 9% Bonds Nuclear Power Corporation of India Ltd. of a face value of Rs.50 crores, there is no mention of when the order was placed.

35. In paragraph 6 the plaintiff states that the bonds were agreed to be purchased by the plaintiff at the rate of Rs.92/- aggregating to Rs. 46,01,23,287.67 of which Rs.46 crores of the purchase price of the bonds and Rs.1,23,287.67 was the interest accrued for one day. The relevance of that single day has not been explained and indeed there has been no attempt to do so. From Paragraph 6 it appears that the transaction was in respect of Rs.50 crores. On that very day i.e. 27th February, 1992 claims to have been made and investment deals recording the purchase of the bonds. Useful reference can be made to Exhibit P-2(4) which is the "Deal Slip Investment" no.1532/92 dated 27th February, 1992. The deal slip indicates that the suit bonds of a face value of Rs.50 crores for purchase of bonds at Rs.92/- from ABSFL through defendant no.1. Handwritten endorsement contains the "LOA" on this document. It refers to defendant no.1 by his initials "HPD" as a broker. ABFSL's name is shown above the description "Name of party". Copy of the relevant deal slip is reproduced below;



CANBANK MUTUAL FUND
BOMBAY

TO D-1026 2092
THE FUND MANAGER
CANSTAR Scheme

DEAL SLIP — INVESTMENT

DEAL No. 1532/92 DATE : 27/02/92

Bought/~~Sold~~ 9% N P C. (26/2)
(No. of Security)

Face Value Rs. 50,00,000/- @ 92/-

from/~~to~~ ABFinance Kanpur on
(Name of Party) (Date)

through H.P.D Contract No. Dated
(Name of Broker)

LOA

BONDS/SGL/BANK RECEIPTS/Received/ ~~Issued/Exchanged~~.

Cheque No.

Dated ~~Issued/Received~~.

For Rs. 46,23,287/67

Posted in Investment Ledger
Posted in Bank Account

Exh- P-2(4)
CORAM: A. K. MENON J.
JUDGE, SPECIAL COURT
DATE:- 17/11/2017
in SPS/04/2007

FUND MANAGER

DEALER :

It is evident from P-2(4) that the suit bonds were at all times intended to be purchased from ABFSL and defendant no.1 was only acting as a broker. Considering the totality of transactions on 27th February, 1992, apart from the suit transaction in respect of 9% NPCL bonds, there were three other transactions in bonds all of which are said to be carried out "through defendant no.1". These are not said to be bought "from" the defendant no.1

but "through" him. The amount receivable on account of "sale" is greater than the amount payable on "purchase". The plaintiff was therefore to receive a sum of Rs.3.87 crores which they did received but this amount was received from ABFSL and not from defendant no.1. Further the amount is not Rs.3.47 crores as mentioned in Exhibit P-5. Therefore securities were sold, monies have been received and an adjustment is said to have taken place. Defendant no.1 admits correctness of the chart set out in paragraph 8 of the plaint. The plaint describes the chart reflecting transactions conducted through defendant no.1 and neither purchased from nor sold to defendant no.1. The adjustment should have been proved by leading evidence because upon the sale of any securities there would have been purchases. It would have been owned by someone before the sale but title of the defendant no.1 has not been established. Therefore a counter party must be identified by the plaintiff and that has not been done. Besides receipt of monies is admitted and it is necessary to consider from whom the monies were received by the plaintiff upon adjustment. The plaint does not disclose the source of these monies, however, the record indicates that the monies were received from ABFSL. The question is whom did the plaintiff pay for the suit bonds that were purchased. In paragraph 5 & 6 of the plaint, there is no mention of counter party. There is no mention of the recipient of the price of Rs,46,01,23,287.67. The plaintiff does not say that Rs.46 crores was paid to defendant no.1 but Exhibit P-1 does establish that the plaintiff appears to

have paid the monies to ABFSL.

36. In paragraph 13 of the plaint, the plaintiff states that the Supreme Court held that defendant no.1 had no title to pass to the plaintiff and that defendant no.1 has fraudulently represented with title but the plaintiff had not established when and where such representation if any, was made and whether the plaintiff paid valuable consideration to defendant no.1. There is no answer to this question. Although the plaint states that the amount was received by defendant no.1 for sale of the bonds but there is no mention if and when the plaintiff paid consideration to defendant no.1.

37. In the written statement of defendant no.1 in paragraph 15 it is contended that the plaintiff claims to have purchased the bonds from ABFSL. If the money was paid to ABFSL and defendant no.1 was the broker how can the claim for refund against defendant no.1 be sustained? If post adjustment, monies were received from ABFSL by way of a final settlement/adjustment, how is credit given to defendant no.1? The plaintiff contends that defendant no.1 impliedly warranted that he had right to sell the bonds. The plaintiff believed this till the Supreme Court decided that defendant no.1 had no title. The plaintiff has not explained how, in the light of the fact that defendant no.1 was not the seller, the plaintiff can believe that defendant no.1 had the right to sell? To my mind, the record indicates that he acted as a broker for the transaction. Defendant no.1 has never claimed title even in the affidavit which is now sought to be relied upon by the plaintiff, defendant no.1 does

not claim title as holder.

38. For ease of reference it will be useful to reproduce the paragraph of the affidavit-in-reply dated 14th June, 1996 filed in Misc. Petition no.81 of 1995 by defendant no.1.

> *"This respondent says that after having acquired the said 9% NPC bonds from respondent no.4 this respondent sold 9% NPC bonds of the face value of Rs.50 crores to the petitioner on 27th February, 1992 and delivered to the petitioner the original allotment letter along with the transfer deed which he received from respondent no.4. This respondent issued his Cost Memo dated 27.2.1992 and consideration in respect thereof were adjusted against other purchaser and a balance sum of Rs,3,47,00,000/- was payable by this respondent to the petitioners which was paid by this respondent to the petitioners."*
>
> *(emphasis supplied)*

39. What the deponent has said is that he acquired 9% NPC bonds from respondent no.4-SCB and these bonds were sold to the plaintiff on 27th February, 1992. As on that date there is nothing to show that the plaintiff had satisfied itself that the defendant no.1 had title to the bonds as owner thereof. The other statement in the affidavit is that after some adjustments against other purchasers a balance of Rs.3.47 crores was payable by defendant no.1 to the plaintiff which was paid. Now the fact remains that defendant no.1

had not made these remittances to the plaintiff.

The following table will provide a bird's eye view of the transactions;

Sr. No.	Exhibit No.	Type of Document	Date	Nature of Security	Transaction	Consideration
1	P-1	Bill/Cost Memo	27/02/1992	9% NPC Bonds of F.V. 50 Cr.	Cost of purchase	
2	P-2(1)	Deal Slip/1259/92	26/ 27/2/1992	13% MTNL Bonds of F.V. 50 Cr.	Sale to ABFSL through HPD	
3	P-2(2)	Deal Slip/1530/92	27/02/1992	13% NLC Bonds F.V. 50 Cr.	Sale to ABFSL through HPD	BR
4	P-2(3)	Deal Slip/1531/92	27/02/1992	17% NPC Bonds F.V. 50 Cr.	Purchase from ABFSL through HPD	Rs.49,77,32,876.71
5	P-2(4)	Deal Slip/1532/92	27/02/1992	Purchase of 9% NPC Bonds	Letter of allotment from ABFSL through HPD	Rs.46,01,23,287.67
6	P-3	Bill-1285	27/02/1992	Cost of 50Cr. 17% NPC bonds		Rs.49,77,32,876.71
7	P-4	Payment Voucher LG-5221	27/02/1992	Debit of Rs.49.75 Cr. being RBI cheque received from ABFSL	Credit shows sale of 17% NLC bonds of 50Cr. to ABFSL through BR.	

40. It is now seen that the all transactions involved ABFSL. Moreover the amount "received" by the plaintiff is Rs. 3,87,46,575.35 from ABFSL and not Rs.3.47 crores directly from defendant no.1. It therefore becomes evident that ABFSL is a necessary and proper party to these proceedings. There is nothing to show that monies were paid to defendant no.1 and that defendant no.1 had paid it over to SCB. On the other hand record indicates that amounts were paid over not to defendant no.1 but to ABFSL. I therefore answer issue no.5 in

the affirmative and hold that the suit is bad for non-joinder of ABFSL.

41. As far as issue no.6 is concerned, Mr. Deshmukh was of the view that the Supreme Court has passed common judgment in Civil Appeal no.2275 of 2002 arising from Suit no.11 of 1996 and Civil Appeal no.2276 of 2002 arising from Miscellaneous Petition no.81 of 1995 and that the defendant no.1 is trying to distinguish the common judgment as far as defendant no.1 is concerned but the judgment is binding upon defendant no.1 as well. In view of the aforesaid, he submitted that the suit is maintainable and the plaintiff was not bound to seek any declaration as to the status of the contract.

42. Apropos issue no.6 there can be no quarrel with the fact that the judgment of the Supreme Court is binding upon the parties but it can bind defendant no.1 only to the extent it affects the rights of defendant no.1 in law but on facts it does not mean that the plaintiff was entitled to file a suit by virtue of the judgment dated 5th May, 2006. I have already held that the suit is barred by limitation. The findings of fact in the judgment of the Supreme Court hold that the plaintiff was not entitled to ownership and that would not result in the defendant no.1 becoming liable to repay the amount claimed. If that were so there was no occasion to file this suit. Having filed the suit the plaintiff was bound to embark upon the exercise to prove the allegation that defendant no.1 was liable to refund amounts paid to him. Payment to defendant no.1 has not been proved and liability to refund has not been

established.

43. In paragraph 14 of the plaint, the plaintiff has stated thus;

> *"The plaintiffs submit that due to the aforesaid findings of the Supreme Court whereby it was held that the plaintiffs were not entitled to the ownership of the bonds, the amount of Rs.46,01,23,287.67 paid by the plaintiffs to defendant no.1 towards the purchase price of the bonds is now repayable by defendant no.1. As the purchase of the bonds by the plaintiffs has been set aside,* ***defendant no.1 is not entitled to retain the amount of Rs.46,01,23,287.67 paid by the plaintiffs to defendant no.1 towards the purchase price of the bonds and the same is thus payable by defendant no.1 to the plaintiffs*** *with interest thereon at the rate of 18% per annum from February 27, 1992."* ***(Emphasis supplied)***

44. The plaintiff has failed to establish the fact of payment of funds to defendant no.1 and therefore failed to prove that any funds were "retained" by defendant no.1 as pleaded in paragraph 14 of the plaint by leading evidence. The plaintiff has only relied upon the contents of the affidavit filed before the CLB which was later numbered as Miscellaneous Petition no.81 of 1995. In the written statement, the defendant no.1 has clearly contended that the plaintiff claimed that it had purchased the bonds from ABFSL. The

Supreme Court does not find that defendant no.1 was bound to repay the amount now claimed. That is also indicative of the fact that the plaintiff was bound to prove its claim by leading evidence. The plaintiff has chosen not to lead evidence when it was incumbent upon the plaintiff to lead evidence considering the factual matrix of the case.

45. For the aforesaid reasons, it was also expected that the plaintiff would seek an appropriate declaration of fraudulent representation by the defendant no.1 prior to seeking repayment of any monies. The plaintiff has omitted to do so. It would be difficult to hold that such omission was inadvertent. After the judgment of the Supreme Court which lays bare the inadequacies of the plaintiff's case, the plaintiff would have well advised to lead evidence and dispel all doubts but that has not been done. In my view the plaintiff was duty bound to seek an appropriate declaration of the status of the alleged contract prior to foisting liability on defendant no.1 which they have omitted to do so.

46. Considering the fact that defendant no.1 was not a party to Suit no.11 of 1996 it was necessary for the plaintiff to seek such a declaration. There is merit in the submission of Mr. Kale that defendant no.1 was not a party to Suit no.11 of 1996 and the record shows that defendant no.1 had filed a Chamber Summons to be impleaded as a party defendant. However, the Chamber Summons came to be dismissed. The defendant no.1 has been

excluded from previous proceedings and in all the courts the plaintiff has not made diligent efforts to establish the case against defendant no.1. The defendant no.1 not being a party to suit no.11 of 1996, it was not possible to hold that the judgment in Suit no.11 of 1996 was binding on defendant no.1. Defendant no.1 had no part to deal with the factual matrix in that case. Defendant no.1 it is seen, did make an attempt to participate in the trial of Suit no.11 of 1996 by filing a Chamber Summons which came to be dismissed by the Special Court on opposition by SCB. Thus, defendant no.1 could not participate in the trial in Suit no.11 of 1996 since the order of the Supreme Court clearly contemplated remand to the Special Court for *de novo* disposal on the basis of pleadings then existing and as between the parties then before the Court. Issue nos. 6 and 7 are thus liable to be and are answered in the negative.

47. In conclusion, the suit fails and I pass the following order;

(i) Suit is dismissed.

(ii) No orders as to costs.

(A.K.MENON, J.)

Wadhwa