



W.A.No.609 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	032624
Pronounced On	043024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**W.A.Nos.609 of 2006
WMP.No.1251 of 2006**

M/s.National Stock Exchange of India Ltd.,
Rep., by its Authorised Signatory,
Having its Main Office at Exchange Plaza,
Bandra Kurla Complex,
Bandra (E), Mumbai – 400 051 ... Appellant

Vs

- 1.The Assistant Provident Fund Commissioner,
Employment Provident Fund Organisation
Regional Office,
No.20, Royapettah High Road,
Chennai – 14.
- 2.The Managing Director,
Premier Securities Ltd.,
Having its Regd., Office at
“Karumuthu Centre”, V Floor,
498, Anna Salai, Nandanam



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Chennai -35.

... Respondents

PRAYER:-Writ Appeals have been filed under Clause 15 of Letter Patent against the order dated 27.03.2006 made in W.P.No.24857 of 2001.

For Appellants : Mr.J.Shivanandharaj Sr., Counsel
for Ms.Ridhina Sharma

For Respondents : Mr.Vishnu Ramu for R1
No Appearance for R2

JUDGMENTS

(Judgment of the Court was made by K.KUMARESH BABU.,J)

This Intra Court Appeal has been preferred challenging the order of the learned Single Judge wherein the learned Single Judge had upheld the order passed by the first respondent to disburse the amount withhold by the Appellant as security deposit on behalf of the second respondent for the default committed by the second respondent under the EPF Act.

2.Heard Mr.J.Shivanandharaj learned Senior Counsel appearing on behalf of Ms.Ridhina Sharma learned Counsel for Appellant and Mr.Vishnu Ramu, learned Counsel appearing for the first respondent.



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3.Assailing the order, the learned Senior counsel would submit that the appellant is recognised stock exchange established under Securities Contract (Regulation) Act and it framed Rules, Regulations and bye-laws which has to be approved by the SEBI and House of Parliament. The SEBI Act and the Regulations/bye-laws framed under Securities Contract (Regulation) Act, (hereinafter referred to as 'SCR Act') give a priority to the Appellant over any other debts whatsoever of its trading member. The regulations/bye-laws of the appellant had been enacted to ensure trading in a transparent, free and open manner and to prevent any fraud that could directly hamper the stock market and to prevent the loss to investors. Moreover, the bye-laws or regulations has statutory force and would be enforceable in law. The Hon'ble Apex Court had approved the supremacy of the stock exchanges in regulating itself, as had been held in the judgment of the Hon'ble Apex Court in the case of *Rusoday Securities Limited vs. National Stock Exchange of India Limited & Ors.*, reported in (2021) 3 SCC 401.



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4. The second respondent herein had given an undertaking to adhere to the bye-laws, Rules and Regulations framed by the NSEIL from time to time. The second respondent had further agreed to furnish security deposits, pledge of securities, hypothecation of immovable lien on bank accounts or such other securities as may be required by the stock exchange from time to time, to secure recovery in case of default in payment and other incidental charges relating to default and other dues of the stock exchange and clearing house if any. Further, the second respondent has also agreed that they shall not be entitled to make any claim of refund of the security deposit for a minimum period of five years, even if it ceases or discontinues to trade on the capital market segment of the National Stock Exchange. The said undertaking given by the second respondent falls within the broad scheme of byelaws and is a quintessential requirement for obtaining registration as a stock broker. If a trading member defaults in honouring its commitment under the bye-laws, the trading membership would be expelled and further based upon the Defaulters' Committee decision, the assets of the stock broker namely the second respondent would vest in the exchange i.e.,



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the appellant. He would submit that the second respondent herein had been declared as a defaulter and the membership was expelled and the assets including the security deposits, upon which the first respondent makes a claim had vested with the appellant and therefore, there is no amount of the second respondent is available with the appellant for the first respondent to be attached for the default committed by second respondent under the EPF Act.

5.He would further submit that apart from the vesting of the security deposit given by the second respondent, the bye-laws under Regulations gives the appellant a priority of charge, which cannot be whittled down by the EPF Act. In that context, he would submit that the EPF Act was general enactment and the SEBI Act and Regulations/bye-laws framed thereunder are a special enactment with a particular object. Therefore, he would submit that the priority under Section 11 of the EPF Act will be overridden by the priority under the SEBI Act and its Regulations, bye-laws. That apart, he would submit that the SEBI Act and its bye-laws, Regulations were later in point of time than the EPF Act and the *non obstante clause*



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under the Regulations of the SEBI Act would override the *non obstante* clause under the EPF Act as the EPF act is a prior enactment.

6.Next he would contend that the first respondent had passed the order of attachment without issuing any demand notice, as provided under Section 8F of the EPF Act. Even though, such demand had not been made, the appellant had submitted its detailed statement mentioning the priority enjoyed by the appellant over the security deposit of the second respondent under statement of oath as prescribed under the EPF Act.

7.He had also disputed that the claim as against the second respondent, that was sought to be attached included the dues of the sister concern of the second respondent. These aspects have not been considered by the first respondent, while confirming the order of attachment and the learned Single Judge had also not dealt with these issues and had erroneously held that the first respondent would have a first charge over the amounts that the appellant holds. In that context, he would reiterate his submissions that there is no money of the second respondent that is being held by the appellant, since the vesting of the said amount had already taken



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place with the appellant. In support of his contention, the learned Senior counsel had also relied upon the various judgments that the claims of the appellant will have a overriding effect of other claims on the basis of the bye-laws made under the Regulations, he would rely upon the judgment of the Hon'ble Apex Court in the case of **Bank of India V. Ketan Parekh** and other reported in **(2008) 8 SCC 148** and **Sarwan Singh V Kasturilal** reported in **(1997) 1 SCC 750**. Similarly on the contention that the special law will override the General Law, he had relied upon the judgment of the Hon'ble Apex Court in the case of **Sanwarmal Kejriwal Vs Vishwa Coop. Housing Society** reported in **(1990) 2 SCC 288**. He had also relied upon the judgment of the Hon'ble Apex Court in the case of **Broad of Trustees, Port of Mumbai Vs Indian Oil Corporation and another** reported in **(1998) 4 SCC 302** and **Central Bank of India Vs State of Kerala and others** reported in **(2009) 4 SCC 94** to contend that in view of the provisions under the bye-law made under the Regulations, the appellant would have a priority/a first and paramount lien on the money that had been lying with it belonging to the second respondent. He had also referred to the judgment of the Delhi High Court and Allahabad High Court on the object



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of SEBI Enactment to drive home his contention that the Act and the Regulation which governed the appellant and second respondent have been incorporated specifically to protect the interest of the investors and in that context, he would submit that the claim of the appellant on the monies of the second respondent would have to be given precedents over the claims of the first respondent.

8.He had also relied upon the judgment of the Hon'ble Supreme Court in the case of *Rusoday Securities Limited and National Stock Exchange of India Limited & others* reported in *(2021) 3 SCC 401* to contend that the bye-laws of the appellant, which is in consonance with the SCR Act, has effect of law in view of the object under which it has been established and regulated.

9.He had further relied upon the judgments of the Hon'ble Apex Court in the case of *Beharilal Ramchandran Vs Income Tax Officer Special Circle "B" Ward, Kanpur and Others* reported in *(1981) 3 SCC*



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473; Suinder Nath Kapoor Vs Union of India reported in **1988**

Supplement SCC 626; Saral Wire Craft Private Limited Vs Commissioner of Customs, Central Excise and Service Tax and Other reported in **(2015)**

14 SCC 523 and the judgment of the Madras High Court in the case of **Southern Textiles Ltd. Vs Income-Tax Officer, City Circle** reported in **(1971) SCC Online Mad 370** and the judgment of the Delhi High Court in the case of **Aaa Portfolios P. Ltd Vs Deputy Commissioner of Income Tax and Others** reported in **(2013) SCC Online Delhi 2798** to drive home his contention that the proceedings initiated under Section 8F of the EPF Act as against the appellant was irregular, improper and illegal.

10.Relying upon the aforesaid judgments, in support of his contention, he would submit that the learned Single Judge had not adverted to the materials that had been placed before him and has erroneously dismissed the Writ Petition and therefore, he would seek interference of the order passed by the learned Single Judge and that of the first respondent herein.

11.Countering his submissions, at the out set the learned counsel for



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the first respondent would submit that both the EPF Act and SEBI Act are special enactment for a particular object. He would further submit that even though the EPF act had been enacted earlier, the bye-law framed under the SCR Act cannot have a supremacy over the statutory legislation as the said bye-law utmost can only be in the nature of a subordinate legislation. He would further submit that when the competing rights under two Central enactments are put against each other then it is incumbent upon the Court to analysis the objects and reasons of the said enactment and come to a conclusion which of the said enactment would prevail. He would further submit that the lien claimed by the appellant is based upon an agreement/undertaking given by the second respondent, pursuant to a bye-law sought to be equated only akin to a subordinate legislation and the same cannot prevail upon a statutory legislation namely the EPF Act.

12.He would further submit that the vesting claimed by the appellant would not come in the way of the authorities under the EPF Act to perfect their first charge over the deposits held by the appellant. He would submit that such vesting had taken place much later than the order of attachment



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passed by the first respondent. That apart, he would submit that such vesting is for a purpose namely to discharge the claims against the second respondent and even the bye-law/Regulation provides that if any residue is left after discharge, the appellant cannot retain the money and it is for the appellant to return the money to the second respondent. Therefore, he would submit that the vesting of the security deposits of the second respondent with the appellant is only to protect the rights of the investors and the amounts cannot be fully claimed by the appellants. Therefore, he would submit that the vesting contemplated under the said Regulations is a limited vesting.

13.He would further submit that the provisions of the EPF Act had been strictly followed by the authorities and there has been no violation of the procedures contemplated including that there has been no violation of principles of natural justice.

14.We have considered the rival submissions made by the learned counsels appearing on either side and perused the materials placed on record.



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15.The pivotal contention of the learned Senior counsel appearing for the appellant is that the bye-laws/Regulations having the force of law as held by the Hon'ble Apex Court in the judgment reported in the case of ***Rusoday Securities Limited Vs National Stock Exchange and Others*** reported in ***(2021) 3 SCC 401***, would have a overriding effect of the first charge that is available with the first respondent under the EPF Act.

16.For better appreciation of his contention, it would be useful to analyze the Regulation and the bye-laws under which the appellant seeks to claim the first and paramount lien. The Securities Contract (Regulation) Act, 1956, (hereinafter referred to as 'SCR Act') was brought into force to prevent undesirable transaction on the securities by regulating the securities market. The said enactment deals with the grant and recognition of stock exchanges and the manner in which the stock exchanges shall function. Certain powers have also been vested with the stock exchange and how they shall be controlled by the authorities under the enactment. The stock exchanges had been vested with the power to make bye-laws under Section



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9 of the said enactment. The said bye-laws approved by the SEBI shall be published in the gazette of India and also in the official gazette of the State in which the Principal office of recognized stock exchange is located. Such bye-laws shall have effect from the date of its publication in the gazette of India. Under the said power, the appellant herein had also formulated its bye-laws, under the said bye-laws, the trading member who is admitted to the appellant stock exchange would have to pay certain fees and also security deposits and any other amount that may be specified by the SEBI. Under clause 1(c) of Chapter V of bye-laws, the security deposits, any other money or deposit in any form that has been made by a trading member to exchange shall be subject to the first and paramount lien for any sum due to the exchange on all other claims against the trading member for due fulfillment of engagements, obligation and liabilities of trading members arising out of or incidental to any dealing made subject to the Bye-laws, Rules and Regulations of the exchange. The said clause also provides that the exchange would be entitled to adjust and appropriate such money to the exclusion of the other claims against the trading member. Chapter XII of the bye-laws also provides for declaration of a default of the trading



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member and who can be declared as a defaulter by various methods.

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17. Once the trading member has been declared as a defaulter, then the deposits or monies of the trading member lying with the Appellant will vest with the Appellant. For better appreciation, the relevant bye-law framed by the appellant under the provisions of Securities Contract (Regulations) Act is extracted hereunder:-

Chapter V

Trading Membership

Appointment and Fees

(1)(c) The trading member shall pay such fees, security deposits and other monies as may be specified by the Board or the relevant authority from time to time, on admission as trading member and for continued admission. The fees, security deposits, other monies and any additional deposits paid, whether in the form of cash, bank guarantee, securities or otherwise, with the exchange, by a trading member from time to time, shall be subject to a first and paramount lien for any sum due to the Exchange and all other claims against the trading member for due fulfillment of engagements, obligations and liabilities of trading members arising out of or incidental to any dealings made subject to the Byelaws, Rules and Regulations of the Exchange. The Exchange shall be entitled to adjust or appropriate such fees, deposits and other monies for such dues and claims, to the exclusion of the other claims



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against the trading member, without any reference to the trading member.

Chapter XII

Default

Declaration of Default

(11) Vesting of assets in the Exchange

The Defaulters' Committee shall call in and release the security deposits in any form, margin money, other amounts lying to the credit of and securities deposited by the defaulter and recover all moneys, securities and other assets due, payable or deliverable to the defaulter by any other Trading Member in respect of any transaction or dealing made subject to the Bye-laws, Rules and Regulations or the Exchange and such assets shall vest ipso facto, on declaration of any trading member as a defaulter, in the Exchange for the benefit of and on account of any dues of the Exchange, National Securities Clearing Corporation Limited, Securities and Exchange Board of India, other trading members, Constituents and registered authorised persons of the defaulter, approved banks and any other persons as may be approved by the Defaulters' Committee and other recognised stock exchanges.

18. Firstly we have gone through the said enactment, the enactment had made with the object to regulate the stock exchanges and the transaction in securities with a view to prevent undesirable speculation. The reading of the provisions of the said enactment would take us to the conclusion that the same had been enacted to protect the investors of their



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contract of dealing with the stocks of companies through the stock exchanges. Section 9 of the SCR Act does not contemplate of any priority of charge in favour of the stock exchanges as against any third parties. The bye-law that had been extracted above also does not contain any *non obstante clause* which would have an effect of overriding any other law. Further even if an non obstante clause is available in a bye-law, then the same cannot be said to have overriding effect over a statutory enactment much more when the said statutory enactment provides for a priority of charge opening with the *non obstante clause* overriding other enactments.

19.Be that as it may, from a reading of clause (c) of Chapter V extracted supra, it could be only deduced that the priority namely first and paramount lien of any stock exchange of any sum against all other claims of the trading member should be arising out of or incidental to any dealing made by the trading member. Therefore, the claim of the appellant that such priority would entitle them to hold the money of the second respondent against the claim made by the first respondent cannot be countenanced. The reason we arrive at such a conclusion is that the claim made by the first



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respondent over the money of the second respondent available with the appellant is not a claim that arises out of or incidental to any dealings that had been made by the second respondent under the bye-law/Rules/Regulations.

20.It had been vehemently contended that by clause 11 of Chapter XII extracted supra, the security deposits made by the second respondent lying with the appellant had vested with the Defaulters' Committee and therefore, when such vesting had taken place, the security deposit no longer belongs to the second respondent and therefore, the claim of the first respondent under Section 11 of the EPF Act cannot be said to be a valid claim.

21.From the facts that had been narrated before us, it could be seen that the first respondent had issued a notice invoking the powers under Section 11 of the EPF Act on 05.01.2001. A reading of Chapter XII, provides for a declaration of default, clause (1) provides for contingencies, where a trading member could be declared as a 'defaulter'. Clause (6) provides for a 'notice of declaration of default'. It is also an admitted fact



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once the trading member had been declared as a 'defaulter' only then the Defaulters' Committee shall take charge of all his books of accounts, documents, paper and vouchers to ascertain the state of affairs. The sequence of the bye-laws would indicate that only after an enquiry into the default, the vesting of assets in the exchange could take place. The vesting of assets in the exchange is provided under Clause (11) of Chapter XII.

22.The show cause notice had been issued by the appellant to the second respondent on 01.03.2001. This would indicate that the second respondent had been earlier called upon by the appellant to fulfill certain of his obligations and that on his failure to fulfill such of his obligations, the second respondent had been expelled from the trading membership of the exchange w.e.f., 01.03.2001. In the present case, no records have been placed before us to contend that there were any earlier proceedings either to expel or to declare the second respondent a defaulter. The said proceedings of expulsion had been made only on 01.03.2001, which was subsequent to the notice issued by the first respondent. In such circumstances, we are of the view that no vesting would have taken place for the appellants to



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contend that the security deposit of the second respondent had vested with the appellant.

23.Further in the judgment the of Hon'ble Apex Court in the case of *Bombay Stock Exchange vs. Jaya I.Shah & Ors.*, reported in (2004) 1 SCC 160 and *Bombay Stock Exchange vs. V.S.Kandalgaonkar & Ors.*, reported in (2015) 2 SCC 1, wherein the Hon'ble Supreme Court has in categorical terms held that when the vesting had taken place, the ownership of the assets of the trading member is under animated suspension or eclipsed. When that being the categorical finding of the Hon'ble Apex Court on the effect of such vesting, the appellant cannot claim that by vesting, the amount belong to them. The reading of Chapter XII in its entirety would only draws to the conclusion that the vesting in the stock exchange is only to protect the claims against the trading member and for disbursal of the amount to such claims. If any surplus is also found after disbursal, the amount would have to be returned. Therefore, the appellant cannot claim any ownership of the amount and what it holds by way of vesting is only on behalf of the second respondent.



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24.A strong reliance had been made by the learned Senior counsel for the appellant on the judgment of the Hon'ble Apex Court in the case of ***Rusoday Securities Limited vs. National Stock Exchange & Ors.***, reported in ***(2021) 3 SCC 401***. The said judgment cannot be said to be applicable to the facts of the case, as the Hon'ble Apex Court did not analyse the provisions of the SEBI Act, SCR Act, bye-laws/regulations made by the stock exchange vis-a-vis a statutory enactment, which provides for a priority of charge of a statutory claims. Therefore, the said judgment cannot be pressed into service by the appellant to support his contentions.

25.Further case of the appellant is that the appellant had not been provided with the opportunity and the same is in violation of the provisions of the EPF Act. The learned Single Judge had analysed the said aspect and has found that there was no infirmity or error in the procedure that had been followed by the first respondent. The learned Single Judge had also analysed the various provisions of the enactment and the object with which the EPF Act has been enacted. We have gone through the findings and



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reasoning of the learned Single Judge which in our view does not warrant any interference by this Court.

26.For the foregoing reasons, the Writ Appeal fails and the same is accordingly dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.)

30.04.2024

(K.B., J.)

Index: Yes
Speaking Order
Neutral Citation: Yes
Pbn



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To
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1. The Assistant Provident Fund Commissioner,
Employment Provident Fund Organisation
Regional Office,
No.20, Royapettah High Road,
Chennai – 14.



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and
K.KUMARESH BABU.,J.

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A Pre-delivery order made in
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30.04.2024