

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO.2205 OF 1997**

1. Harinarayan G. Bajaj	)
Share and Stock Consultant having his office at 406,	)
Commerce House, 140, Nagindas Master Road, Fort,	)
Mumbai - 400 023	)
2. Shailesh Harinarayan Bajaj	)
Share and Stock Broker having his office at 406,	)
Commerce House, 140, Nagindas Master Road, Fort,	)
Mumbai - 400 023	)
3. Krishna Harinarayan Bajaj	)
having her office at 406, Commerce House, 140,	)
Nagindas Master Road, Fort, Mumbai - 400 023	)
	)
4. Rahul Harinarayan Bajaj	)
Share and Stock Analyst having his office at 406,	)
Commerce House, 140, Nagindas Master Road, Fort,	)
Mumbai - 400 023	) Plaintiffs

Versus

1. Reliance Capital Limited, a company incorporated	)
under the Companies Act, 1956 and having their	)
corporate office at Mittal Chambers, 228, Nariman Point,	)
Mumbai - 400 021	)
2. Ms. Sesa Sterlite Limited, a company incorporated	)
under the Companies Act, 1956 and having their	)
registrered office at Sesa Ghor, 20, EDC Complex, Patto,	)
Panjim, Goa - 403 001.	) Defendants

Ms. Sonal a/w. Mr. Vivek M. Sharma for plaintiffs.

Mr. J.P. Sen, senior Advocate a/w. Mr. Omkar Chandurkar, Ms. Bhavna Singh and Mr. Paresh Patkar i/b. Mulla and Mulla and CBC for defendant no.1.

CORAM	: K.R.SHRIRAM, J.
RESERVED ON	: 10 th OCTOBER, 2017
PLACED FOR	
CLARIFICATION ON	: 30 th OCTOBER, 2017,
	9 th /16 th /23 rd NOVEMBER, 2017
PRONOUNCED ON	: 5 th JANUARY, 2018

JUDGMENT:

1 This suit was filed for a declaration that plaintiffs as pledgors and defendant no.1 as pledgee had reached an understanding for transfer of the pledged securities (shares of defendant no.2) in favour of defendant no.1 at an agreed sum and for payment over to plaintiffs, on accounts being taken, of the amount lying in excess after satisfaction of the outstanding dues. In the alternative, plaintiffs also sought reliefs in the nature of redemption of the pledged securities (shares of defendant no.2) on the basis that the sale thereof by defendant no.1 was null and void. Plaintiffs, however, abandoned their main case in its entirety and pressed only their alternative plea for redemption. No relief is sought against defendant no.2.

2 In or around July 1995, plaintiff no.1 approached defendant no.1 seeking a loan in a sum of Rs.5,00,00,000/- (Rupees Five Crores Only). The loan, admittedly, was sanctioned by defendant no.1 vide its letter dated 11th July, 1995¹, repayable in 8 months, i.e., on 12th March, 1996. Material terms are as set out hereinbelow:

“1. Facility

Principal Amount: Rs.500 lakhs (Rs. Five Hundred lakhs only)

Nature of Facility: Loan against shares

Rate of Interest: Calculated at monthly/rests payable in arrears

Period: 8 months

Date of Maturity: 12th March, 1996

1. Exh. P-1

Collateral Security: Pledge of following shares:

<i>Name of scrip</i>	<i>No.</i>
<i>Sesa Goa Ltd.</i>	<i>200000</i>

Margin: 30%

Rate of Interest: 24%

2. General Conditions Precedent

The availment of the Facility will be subject to our receiving, in a form and substance satisfactory to us, of:

a).....

e) Agreement of Pledge in form and substance satisfactory to us duly executed

f) pledge of collateral security at our office/custodial (if specified)

g) Demand Promissory Note for Rs.5,00,00,000.

h) post-dated cheques for principal and interest payments

i)....

4. Covenants

b) 1. Notwithstanding what is stated hereinabove, we shall, at any time and from time to time, be entitled to notify you and thereafter charge interest at such notified rate and this letter shall be construed as if such revised rates were mentioned herein.

2. In case of default either in the payment of interest, additional interest, the repayment of the principal amounts as and when due and payable or reimbursement of all costs, charges and expenses when demanded, you shall pay additional interest at rate of 2% above the interest rate for the Facility, on the overdue interest, principal amount, costs, charges or expenses and/or from the respective due dates for payment and/or repayment.

3. ...

4. No failure to exercise or delay in exercising any of our rights hereunder or under any other documents will act as a waiver of that or any other right nor shall any single or partial exercise preclude any future exercise of that right."

3 Pursuant to the sanction letter, plaintiffs entered into an Agreement of Pledge dated 12th July, 1995² to secure the said advance of Rs.5 Crores. Under this Agreement, plaintiffs pledged, in favour of defendant no.1, 2,00,000 shares of defendant no.2, Sesa Goa Ltd. (later

2. Exh. P-2

name was changed to Sesa Sterlite Ltd.). Plaintiff no.1 also executed in favour of defendant no.1 a demand promissory note dated 12th July 1995³ for the said sum of Rs.5 Crores and a Power of Attorney of the same date,⁴ whereby defendant no.1 was authorized to sell the pledged securities, as deemed fit. The clauses (which had few blanks) in the Agreement of Pledge, that are relevant for the present, are set out hereinbelow:

“4. In default of payment of any one/two installments of interest as stated above RCL shall be entitled to demand payment of the entire amount then outstanding in respect of the said debt as if the period for repayments has expired and shall also be entitled, on failure to pay the interest on due dates, to debit the overdue interest on the Borrower’s Loan and capitalize the amount of such interest and charge interest thereon by way of compound interest as if such amount was an additional loan granted by RCL to the Borrower carrying interest at the same rate in addition to charging compensatory interest at the rate of ____% p.a. from the date of default to the date of actual payment of such defaulted amount. The Borrower further agrees that RCL shall be entitled to change rates and/or periodicity of interest and compensatory interest etc. mentioned in clause 2 hereinabove and this clause at any time by giving ____ days notice to the Borrower and/or notifying in a local newspaper and shall thereafter be entitled to charge interest at the changed rate as if the same was provided for in this agreement.

5. (a) For the consideration aforesaid the Borrower has hereby pledged and delivered the shares and securities in marketable lot described in the Second Schedule hereto and the shares and securities that maybe hereafter delivered to RCL pursuant this agreement whether for the purpose of forming Additional Security for any sum already lent and advanced or by way of substitution for and in lieu of any shares and securities which may have been delivered or may be delivered to RCL under this Agreement or otherwise howsoever (hereinafter called the said Securities) shall to be deemed to have been pledged as security to RCL for the due repayment by the Borrower to RCL of any moneys due to RCL from time to time. The expression “the moneys due to RCL” in this and subsequent clauses of this Agreement shall be taken to include the principal moneys from time to time due and also all interest thereon calculated from day to day at the rates hereinabove mentioned and the amounts of all costs, charges and expenses which RCL may have paid or incurred in any way in connection with the said security or the sale or disposal thereof.

3. Exh.P-6

4. Exh.P-7

10. The Borrower hereby authorizes RCL during the continuance of the pledge to lodge for transfer or transfer in the name of RCL or their nominee the said Securities or any of them.

11. That this Agreement is to operate as security for the moneys from time to time due to RCL as also for the ultimate balance to become due on the said Loan Account and the said account is not to be considered exhausted by reason of the said Account being brought to credit at any time or from time to time as long as the facility is not terminated.

14. (i) The occurrence of the following shall be treated as default on the part of the Borrower in addition to the defaults enumerated hereinabove earlier.

(a) Any principal amount or interest or additional interest or fees, costs, charges or expenses being unpaid for a period more than 15 days from the due date for payment/repayment/reimbursement thereof.

(b)...

(c) Your committing any breach or default in the performance or observance of any term or condition or covenants or provision of this letter and/or of any other security or documents or undertakings executed by you or on your behalf from time to time.

(d)....

14. (ii) On the happening of an event of default, RCL shall be entitled, after giving 7 (seven) days written notice to the Borrower(s), to sell or otherwise dispose of the Securities or any of them in such manner and at such price as RCL shall think most appropriate, without being liable for any loss or diminution in value thereby sustained, and apply the net proceeds of such sale (after deducting all costs, charges and expenses incurred in such sale or disposal), in or towards satisfaction of the moneys due to RCL in the loan account of the Borrower and in case there is a surplus, to pay over the surplus to the Borrower or as the Borrower may direct.

15. All other terms and conditions forming part of Letter of Sanction dated _____ not specifically included in this Agreement shall have effects as if the same are part of this Agreement."

The Power of Attorney dated 12th July 1995, expressly empowered defendant no.1 to deal with the said securities pledged and provided, inter alia, :

"b) I have pledged the said securities with M/s. Reliance Capital Ltd. having its corporate office at Mittal Chambers, Ground Floor, 228, Nariman Point, Bombay 400 021, as collateral security with an

authority to M/s. Reliance Capital Ltd. to sell, transfer and/or dispose of the said securities as they deem fit.

c)

1. To sell and transfer the said securities to any party/person and receive the sale consideration in respect of the said securities and apply the same against liquidation of the loan sanctioned and paid to me.”

Plaintiff no.1 also, under cover of a letter dated 12th July, 1995⁵, forwarded to defendant no.1 cheques for monthly interest @ 24% p.a. as well as for the principal sum of Rs.5 Crores.

4 Thereafter, plaintiffs sought an additional advance of Rs.5 Crores on the same terms and conditions save and except as to the tenure of the loan. While no new sanction letter was issued by defendant no.1 in respect of this advance, admittedly this second amount of Rs.5 Crores was also advanced on the same terms and conditions as stipulated in Exh.P-1, sanction letter dated 11th July, 1995. The second loan was disbursed on 17th July, 1995 and was repayable on 17th January, 1996, i.e., in 6 months. Plaintiff no.1 and defendant no.1 entered into identical set of documents in respect of the second tranche of Rs.5 Crores including, inter alia, an Agreement of Pledge dated 12th July, 1995⁶, a Promissory Note dated 13th July, 1995⁷ and a Power of Attorney dated 13th July, 1995⁸. Plaintiff no.1 also, under cover of a letter dated 19th July, 1995⁹, forwarded as in the case of the first tranche of Rs.5 Crores, post-dated cheques

5. Exh.P-5

6. Exh.P-8

7. Exh.P-12

8. Exh.P-133

9. Exh.P-11

towards monthly interest @ 24% p.a. as well as towards repayment of the principal.

5 Out of the second tranche of Rs.5 Crores, a sum of Rs.1.3 Crores was disbursed directly to plaintiff no.1 while a sum of Rs.3.70 Crores was paid on behalf of plaintiffs to Reliance Share and Stock Broking Ltd¹⁰. While the post-dated cheques for interest were initially honoured from time to time, plaintiffs committed a default in respect of the last installment of Rs. 10,19,178/- payable by way of interest on the second tranche of Rs.5 Crores as well as the principal sum of Rs.5 Crores which fell due for payment on 17th January, 1996. By its letter dated 9th February, 1996¹¹, plaintiff no.1 sought an extension of one month's time to repay the said amount. By its reply dated 23rd February, 1996¹², defendant no.1 recorded that the cheques for Rs.5 Crores and Rs.10,19,178/- would be re-deposited on 27th February, 1996. The letter also made an express reference to clause 14 (ii) of the Agreement of pledge and observed:

"You are requested to kindly treat this as a seven days notice to make the payment of amounts owed by you to RCL and which have fallen due for payment. In the event of a default we shall proceed to sell or otherwise dispose of the securities to recover our dues. You will be liable for all costs and consequences thereof."

6 By a further letter dated 7th March, 1996¹³, defendant no.1 recorded that despite repeated assurances, defendant no.1 was yet to

10. Exh.P-14

11. Exh.P-16

12. Exh.P-17

13. Exh.P-18

receive any monies from plaintiffs. By this letter, defendant no.1 expressly informed plaintiffs that they had "*initiated negotiations for sale of shares of Sesa Goa Ltd. pledged by you as security for loan of Rs.10 Crores given to you*". Plaintiffs were thus expressly put on notice that defendant no.1 intended to sell the shares pledged in its favour to secure the entire sum of Rs.10 Crores which was then outstanding alongwith unpaid interest, though counsel for plaintiffs argued that this letter was restricted to second loan/tranche because it stated "*proceeds of sale shall be appropriated towards recovery of Rs.5 Crores which is overdue*" and on that date only second loan was due. It should, however, be noted that the letter says - "*Re:-Loan of Rs.10 Crores given to you*" and first loan was in any ways falling due for repayment on 12th March, 1996.

7 Meanwhile, the post-dated cheque furnished by plaintiff no.1 for repayment of the first tranche of Rs.5 Crores was dishonoured. By its letter dated 21st March, 1996¹⁴, defendant no.1 recorded this default and called upon plaintiff no.1 to forthwith repay the said sum of Rs.5 Crores alongwith overdue interest thereon @ 36% p.a. (though interest payable was only 24% p.a.) for the period for which the amount remained outstanding.

8 By their reply dated 29th March, 1996¹⁵, plaintiffs sought extension of time to pay the amounts that had fallen due along with

14. Exh.P-19

15. Exh.P-20

interest. Plaintiffs, in this letter, however, did not question the rate of interest of 36% per annum demanded by defendant no.1. This, defendant no.1 says entitles defendant no.1 to claim interest at 36% p.a. on the amounts outstanding because clause 4(b)(1) of Exh.P-1 permits them to charge interest at such notified rate and the sanction letter shall be construed as if such revised rates were mentioned therein. I am afraid, defendant no.1 is not correct, because Exh.P-14 cannot be called a notification by defendant no.1 as contemplated in clause 4 (b)(1) of Exh.P-1 for entitlement to interest at 36% p.a. It can be only construed as a demand notice as required under section 138 of the Negotiable Instruments Act. I must hasten to add, I am not making any observation as to whether the said letter meets with the requirements of Section 138 of the Negotiable Instruments Act.

9 By a further letter dated 7th May, 1996¹⁶, plaintiffs referred to the outstanding loan of Rs.7,50,00,000/- and forwarded post dated cheques of Rs.1,50,00,000/ each by which they proposed to make payment of the principal amount. Plaintiffs also assured defendant no.1 that the interest amount would be paid before 30th June, 1996 after calculating the same. One of the cheques for Rs.1.5 crores furnished by this letter dated 7th May, 1996 was subsequently replaced by 3 cheques of Rs.50 lakhs each¹⁷.

16. Exh.P-21

17. Exh.P-22

10 By a letter dated 29th May, 1996¹⁸ plaintiffs recorded that two cheques of Rs.50 lakhs each had been honored by them towards principal and interest. They sought extension of time till 4th June, 1996 for repayment of the remaining Rs.50 lakhs which was to fall due on 30th May, 1996. By this letter, plaintiffs also requested defendant no.1 to release a portion of the pledged securities in the light of the payments already made. Defendant no.1 accordingly released 21,000 shares and 6640 shares on 31st May, 1996 and 5th June, 1996, respectively, because of the payment already made. This was in addition to 1,02,640 shares earlier released by defendant no.1 to plaintiffs.

11 By a letter dated 6th June, 1996¹⁹ plaintiffs recorded payment of a sum of Rs.1,50,00,000/- and sought time to pay the balance amount including interest. This was followed by a letter dated 12th August, 1996²⁰ from plaintiffs to defendant no.1 where plaintiffs referred to their failure to make timely repayment of the total loan of Rs.10 crores availed by them. By the said letter, plaintiffs sought details of the shares already sold by defendant no.1 and requested not to press for any sale of the remaining shares lying in their custody “to adjust against the remaining amount due to you either in the NSE or BSE.” Plaintiff no.1 claimed that he was “in the process of placing this equity myself and your offer if floated would jeopardize my negotiations.” This according to defendant no.1 was more

18. Exh.P-23

19. Exh.P-24

20. Exh.P-26

than apparent that plaintiffs themselves treated the two tranches of Rs.5 crores each as constituting a single loan of Rs.10 crores, part of which was outstanding along with overdue interest and that plaintiffs were fully aware that defendant no.1 intended to sell the pledged securities to recover the amounts due.

12 Meanwhile, defendant no.1 during the subsistence of the pledge, lodged the share certificates and share transfer forms with Sesa Sterlite Ltd. (Defendant No.2) for transfer of the shares in the name of defendant no.1. This was as a step in aid to a future enforcement of the pledge and the sale of the pledged securities.

13 By their letter dated 30th August, 1996²¹ defendant no.2 - Sesa Sterlite Ltd. informed plaintiffs of the lodgment by defendant no.1 of the pledged securities for transfer in its name. By a letter dated 13th September, 1996²² addressed to defendant no.2 - Sesa Sterlite Ltd., plaintiff no.2 called upon defendant no.2 not to transfer the said shares in the name of defendant no.1. He did so on the ground that defendant no.1 had agreed not to transfer the shares without the consent of plaintiff no.1 and that such consent had not been obtained. The letter also claimed that the amount payable by plaintiff no.1 had not become due and payable. This does appear to be inconsistent not only with the terms of the agreement between the parties but also with the admitted position that plaintiffs were

21. Exh.P-27

22. Exh.P-28

by that date clearly in default of their payment obligations.

14 It is the case of defendant no.1 that subsequently, plaintiffs agreed to withdraw their objection to the transfer of the pledged securities in the name of defendant no.1 and the enforcement thereafter by defendant no.1 of the pledge to recover the outstanding dues. In that context, by a letter dated 24th September, 1996²³ addressed to defendant no.2 - Sesa Sterlite Ltd., plaintiff no.2 withdrew his objection to the transfer of the shares in the name of defendant no.1. By a subsequent letter of 8th October, 1996²⁴ addressed to Bank of India, plaintiffs also issued stop payment instructions in respect of the 4 cheques of Rs.1.5 crores each earlier lodged by them with defendant no.1.

 It is clear from plaintiffs conduct that they were perfectly aware at this stage that defendant no.1 intended to sell the pledged securities and were at peace with it. In any event, plaintiffs did not express any desire at this stage to redeem the pledged securities by tendering the amounts due. It is also significant that at this time plaintiffs did not assert the existence of any arrangement whereby the transfer of the shares in the name of defendant no.1 were to be treated as a sale at any price.

15 This assertion was made for the first time by a letter dated 30th December, 1996²⁵ where plaintiffs set up an alleged understanding

23. Exh.P-29

24. Exh.P-30

25. Exh.P-31

with one Mr. Sadashiv Rao of defendant no.1 that the shares would be appropriated at the rate of Rs.310/- per share on 8th August, 1996 and that accounts would be drawn up on that basis.

The said letter also referred to an earlier letter dated 8th October, 1996 stated to have been addressed by plaintiffs to defendant no.1, which both sides have not produced. The letter thus proceeded on the basis that the 1,59,936 equity shares of Sesa Sterlite Ltd. had been appropriated by defendant no.1 to itself at a cost of Rs.310/- per share and that defendant no.1 was liable to render accounts on that basis and to pay over to plaintiffs the balance remaining along with interest at the rate of 24% per annum. In other words, the letter constituted an assertion that the pledge had come to an end and that defendant no.1 was now the owner of the shares.

16 By its letter dated 3rd January, 1997²⁶ addressed to plaintiff no.1, defendant no.1 recorded the sale, at a net rate of Rs.255/- per share, of 50,000 of the pledged securities for an aggregate sum of Rs.1,27,50,000/-. By their Advocates' reply dated 15th January, 1997²⁷ plaintiffs reiterated the contents of Exh.P-31, their earlier letter dated 30th December, 1996 and then observed:

"In view of what is aforesaid my client fails to understand as to after having appropriated the shares of Sesa Goa Ltd. @ Rs. 310/- per share, why are you now intimating my client about the sale of the said shares. My client submits that it is totally within your discretion

26. Exh.P-32

27. Exh.P-33

as to when and what rate to sell the shares. As far as my client is concerned, my client is entitled to receive the statement of accounts and balance surplus funds lying in your hands after adjusting loan amounts with interest thereon.

My client is further, as stated earlier, entitled to return of documents lying with you. In view of what is aforesaid my client submits that you are free to take decision as to when, how and at what rate to sell the shares which already belong to you. You are also requested to comply with the requisitions made through my letter dated 30th December, 1996."

17 M/s. Kanga & Co. acting on behalf of defendant no.1 initially addressed a holding letter to the plaintiffs' Advocate recording that they were seeking detailed instructions and would reply shortly²⁸. M/s. Kanga & Co. appear to have, subsequently, addressed a letter dated 7th February 1997 which has not been produced by both sides and hence is not clear what the contents were. Plaintiff no.1, however, states that a reply was in fact received in paragraph 24 of his witness statement²⁹ where he asserts "*Vide the said letter, 1st defendant Company reneged from the oral agreement reached between me and Mr. Sadashiv Rao on behalf of 1st defendant Company with regard to the appropriation of the 1,61,486 pledged shares of 2nd defendant Company by 1st defendant Company at the rate of Rs.310 per share.*"

18 Meanwhile, defendant no.1 continued to inform plaintiffs from time to time of the sale of the pledged securities including the rate at which the sales were being effected. On each of these letters, plaintiff no.1

28. Exh.P-34

29. Pg.172

endorsed the legend “accepted under protest”³⁰.

19 By their Advocates' letter dated 13th February, 1997³¹, in reply to M/s. Kanga & Co.'s letter dated 7th February, 1997 (which has not been produced), plaintiffs reiterated the arrangement that they claimed to have reached with Mr. Sadashiv Rao of defendant no.1. In that context, the plaintiffs asserted:-

“xxxxxxxx

4. With reference to paragraph 4 of your letter, your clients have overlooked my clients contention that your clients were free to decide as to when your clients would sell the shares as your clients had appropriated the shares lying with them on August 8, 1996 @ Rs. 310/- per share and had already lodged the shares with the company for transfer. My client submits that since your clients had become legal owners of the shares, they were free to decide as to when to dispose off the shares belonging to themselves.

xxxxxxxx

6. With reference to paragraph 6 of your letter, my client submits that all the transactions of shares upto June 19, 1996 were, undertaken with the knowledge and consent of my client. Infact, my client has already stated through my earlier correspondence that about one lakh shares have been disposed off by your clients between the rates of Rs. 430/- to Rs. 350/- per share. However, my client does not admit any transaction undertaken by your clients thereafter i.e. August 8, 1996 since your clients had appropriated the said shares lying with them on August 8, 1996 as already made clear in my letter dated December 30, 1996. In view of the same my client denies the rest of your allegations and contentions in the paragraph under reply. As far as my client is concerned both, the loan accounts as set out by you stand fully settled and in fact my client has to recover substantial excess amounts lying with your clients alongwith interest thereon as demanded earlier. Without prejudice to what is stated hereinabove my client denies that your clients have sold about 1,59,936 shares initially and put your clients to strict proof thereof.

7. With reference to paragraph 7 of your letter my client denies that full statement of accounts were given to my client from time to time and puts your clients to strict proof thereof. My client denies the correctness of the statement of account (Statement "A"). My client further denies the correctness of Statement "B". My client submits that

30. Exh.P-35

31. Exh.P-36

your clients have sought to appropriate monies in an arbitrary manner to which my client had never agreed. My client had specifically instructed your clients to appropriate the amounts of sale of shares prior to August 8, 1996 towards the principal amount of loans. Therefore my client denies the correctness of Statement "B".

8. With reference to paragraph 8 of your letter, since my client has denied the correctness of the Statement "B" of your clients, there is no question of any amount outstanding in either loan account 1 and/or loan account 2. In view of the same there is no question of my client paying the said amounts of Rs. 155.71 lakhs or any part thereof to your clients. As far as selling of the shares is concerned since your clients had become the owner of the shares lying with them from August 8, 1996 it will be at their own risk of capital.

xxxxxxx"

By this letter, plaintiffs called upon defendant no.1 to furnish accounts on the basis set out by them, namely, the appropriation of the pledged securities by defendant no.1 at the rate of Rs.310/- per share and the payment over to plaintiffs of the alleged surplus amounts along with interest at the rate of 24% per annum. In other words, plaintiffs continued to stand by and to seek enforcement of the alleged arrangement with Mr. Sadashiv Rao. It should be noted that plaintiffs, at no stage, sought to redeem the pledged securities by tendering the amount due.

20 Defendant no.1, meanwhile continued to sell the pledged securities and to inform plaintiffs of each instance of sale³². It is in this context that plaintiffs filed the above suit.

21 The plaint primarily proceeded on the alleged oral arrangement between plaintiffs and Mr. Sadashiv Rao, the alleged

32. Exh.P-37 to P-39

appropriation of the pledged securities at the rate of Rs.310/- per share and the alleged obligation of defendant no.1 to render accounts on that footing and to pay over the alleged surplus.

22 Prayers (a)³³ and (e)³⁴ of the suit were relatable to this primary case set up by plaintiffs. Prayer (a) was for a declaration that the entire loan of Rs.10 crores together with interest thereon stood repaid on or about 8th August, 1996 to the 1st defendant while prayer (e) was for payment over to plaintiff no.1 of an amount of Rs.1,35,82,049/- alleged to be due on accounts being drawn on the basis that the shares had been appropriated at the rate of Rs.310/- per share. The plaint also included an alternative plea which was framed thus:

“22. Without prejudice to what is aforesaid, the plaintiffs state that since 1st defendants by their letter dated 29th April, 1997 refuted that they had appropriated the shares lying with them on 8th August, 1996 @ 310/- per share and that they were not bound and liable to pay to the plaintiff no.1 any surplus balance amount at all, on their own showing defendants no.1 had no title to the said 1,61,486 shares lying with them as pledged shares, pledged by plaintiff no.1. The plaintiffs say that thus defendant no.1 had no marketable title and were not entitled to sell the said shares in the market. The plaintiffs say that plaintiffs are ready and willing to pay the entire amount of loan together with interest thereon upon defendant no.1 returning the said very shares as set out in Exhibit "A" hereto. The plaintiffs say that defendant no.1 thus have no title in the said shares and the said shares must be returned to plaintiffs. Plaintiffs say that 1st defendants have purported to sell the said shares as alleged in their letter. Thus the 1st defendants did not have any right for sale of the said shares any part thereof. The purported sale of the said shares is wrongful. Plaintiffs are entitled to a declaration to the aforesaid effect. Plaintiffs state that 1st defendants and/or 2nd defendants are

33. Prayer (a) reads: That it be declared that the entire loan of Rs.10,00,00,000/- together with interest thereon stood repaid on or about 8th august, 1996 to the Defendants;

34. Prayer (e) reads: that in the alternative to prayer(d) the 1st Defendants be directed to pay to plaintiff no.1 an amount of Rs.1,35,82,049/- together with interest @24% p.a. of Rs.28,66,743/- upto the date of filing of this suit and further interest as this Hon'ble Court so decide till the realisation as per particulars of claim annexed and marked as Exhibit "EE" to the Plaint.

liable to disclose to the plaintiffs the names of persons or transferees to whom the shares mentioned in the list (being Exhibit "A" hereto) have been purportedly sold as plaintiffs intend to join them as necessary parties to the suit. Plaintiffs are entitled to the said shares and are entitled to an order for return of the said shares. Defendant no.1 should be directed to procure the same from the market, if they have sold and transfer the said shares. The plaintiffs are entitled to an order and decree accordingly."

The remaining prayers in the plaint relate to this alternative case.

23 Defendant no.1 filed written statement disputing both the main and the alternative plea. Defendant no.1 contended, inter alia, that there was no oral arrangement as alleged and that in any event Mr. Sadashiv Rao was not authorized to enter into any such alleged arrangement and that on accounts being taken, a sum of Rs.5,61,413.50/- and 36 shares which were as yet unsold were liable to be handed over to plaintiffs. The said amount of Rs.5,61,413.30/- was deposited by defendant no.1 with the Prothonotary and Senior Master of this Hon'ble Court and the 36 unsold shares have been handed over to plaintiffs.

24 On the pleadings filed by the parties, the following issues were framed :-

"1. Do the plaintiffs prove that the agreement averred in paragraph 14 of the Plaint was arrived at between the defendant no.1 and plaintiff no.1?

2. Do the plaintiffs prove that on 8th August 1996 both the loans stood repaid?

3. Whether the plaintiffs proves that 400 shares of 2nd Defendant were admittedly pledged with 1st Defendant and remained pledged as on 8th August 1996?

4. Do the plaintiffs prove that the sale of 1,61,486/- shares of the Defendant No.2 by the defendant no.1 was unlawful?

5. Does defendant no.1 prove that Mr. Sadashiv Rao did not have the power, right or authority to enter into the agreement mentioned in paragraph 14 of the Plaint?

6. Does defendant no.1 prove that the transfer of 1,61,486/- shares of the Defendant No.2 Company to defendant no.1 was not by way of sale but was only to facilitate sale of the said shares in exercise of its right as pledgee?

7. Does defendant no.1 prove that it was entitled to sell the 1,61,486/- shares of the Defendant No.2 in its capacity as pledge as alleged in paragraph 13 of the Written Statement?

8. Does defendant no.1 prove that 1,61,486/- shares of the Defendant No.2 were sold by defendant no.1 after due notice to the plaintiff no.1?

9. Does the defendant no.1 prove that only a sum of Rs.5,61,413.50 stood to the credit of the loan account of plaintiff no.1 as per Exhibit "1" to the Written Statement?

10. What order?"

25 Issue nos.1, 2, 5, and 6 relate to the main plea set up by plaintiffs while issue nos.4, 7 and 8 relate to the alternative plea. Issue nos.3 and 9, which concerns the number of shares that were pledged by the plaintiffs with defendant no.1, is relatable to both pleas.

26 Plaintiff no.1 was the only witness on behalf of plaintiffs and defendant no.1 led evidence only of one Mr. Madan Mohan Chaturvedi, the Chief Manager of defendant no.1.

27 Plaintiffs abandoned their main plea and fell back on their alternative one, i.e., redemption. In paragraphs 35 and 36 of the affidavit in examination in chief, PW-1 has stated :

"35. I further say that I have never received any notice from the

1st defendant Company before it embarked on its purported exercise of selling the 1,61,450 shares of the 2nd defendant Company that formed part of the aggregate 2,00,400 shares that had been totally pledged by me with the 1st defendant Company as security for the aforesaid “first loan” of Rs. 5 crores. I say that no notice was ever issued by the 1st defendant Company to me before undertaking the sale of the said 1,61,450 shares. I thus say that since the 1st defendant Company has reneged on its agreement of appropriation of the said 1,61,486 shares of the 2nd defendant Company at the rate of Rs.310/- per share and has further claimed that Mr. Sadashiv Rao had no authority on behalf of the 1st defendant Company to enter into such an agreement, I am ready and willing to repay the balance principal amount of approximately Rs.2,97,50,000/- which stood outstanding as of 19th June, 1996 or any such other amount which is ordered to be paid by me to the 1st defendant Company by this Honorable Court with due interest thereon at the rate of 24% p.a. till the date of filing of the present Suit, on the 1st defendant Company being simultaneously ordered to deliver the said 1,61,450 shares of the 2nd defendant Company with the due benefits accrued thereon since 1997 and with the dividend amounts declared on the same along with interest on the said dividend amounts payable by the 1st defendant Company to me at the rate 24% p.a. in terms of prayer clauses (b), (c), (d), (d1), (d2) and (d3) of the present suit.

36. In view of the aforesaid I say thus pray that the present suit may be decreed by this Honorable Court in favor of the plaintiffs in terms of prayer clauses (b), (c), (d), (d1), (d2), and (d3) with the levy of appropriate costs on the 1st defendant Company.”

Therefore, though various submissions were made to prove the main case of plaintiffs that defendant no.1 had agreed appropriation of 1,61,486 shares of defendant no.2 company at the rate of Rs.310/- per share, plaintiffs having abandoned their main plea including prayer for accounts, I do not consider it necessary to deal with all those arguments.

Therefore, I am not dealing with issue nos.1,2,5 and 6.

28 **ISSUE NO.3 :**

Plaintiffs had initially filed a suit on the footing that 3,87,000 equity shares of defendant no.2 were pledged by plaintiffs with defendant

no.1 to secure the aforementioned advance of Rs.10 crores. Subsequently, by way of an amendment effected on 1st October, 2014 plaintiffs revised this figure of 3,87,000 shares to 3,87,400 shares. At the same time, plaintiffs also amended the plaint to incorporate the following averments:

“10. RIDER “F”

In the first week of July, 1996, the Defendant No.1 had called for additional security and accordingly, the Plaintiff No.1 handed over 400 shares of the Defendant No.2 company under the cover of his letter dated 8th July, 1996 as pledge. The Plaintiffs crave leave to refer to and rely upon the letter dated 8th July, 1996 addressed by Plaintiff No.1 to the Defendant No.1 enclosing the aforesaid shares when produced.”

It is the position of defendant no.1 that only 3,87,000 shares were pledged by plaintiffs with defendant no.1 and that all but 36 of those shares have been sold by defendant no.1 in exercise of its rights as a pledgee.

29 In respect of the disputed 400 shares, plaintiff no.1 had the following to say in paragraph 15 of his witness statement:

“I say that due to the fluctuation in the market price of 2nd defendant Company, I, as per the request of 1st defendant Company in the first week of July, 1996 pledged a further 400 shares of 2nd defendant company with 1st defendant Company vide my letter dated 8th July, 1996.”

Plaintiffs have not produced any letter by which defendant no.1 called upon plaintiffs to furnish the additional security as alleged. It is the case of plaintiffs that in the first week of July 1996, defendant no.1 had called for additional security and accordingly plaintiff no.1 had handed

over 400 shares of defendant no.2 under the cover of its letter dated 8th July, 1996 [Exh.P-25] as additional security. Thus, as on 8th August, 1996 a total of 1,61,486 shares remained pledged with defendant no.1.

30 Mr. Madan Mohan Chaturvedi (DW-1) has, in his affidavit in lieu of examination in chief, explained the circumstances in which the letter dated 8th July, 1996 was addressed by plaintiffs forwarding the 400 shares, distinctive numbers of which are mentioned therein. The relevant portion of paragraph 16 of DW-1's affidavit reads as under :

“16.On 6th July 1996, a lot of 24,424 shares of 2nd defendant were released by 1st defendant in favour of the 1st plaintiff. In respect of the transaction dated 6th July, 1996, 1st defendant ought to have released only 24,024 shares instead of releasing 24,424 shares. The said 24,424 were in non-marketable lot and could not be segregated and due to this difficulty 1st defendant had to release the full 24,424 shares instead of releasing 24,024 shares. In view of this, 1st plaintiff by his letter dated 8th July, 1996 forwarded by way of pledge 400 shares of 2nd defendant to 1st defendant. In all, a total no. of 1,27,064 shares were redeemed and returned by 1st defendant towards certain payments which were made by 1st plaintiff. I was actively involved in these transaction.”

31 Defendant no.1 has received dividend on 1,61,386 shares from defendant no.2 and has given credit thereof to plaintiff no.1 on 21st January, 1997 in its books of accounts [Exh.D-10]. The fact that defendant no.1 has given credit in respect of dividend on 1,61,386 shares to plaintiff no.1 in its books, shows that it certainly had more than 1,61,086 shares pledged by plaintiff no.1 with it as on the date of book closure of defendant no.2. Hence, the defence of replacement of 400 shares

is contrary to defendant no.1's own records and pleadings. In my view, the 400 equity shares have been handed over by plaintiffs to defendant no.1 as additional security.

32 **ISSUE NOS.4,7, 8 and 9 :**

It is plaintiffs' case :

(a) that two loans of Rs.5 crores each were advanced by defendant no.1 to plaintiffs. The first loan was for a tenure of 8 months maturing on 12th March 1996 while the second loan was for a tenure of 6 months, maturing on 17th January 1996;

(b) that 200,000 shares of Sesa Sterlite Limited were pledged by plaintiffs with defendant no.1 to secure the first loan and 1,87,000 shares of defendant no.2 - Sesa Sterlite Limited were offered as a security for the second;

(c) that plaintiffs have fully repaid the second loan and that amounts remained outstanding only on the first;

(d) that the notice dated 23rd February, 1996 issued by defendant no.1 for sale of pledged securities was in view of plaintiffs being in default of the second loan at the time and that in any event the said notice had been waived on account of defendant no.1 having extended time for payment by plaintiffs of their outstanding dues;

(e) that 98,850 shares of defendant no.2 - Sesa Sterlite Limited were sold by defendant no.1 with the consent of plaintiffs while 1,61,450

shares were not;

(f) that the sale of the said 1,61,450 shares which were without notice to plaintiffs was illegal and as a result null and void as against plaintiffs;

(g) that plaintiffs are consequently entitled to redeem the pledged securities including all accruals thereupon such as bonus issues and dividend upon tendering the amount due from plaintiffs to defendant no.1 on the date of institution of the suit.

33 It is the case of defendant no.1:

(a) that while two amounts of Rs.5 crores each were advanced by defendant no.1 to plaintiffs, they were treated as a single loan for all practical purposes by both parties. It is an admitted position that except for the date on which the two tranches were repayable, the two amounts were advanced on the same terms and conditions as reflected in the sanction letter dated 11th July, 1995. Defendant no.1 has maintained a single ledger account in respect of the composite loan of Rs.10 crores;

(b) that under the terms of the Pledge Agreement security offered in respect of one advance would enure to the benefit also of any other. Further, it was also evident from the Pledge Agreement that a default in respect of one loan or facility would constitute a default of all others as well;

(c) that plaintiffs, as evident from their own correspondence, defaulted in repayment of both the tranches;

(d) that mere forbearance by the pledgee does not constitute a waiver of a notice for sale of the pledged assets. In any event, the correspondence exchanged between the parties makes it manifest that plaintiffs were fully aware that defendant no.1 intended to enforce their rights as pledgees by sale of the entire pledged securities;

(e) that plaintiffs were also aware contemporaneously of the sale from time to time, by defendant no.1 of the pledged securities and did not object to the same. On the contrary, plaintiffs consistently maintained, on the basis of the alleged oral agreement struck with Mr. Rao, that defendant no.1 had become owners of the shares and plaintiffs were unconcerned with how the shares were dealt with by defendant no.1;

(f) that plaintiffs at no point in time objected to the sale of the shares by defendant no.1, on the ground that notice had not been given of such sale or otherwise;

(g) that plaintiffs at no point in time sought to redeem the pledged securities by tendering the outstanding amount. Even in the plaint, plaintiffs' plea for redemption was in the alternative. Their main plea proceeded on the basis that the pledge had come to an end and that defendant no.1 had become owners of the shares on 8th August, 1996. It is only at the stage of oral evidence that plaintiffs for the first time

abandoned their principal plea and fell back on their alternative one;

(h) that the two pleas raised by plaintiffs in the plaint are mutually destructive and, in any event, the alternative plea which plaintiffs have chosen to press is entirely unsupported by the evidence on record;

34 While it is true that two amounts of Rs.5 crores were separately advanced by defendant no.1 to plaintiffs, in my view, after both amounts fell due, they were, for all practical purposes, treated as a single composite loan. This is evident, *inter alia*, from plaintiffs' own letters dated 7th May, 1996,³⁵ 6th June, 1996,³⁶ 12th August, 1996,³⁷ 13th September, 1996³⁸ and 30th December, 1996.³⁹ In fact, the correspondence addressed on behalf of plaintiffs by their Advocate also proceeds on the basis that an aggregate 3,87,000 shares of Sesa Goa Limited had been pledged against an aggregate loan of Rs.10 crores.⁴⁰ It is in any event an admitted position that the two advances of Rs.5 crores each are governed by the same terms and conditions as reflected in the sanction letter dated 11th July, 1995.⁴¹ The plea that the two amounts were distinct and that accounts were required to be maintained in respect of each separately is merely a belated afterthought inconsistent with the Plaintiffs' own position in their correspondence. In fact, this contention that accounts were required to be

35. Exh.P-21

36. Exh.P-24

37. Exh.P-26

38. Exh.P-28

39. Exh.P-31

40. Exh.P-31

41. Exh.P-1

maintained separately in respect of the two advances is not even reflected in the Plaint. In any event, to the extent that the terms and conditions on which the said two amounts were advanced were identical, the maintenance of a single ledger in respect of the whole amount made no difference in practical terms.

35 The distinction sought to be drawn between the pledged securities offered by plaintiffs for the first advance of Rs.5 crores and the second advance of Rs.5 crores is also not meaningful. This is in view of the fact that the Pledge Agreement (Exh.P2/P8) in clause 5 (a) thereof, makes it clear that shares pledged to secure one facility would be deemed to have been pledged as security for any monies due to defendant no.1 from time to time. Further, the Pledge Agreement (Exh.P2/P8) also makes it clear, in clause 14 (1)(c) thereof, that any breach of the terms of one facility would constitute a breach of others. Thus, it is clear that the entire 3,87,000 equity shares of defendant no.2 - Sesa Sterlite Limited, pledged by plaintiffs would operate as a security in respect of the entire amount outstanding including interest.

36 Plaintiffs' counsel contended that they had fully repaid the second loan and that amounts remained outstanding only in respect of the first. This case is entirely unsupported by the material on record and in particular the correspondence exchanged between the parties. The letters

dated 29th March, 1996,⁴² 7th May, 1996,⁴³ 6th June, 1996⁴⁴ and 12th August, 1996⁴⁵ not only treat the two advances as a composite one, but also concede that both loans were outstanding. It is only on sale of the pledged securities that the amounts advanced to plaintiffs and the interest due thereupon were fully recovered. Whether defendant no.1 was justified in selling all those shares that they sold is a point which has been dealt with later. Plaintiffs have argued that the second loan was fully repaid on the basis that defendant no.1 ought to have appropriated the payments made by plaintiffs towards the second loan which fell due first. In this behalf, plaintiffs also relied on Section 59 and 60 of the Indian Contract Act which are reproduced herein:

"59. Application of payment where debt to the discharged is indicated: -

Where a debtors, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly".

"60. Application of payment where debt to be discharged is not indicated. -

Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits".

42. Exh.P-20 pg.232

43. Exh.P-21 pg.233

44. Exh.P-24 pg.236

45. Exh.P-26 pg.238

The reliance placed by plaintiffs on these Sections is misplaced. Apart from the initial post dated cheques issued for monthly interest and repayment of the principal amount of the two tranches, plaintiffs made no appropriation of the payments made by them. As such, defendant no.1 was entitled to make such appropriation as it chose. Defendant no.1 appropriated the amount towards the earliest liability in point of time. It has tendered in evidence (but never provided earlier to plaintiffs though asked for) a ledger account prepared on that basis. Even if no appropriation had been made, even under Section 60, the payments would stand appropriated towards the earliest dues rather than the dues that may have become payable first. In any event, in the light of plaintiffs' repeated acknowledgments that both loans were in default, the issue is not relevant.

37 Ms. Sonal, counsel for plaintiffs contended that defendant no.1 issued only one notice dated 23rd February, 1996⁴⁶ for sale of the pledged securities, that this notice pertained only to 1,87,000 shares pledged as security for the second loan and that defendant no.1 having granted extension to repay one loan, had waived its right to sell the pledged securities. It was further contended that no further notice having been issued by defendant no.1, the sale of the pledged securities was illegal.

According to defendant no.1, this entire argument is misconceived as this case is not reflected in the pleadings. According to

46. Exh.P-17

Mr. Sen, plaintiffs have not contended that the notice dated 23rd February, 1996 was the only notice or that it was only in respect of 1,87,000 shares or that it was waived by defendant no.1 or that the subsequent sale of the pledged securities by defendant no.1 was vitiated by want of notice. In the absence of this case having been pleaded, plaintiffs were not entitled to lead any evidence in respect thereof or to urge the same in the course of their oral arguments. This is particularly so, according to Mr. Sen, in view of the fact that a case of waiver or of illegality for want of notice is required to be specifically pleaded so that defendants have full notice of plaintiffs' case.

38 It was also plaintiffs' case that :

(i) a notice under Section 176 of the Act is mandatory, as held by a Division Bench of Calcutta High Court in *Hulas Kunwar V/s. Allahabad Bank Ltd*⁴⁷ and in *Official Assignee V/s. Madholal Sindhu*⁴⁸. Counsel Ms. Sonal submitted that it has not been reversed by the Federal Court on this point of law and therefore it is still good law.

(ii) Clause 14 (ii) of the Pledge Agreement requires a seven days “*written notice*” to be given to plaintiff no.1 for repayment before defendant no.1 can sell or otherwise dispose of the pledged securities.

(iii) Clause 16 of the Pledge Agreement lays down the procedure for giving a notice under the Pledge Agreement as follows:

47. AIR 1958 Cal. 644

48. AIR 1947 Bombay 217

“16. Any notice, demand or communication to be served or given by a party to the other party may be served or given by telex or fax or by leaving the same at or posting the same by post under Certificate of Posting addressed to the Borrower at its place of business, residence or office and every such demand or notice shall be deemed to be received as the case may be at the time at which it is left or at the time at which it should have been delivered in the ordinary course of post.”

(iv) The argument of counsel for defendant no.1 that tender of hard cash is a precondition to filing a suit for redemption and in the absence of such tender, the suit is bad, is incorrect.

(v) Plaintiff had filed the present suit after defendant no.1 started selling the balance pledged shares on and from 2nd January, 1997 and informed plaintiff no.1 about the same by its letters starting from 3rd January, 1997 [Exh.P-32] and in paragraph 22 at page 13 of the plaint, plaintiffs have stated that they are ready and willing to pay the entire amount of loan together with interest thereon upon defendant no.1 returning the pledged shares. In prayer clause (c), plaintiffs have prayed that the original Share Certificates of the pledged shares be ordered to be returned to plaintiffs by defendant no.1 against receipt of a sum of Rs.2,61,43,159/- or such other sum as this Hon’ble Court may deem fit and proper. In prayer clause (d), plaintiffs have in the alternative to prayer clause (c) prayed that defendant no.1 be ordered and decreed to make available to plaintiffs 1,61,486 shares by procuring the same from the market against receipt of a sum of Rs. 2,61,43,159/- or such other sum as this Hon’ble Court may deem fit and proper.

Thus, according to plaintiffs they have tendered the balance loan amount in the plaint and if this Court comes to a conclusion that the sale of 1,61,450 shares by defendant No.1 was invalid, the Court would direct defendant no.1 to give to plaintiffs 1,61,450 shares which have now, due to bonus and share split, converted into 64,58,000 shares along with the accrued benefits with due interest thereon against the payment of the balance loan amount which according to plaintiffs is Rs.3,70,76,195/- (till the date of the filing of the present suit) and in the alternative, the Court would direct defendant no.1 to pay to plaintiffs the value of 1,61,450 shares which have converted into 64,58,000 shares as on date of the judgment, as per the ratio laid down in *Dhian Singh V. Union of India*⁴⁹ along with the accrued benefits with due interest thereon after deducting the balance loan amount payable by plaintiff no.1 to defendant no.1. A chart showing the conversion of 1,61,450 shares into 64,58,000 shares and the details of the dividend that has accrued on them was also submitted by plaintiffs.

(vi) If defendant no.1 was ready and willing to perform its part of the contract, namely, return the shares against receipt of the balance loan amount, it could have stated so in its written statement or additional written statement. However, defendant no.1 has not stated so and has justified sale of the pledged shares by it and accordingly issues have been

49. AIR 1958 SC 274

framed by this Hon'ble Court. It is not the case of defendant no.1 in its written statement or additional written statement that it was ready to return the balance pledged shares and that the suit is bad for non tender of hard cash.

(vii) The pledge was brought to an end by plaintiffs when they filed the present suit for redemption and expressed their willingness to repay the balance loan amount and to redeem the pledged shares. Section 177 of the Indian Contract Act which is reproduced hereunder further elaborates such a situation.

Section 177 – Defaulting pawnor's right to redeem – If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must in that case, pay, in addition, any expenses which have arisen from his default.

Section 177 has been explained by this Honorable Court in *Official Assignee V/s Madholal Sindhu* (supra) wherein it has been held that “The actual sale referred to in S. 177 must be a sale in conformity with the provisions of S. 176 which gives the pledgee the right to sell; and if the sale is not in conformity with those provisions, then the equity of redemption in the pledger is not extinguished.”

Therefore, plaintiffs herein are well within their rights to redeem their pledged shares even as of today by tendering the requisite amounts to defendant no.1 on defendant no.1 reciprocally agreeing to

return the equivalent number of 1,61,450 of defendant no.2 along with the due benefits accrued thereon the same as per the provisions of Section 163 of the Act.

(viii) The question which will arise for determination by this Court is whether plaintiffs would be required to pay interest only till the date of the filing of the present suit or till the date of tender of the loan amount in hard cash to defendant no.1, i.e., till the date of judgment. The said question has been answered by this Court in ***State Bank of India v. Manglabai G. Deshmukh***⁵⁰ in paragraph 13 and 14 as under:

“13.....The plaintiffs had shown their readiness and willingness to repay the loan amount but since beginning the Bank insisted for submission of “Letters of Administration” by the plaintiffs which was in fact, not necessary, particularly when the Bank had transferred another loan account of the deceased in the name of the plaintiffs. Mr. Chandurkar further submitted that it had become clear to the plaintiffs that even if they repay the loan amount, the Bank would not return gold ornaments unless they produce “Letters of Administration”. In such circumstances no prudent man would repay the loan when there was no possibility of returning the gold ornaments. Mr. Chandurkar submitted that insistence of the bank for “Letters of Administration” was not proper and legal since beginning and in such circumstances the plaintiffs not be blamed for not making actual payment of the loan amount. In this respect Mr. Chandurkar placed reliance on the following cases:

4 Lallan Prasad v Rahmat Ali, AIR 1967 SC 1322, wherein it is held as under (para17) :

“if the pawnee is not in a position to deliver the goods he cannot have both the payment of the debt and also the goods.”

5 Smt. Artibala Mohanty v. State Bank of India, AIR 1991 Orissa 260, in which it is held as under :

“Where the Bank as the pawnee was not in a position to deliver back the goods on account of the seizure made by the police. The Bank as the pawnee having refused to perform its obligation of redelivering the goods on debts being satisfied cannot claim any interest from the date

50. Air 2005 BOMBAY 221

on which the petitioner wanted release of the goods pledged by satisfying the debt.”

14. It may be seen that the circumstances of the case show that there was reasonable apprehension in the minds of the plaintiffs that even if they were to pay whole of the loan with interest gold ornaments would not be returned to them in such circumstances they were justified in not making actual payment of loan amount. The appellate Court was justified in holding that the liability of the plaintiffs to pay interest would stop after August, 1982. I find no illegality in the conclusion drawn by the appellate Court.”

(ix) Without prejudice and in the alternative, it was submitted by plaintiffs that in the context of the facts of the present suit, no tender of any amount is warranted from plaintiffs to defendant no.1 since the shares of defendant no.2 pledged in the present case have benefits accrued on the same which amount to much more than what is due from plaintiffs to defendant no.1, even assuming without admitting that interest has to be paid by plaintiffs to defendant no.1 till the date of actual redemption.

(x) Plaintiffs were not obliged to deposit the balance loan amount in Court to enable defendant no.1 to purchase equivalent number of shares and give them to plaintiffs. It was open for defendant no.1 to purchase equivalent number of shares from the market and to deposit the same in Court and seek the balance amount of loan from plaintiffs, which plaintiffs have in any event offered to pay in the suit. Plaintiffs' counsel also relied upon Section 51 of the Contract Act dealing with performance of reciprocal promises and the judgment in *Official Assignee vs. Madholal Sindhu* (supra) to submit that actual tender of hard cash is not required in

a redemption suit when the sale is invalid. Ms. Sonal submitted this judgment though has been reversed in Appeal by the Federal Court in *Madholal Sindhu v. The Official Assignee (supra)* on facts, the law laid down with respect to the mandatory nature of a notice under Section 176 of the Act and that tender of hard cash is not required to be made in a suit for redemption filed upon an invalid sale of the pledged goods has not been disturbed by the Federal Court. Ms. Sonal also relied upon ***S.L. Ramaswamy Chetty vs. M.S.A.PL. Palaniappa Chettiar***⁵¹.

39 The counsel for plaintiffs also attempted to distinguish judgments relied upon by Mr. Sen, counsel for defendant no.1, but I was not convinced.

40 Counsel for plaintiffs also submitted that the instant case is a claim made by a pledger for redemption in detinue upon invalid sale of the pledged goods by the pledgee. As the pledgee in the instant case has sold the pledged goods and disabled itself from returning them even if actual payment was tendered by the pledger, the pledger is not required to make actual payment. It was further submitted that the nature of the pledged goods does not make any difference to the principle that in case of a suit filed for redemption and detinue in the event of an invalid sale, tender of hard cash is not required to be made by the pledger. The law does not recognize any difference between a pledge of shares which are listed on

51. AIR 1930 Madras 364

bourses and a pledge of gold ornaments nor does the law put any greater burden on a pledgor of easily available and replaceable goods like shares of listed companies, than on a pledger of gold ornaments or paintings. Any distinction drawn between easily available and replaceable goods and non-replaceable goods would put a higher burden on the pledger of the former, would be arbitrary.

41 Per contra, counsel for defendant no.1 submitted plaintiff's case that they are entitled to redeem the pledged securities including all accruals thereupon such as bonus shares issued and dividend paid out merely by tendering the amount due from plaintiffs to defendant no.1 on the date of institution of the suit is patently erroneous. According to Mr. Sen, it is settled law that a pledgor must, as a pre-condition for instituting a suit for redemption, deposit the amount outstanding to the pledgee.⁵² The only exception is where an honest tender of the amount due is made by the pledgor prior to the institution of the suit and such tender is rejected without cause by the pledgee or where the pledgee has rendered himself incapable by supervening circumstances from returning the pledged goods.⁵³ In the present case, plaintiffs did not make any tender or offer of the outstanding amounts to defendant no.1 prior to the institution of the suit. In fact, plaintiff no.1 admits as much in the course of his cross

52. The Official Assignee of Bombay v. Madholal Sindhu & Ors., ILR 1948 Bom 1; Sir Raja Kakarlapudi Venkata Sudarsana Sundara Narasayamma Garu (died) & Ors. v. Andhra Bank Ltd., AIR 1960 AP 273

53. The judgments relied upon by Plaintiffs, namely S.L. Ramaswamy Chetty & Anr. v. M.S.A.P.L. Palaniappa Chettiar, AIR 1930 Mad 364; Aratibala Mohanty v. State Bank of India, AIR 1991 Ori 260 and State Bank of India v. Mangalabai Deshmukh, AIR 2005 Bom 221 according to Mr. Sen deal with this limited exception, which has no application to the facts of the present case.

examination. Even the plaint, apart from the fact that no amounts were deposited by plaintiffs, did not even constitute a real offer to pay insofar as the principal plea on which the action was brought was that the pledge had come to an end and that defendant no.1 had become the owner of the shares. The mere statement that plaintiffs were "ready and willing" to pay the amounts due did not constitute a valid tender or even an offer in law.

As such, even if we assume that the sale of the pledged securities by defendant no.1 was illegal and that plaintiffs were entitled to redeem the pledged securities, they can do so only against payment of the entire amount outstanding to defendant No.1 as if the disputed sale did not occur and the sale proceeds were not appropriated towards plaintiffs' debt.

The Judgments relied upon by plaintiffs on the issue of redemption are also wholly irrelevant. The position as reflected in *The Official Assignee of Bombay v. Madholal Sindhu & Ors.*⁵⁴ is that in the event a sale of the pledged securities is null and void, the pledgor would be entitled to redeem the pledged securities. However, this is not such a case. The Judgments relied upon by plaintiffs, viz., *S.L. Ramaswamy Chetty and Anr.* (Supra) and *State Bank of India vs. Smt. Mangalabai G. Deshmukh* (Supra) regarding payment of the outstanding amount being a pre-condition for the exercise of a right of redemption are equally of no assistance insofar as those are cases where an honest tender was in fact

54. ILR 1948 Bom 1

made in an attempt to redeem the pledged securities.

The reliance on the proposition in *Aratibala Mohanty* (Supra) that interest would cease to run in the event a pledgee renders himself incapable of returning the pledged securities is also inapposite. In the present case, shares being fungible securities, no question can possibly arise of the pledgee being unable to "return" the security. In the event a valid tender is made of the outstanding amount, the pledgee would merely have to purchase the shares from the market and return it to the pledgor. In the present case, no occasion arose to do so because no tender was in fact made of the outstanding amount by plaintiffs. On the contrary, plaintiffs repeatedly reiterated that they had no interest in the pledged securities, defendant no.1 had become the owner of the shares and was free to deal with them as it pleased without even informing plaintiffs (Exh.P-33).

Plaintiffs have claimed on the basis of the Judgment of the Hon'ble Supreme Court in *Dhian Singh Sobha Singh & Anr. v. Union of India* (Supra) that the present suit was an action in detinue as distinct from an action in conversion. However, it is manifest from the Judgment itself that the ingredients for an action in detinue are not met in the present case. The Hon'ble Supreme Court holds: "*The action of detinue is based upon wrongful detention of the plaintiff's chattel by the defendant, evidenced by a refusal to deliver it upon demand and the redress claimed is not damages for the wrong but the return of the chattel or its value*". In the present case, there was no

refusal by defendant no.1 to deliver the pledged securities on demand, viz., by a tender of the outstanding amounts. As such, there was no wrongful detention by defendant no.1 of the pledged securities. On the contrary, it was plaintiffs' case prior to and in the suit itself, that the shares belonged to defendants. As such, plaintiffs' purported action in wrongful detention must necessarily fail.

42 In my view, plaintiffs' case is belied by the record. The notice dated 23rd February, 1996 does not confine itself to the 1,87,000 shares pledged by plaintiffs in respect of the second tranche of Rs.5 crores. As noted earlier, the pledge agreement provides that securities offered in respect of one facility enured to the benefit of all. Further plaintiffs' case that the letter dated 23rd February, 1996 was the only letter by which notice was given of defendant no.1's intention to sell the pledged securities is incorrect. The subsequent letter dated 7th March, 1996⁵⁵ issued by defendant no.1 makes it manifest that they intend to sell all of the shares pledged by plaintiffs as security for the entire loan of Rs. 10 crores. This also constituted adequate notice for the purpose of Section 176 of the Indian Contract Act, 1872. Even otherwise, plaintiffs' knowledge that defendant no.1 intended to enforce the pledge by sale of the securities is also amply clear from the letter dated 12th August 1996⁵⁶ where they requested defendant no.1, as a matter of indulgence, not to proceed with

55. Exh.P-18

56. Exh.P-26

the sale of the pledged securities. This was followed by defendant no.1, during the continuance of the pledge, lodging the shares along with the share transfer forms with defendant no.2 - Sesa Sterlite Limited for transfer in its name as a step in aid of enforcing the pledge. Plaintiffs could not but have known that this was done by defendant no.1 with an intention to enforce the pledge by sale of the securities. It is for this reason that plaintiffs also attempted to prevent the transfer by defendant no.2 - Sesa Sterlite Limited, of the pledged securities in the name of defendant no.1.⁵⁷ Subsequently, in circumstances about which there is a dispute between the parties, plaintiffs withdrew their objection for transfer of the shares in the name of defendant no.1. That dispute notwithstanding, it is clear that plaintiffs knew at the time that defendant no.1 proposed to deal with the shares.

43 At no point in time did plaintiffs object to such sale or contend that the sale was illegal or invalid on account of want of notice. On the contrary, plaintiffs repeatedly asserted that defendant no.1 had become the owner of the shares and was free to deal with the shares as it pleased. Having taken this contention till the filing of the suit and in the suit itself and having actively affirmed the freedom of defendant no.1 to sell the shares, plaintiffs cannot be heard to contend that they have not received notice of such sale or that the sale is invalid on that alleged account.

57. Exh.P-28

44 The law is well settled that no notice under Section 176 is even necessary where the pledgor was consulted or acquiesced in the sale.⁵⁸ It is also a settled position that Section 176 only requires notice of the intention to sell and not notice of the particulars of the intended sale.⁵⁹ The pledgee is free to choose his own time to exercise the power of sale and is in particular not bound to sell within a "reasonable time".⁶⁰ In the present case, defendant no.1 has not only made manifest its intention to sell the pledged securities but has promptly communicated to plaintiffs the particulars of each sale. Even otherwise, apart from the fact that defendant no.1 had in fact given notice of its intention to enforce the pledge, plaintiffs were perfectly well aware of defendant no.1's intention to sell the pledged securities. As such, the requirements in law for a valid sale of the pledged securities by defendant no.1 are fully met and the contention of plaintiffs that the sale is null and void as against them has to be rejected.

45 Plaintiffs case for redemption is premised on the alleged illegality of the sale of the pledged securities by defendant no.1. As set out herein, the enforcement of the pledge by defendant no.1 is in fact perfectly valid and not vitiated by any alleged lack of notice. As such, the question of plaintiffs being entitled to redeem the pledged securities does not arise.

58. See *Madholal Sindhu of Bombay v. Official Assignee of Bombay*, AIR 1950 FC 21.

59. *Sankaranarayana iyer Saraswathy Amal v. The Kottayam Bank Ltd.*, AIR 1950 Travancore-Cochin 66, (FB) and *Hulas Kunwar v. Allahabad Bank Ltd.*, AIR 1958 Cal 644, 649.

60. See *Madholal Sindhu of Bombay v. Official Assignee of Bombay*, AIR 1950 FC 21; *Sankaranarayana iyer Saraswathy Amal v. The Kottayam Bank Ltd.*, AIR 1950 Travancore-Cochin 66.

46 It should be noted that at no point, before filing of the plaint, has plaintiff even communicated to defendant no.1 of its intention to redeem 1,61,486 shares or offer to repay any amount against redemption of pledged shares.

 In the course of his cross examination, PW-1 vacillated on the issue of whether defendant no.1 had become an owner of the shares on 8th August, 1996 or were merely exercising their rights as pledgees thereafter⁶¹. The answers, displays an inability to choose decisively between the principal case in the plaint which has been abandoned and the alternative plea. PW-1 also was unable to make out a case that plaintiffs had offered the balance amount in return for the pledged shares which defendant no.1 was not ready to give up. PW-1 was unable to indicate where in the correspondence or in the pleadings plaintiffs have set up any case that the sale of the pledged shares were invalid on the ground that no notice had been given to plaintiffs⁶².

47 The argument regarding waiver of right to sell pledged securities by defendant no.1 is also devoid of merit. The sanction letter dated 11th July, 1995 (Exh.P-1), at clause 4(b) (4) expressly provided that *"No failure to exercise or delay in exercising any of our rights hereunder or under any other documents will act as a waiver of that or any other right nor shall any single or partial exercise preclude any future exercise of that right."*

61. Answers to question nos.29 to 37

62. Answers to question nos.38 to 40

As such, no argument of waiver, merely on the ground of forbearance or extension of time, is available to plaintiffs. Plaintiffs have in support of their case of waiver relied on the judgments of the Hon'ble Calcutta High Court in *Hulas Kunwar v. Allahabad Bank Ltd. (Supra)* and the judgment in *Pigot v. Kubley*⁶³. Neither of the judgments are of assistance to plaintiffs' case. The Judgment in *Hulas Kunwar* (Supra) involved a premature enforcement of the pledge by the sale of the pledged securities prior to expiry of an extension of time granted by the pledgee. That is not the case here. *Pigot v Kubley* (Supra) was a case where the parties were found to have substituted a new agreement under which the time for payment, and consequently the power of sale, was indefinitely extended. No such agreement is pleaded in the present case. The disputed sales occurred at a time when plaintiffs were admittedly in default and had consciously not objected to the transfer of the pledged shares in the name of defendant no.1, being fully aware that defendant intended to deal with them. The facts support no case of waiver by defendant no.1 of any notice or of any right to enforce the pledge.

48 In view of this conclusion, I do not see any need to go into other elaborate arguments made by the opposing counsel.

49 It was also argued on behalf of defendant no.1 that while the main relief in the suit is for a declaration that both the loans stood repaid

63. C.B. (N.S.) 701

on or about 8th August, 1996 on the basis of the appropriation of the balance shares by Defendant No.1 at the rate of Rs. 310/- per share and for refund of excess amount, the alternative relief for a declaration that the sale of the balance shares was invalid and for redemption are mutually destructive and cannot be sought together in a suit. Ofcourse, plaintiffs' counsel disagreed.

Since plaintiffs have given up its main plea, I do not wish to spend time on this argument of defendant no.1.

50 It is the case of defendant no.1 in its written statement that only an amount of Rs.5,61,413.50 stands to the credit of the loan account of the first plaintiff in its books. Issue no.9 has been framed in this regard.

51 Defendant no.1 has relied upon the accounts of plaintiff no.1 maintained by it in its books to show that a sum of Rs.5,61,413.50 stands to the credit of the loan account of plaintiff no.1⁶⁴. Defendant no.1 has levied interest at the rate of 36% on the overdue amount from 4th June, 1996 with retrospective effect from 12th March, 1996 to 19th May, 1996. Thereafter, defendant no.1 has levied interest at the rate of 36% on the outstanding amounts from 20th May, 1996 till 25th February, 1997. As observed earlier, defendant no.1 could not have levied interest at the rate of 36% on the amounts outstanding for any period.

64. Exh.D-10

52 The sanction letter dated 11th June, 1995 [Exh.P-1] which contains the terms and conditions for both the loans, provided for the rate of interest to be at 24%. Clause 4(b)(1) thereof, provides that defendant no.1 would be entitled to notify plaintiff no.1 of the change in interest rate and thereafter be entitled to charge interest at such notified rate. Clause 4(b)(1) is as under:

“4(b)(1) Notwithstanding what is stated hereinabove, we shall, at any time and from time to time, be entitled to notify you and thereafter charge interest at such notified rate and this letter shall be construed as if such revised rates were mentioned therein.”

This clause deals with change in the rate of interest before any default made by plaintiff no.1 while clause 4(b)(2) of the sanction letter deals with additional interest at the rate of 2% above the interest rate for the facility that could be levied by defendant no.1 post default.

The aforesaid clause of the sanction letter read with clause 16 of the Pledge Agreement reproduced earlier, makes it clear that any notification to change the rate of interest during the continuance of the facility had to be made in writing by defendant no.1.

53 Defendant no.1 claims to be entitled to levy interest at the rate of 36% on the basis of its letter dated 21st March, 1996 [Exh.P-19], which is a notice issued by it under the provisions of Section 138 of the Negotiable Instruments Act, after default in repayment of the first loan. DW-1 during

his cross examination gave evasive replies in answer to questions on increase of rate of interest from 24% p.a. to 36% p.a. I would add, from the answers, DW-1 has not denied that no other notice to increase the rate of interest to 36% was sent by defendant no.1 before or after Exh.P-19⁶⁵.

54 The notice dated 21st March, 1996 [Exh.P-19] is not a notice under clause 14(b)(1) of the sanction letter and therefore, the levy of interest at 36% by defendant no.1 is unjustified and wrongful.

55 Under clause 4(b)(2) of the sanction letter [Exh.P-1], defendant no.1 was entitled to levy additional interest @ 2% in the following words:

“4(b)(2) In case of default either in the payment of interest, additional interest, the repayment of the principal amounts as and when due and payable or reimbursement of all costs, charges and expenses when demanded, you shall pay additional interest at the rate of 2% above the interest rate for the Facility, on the overdue interest, principal amount, costs, charges or expenses and/or from the respective due dates for payment and/or repayment.”

It is an admitted position that defendant no.1 has not levied the aforesaid additional interest at the rate of 2%. DW-1 in paragraph 21 of his affidavit in lieu of examination in chief has also stated that the outstanding loan amount in plaintiff's loan account as on 7th May, 1996 was Rs.7,57,88,547/-. This amount has been derived by defendant no.1 by levying an interest at the rate of 24% p.a. and without monthly rests and

65. Q/A 73 to Q/A 80

not at 26% p.a. [Exh.P-10].

56 The sanction letter dated 11th July, 1995 [Exh.P-1] provides that the rate of interest would be calculated at monthly rests payable in arrears. The Demand Promissory Notes dated 12th July, 1995 [Exh.P-6] and 13th July, 1995 [Exh.P-12] do not provide for any such rests. The last postdated cheques given by plaintiff no.1 towards interest of both the loans was dishonoured upon presentation [cheque at Sr. No.8 of Exh.P-5 and cheque at Sr. No.6 of Exh.P-11]. Yet, defendant no.1 did not levy interest at monthly rests or additional interest thereafter.

57 Mr. Sen, counsel for defendant no.1 argued that interest was to be calculated at monthly rests which was payable in arrears and therefore would have been levied only after plaintiff no.1 had defaulted in making payment of any installment towards interest or the principle amount and not before.

Interest at monthly rests or any other rests was not demanded by defendant no.1 in its letters dated 23rd February, 1996 [Exh.P-17], 7th March, 1996 [Exh.P-18] and 21st March, 1996 [Exh.P-19]. Even in the Statement of Account maintained by defendant no.1 [Exh.D-10], interest has not been levied at monthly rests or any additional interest charged. Defendant no.1 had never levied interest at monthly rests or otherwise additional interest and hence is not entitled to.

58 Therefore, sale of any pledged share in excess of what was only required to be sold to recover the amount due, would be illegal. The counsels agree that the last of the pledged shares that was sold by defendant no.1 and the sale proceeds appropriated was on 4th March 1997.

As the Court was unable to find the correct figures, the matter was placed for directions on 30th October 2017 and the counsels were requested to provide a statement arrived at by consensus as to what would be the amount payable on the basis of interest calculated at 24% per annum simple interest, how many pledged shares were sold beyond the number that was required to be sold to recover that amount less 36 shares returned by defendant no.1 to plaintiff no.1 pursuant to order dated 22nd July 1997, what would be the number after excess share sold were split and bonus shares issued by defendant no.2-company (accretions) and the dividend that would have been paid on those shares (unpaid dividend) after 4th March 1997. The matter was placed again for directions on 9th November 2017, 16th November 2017 and on 23rd November 2017. The counsels were unable to arrive at a consensus. Finally different statements were given by both the parties. I would proceed on the basis of statement given by defendant no.1 and also proceed on the basis of calculations of defendant no.1. Defendant no.1 gave the working of shares and accretions as under :-

Statement of accounts of the simple interest calculated at 24% per annum

As per Plaintiffs' calculations			As per Defendant no.1's calculations		
Statement of Accounts on the basis of interest @ 24% p.a.	Simple interest	24%	Statement of Accounts on the basis of interest @ 24% p.a.	Simple interest	24%
	Amount Payable	76,27,649		Amount Payable	75,30,289
	Sale Rate	262		Sale Rate	262
	No. of Shares	29,113		No. of Shares	28,742
	No. of Shares after accretions	1164520		No. of Shares after accretions	1149680
	Rate	300		Rate	300
	Value	3493,56,000		Value	3449,04,000
	Dividend	588,37,373		Dividend	580,87,582
		4081,93,373			4029,91,582

59 Mr. Sen, of course, submitted that these figures are irrelevant because at the most, even assuming the Court comes to a conclusion that simple interest at 24% p.a. only was recoverable and defendant no.1 was wrong in selling more shares than required, plaintiffs will be only entitled to the value that defendant no.1 received from its sale. I am not in agreement with Shri Sen. Mr. Sen also submitted that in any case that was not the prayer in the plaint.

60 Plaintiffs consistent stand has been defendant no.1 had to render accounts and to pay over the alleged surplus. Rendering of accounts

will squarely apply to both the primary case of plaintiffs and the alternative plea.

Moreover, issue no.9 reads as under :

(9) Does the defendant no.1 prove that only a sum of Rs.5,61,413.50 stood to the credit of the loan account of plaintiff no.1 as per Exhibit "1" to the Written Statement?

61 This situation, that more shares were sold than required, would not have arisen but for the decision of defendant no.1 to unilaterally chose to calculate interest @ 36% per annum and appropriate to itself the sale proceeds. Defendant no.1 was not even providing plaintiffs with detailed break-up of the calculations despite repeatedly being called upon to produce. As could be seen from the evidence, plaintiffs were repeatedly asking defendant no.1 to provide the break-up. If only defendant no.1 had been honest in its calculations and provided timely statements, this situation would not have arisen. It is true that it was plaintiff no.1 who had approached defendant no.1 for financial assistance and plaintiff no.1 had defaulted in its payment but at the same time, defendant no.1 could not arrogate itself to the position that without any basis, and because they had possession of the pledged shares, and the value of the shares were much more than the amount repayable by plaintiffs, go on selling the shares when there was no need.

62 The effect of this is defendant no.1 had wrongfully detained the shares after the entire amount calculated at 24% p.a. interest had been recovered. The extra shares that defendant no.1 sold by calculating at 36% p.a. interest or its value had to be returned.

63 It is well settled that the relief sought by parties should not be refused on technical and pedantic grounds. Once the substantive prayers and the cause for justice is borne out in the pleadings, then the Court would be fully within its jurisdiction to mould the reliefs and any technicality would not obstruct the course of justice.

With respect to moulding reliefs in the interest of justice, powers of the Court are wide. Keeping in mind the rights and obligations of the parties to the suit and the issues involved, the Court can undoubtedly take note of changed circumstances and suitably mould the relief to be granted to the party concerned in order to mete out justice in the case. As far as possible the anxiety and endeavour of the Court should be to remedy an injustice when it is brought to its notice rather than deny relief to an aggrieved party on purely technical and narrow procedural grounds.

A Full Bench of the Supreme Court of India in *Pasupuleti Venkateswarlu v. Motor and General Traders*⁶⁶ has elaborated on this principle in the context of eviction proceedings. Speaking for the bench, Krishna Iyer J., in his inimitable way said :

66. (1975) 1 SCC 770

“.....First about the jurisdiction and propriety vis a vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief for the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.....”

64 In the circumstances, I am inclined to reject the submissions of Mr. Sen and hold that plaintiffs are entitled to the shares with accretions and unearned dividend but the entitlement will be based on the statement of defendant no.1 and defendants' calculations.

65 In my view, therefore, plaintiffs shall be entitled to a decree as under against defendant no.1 :-

(a) Deliver within four weeks 11,49,680 fully paid equity shares, in view of sub-division and bonus issue of shares of defendant no.2-company, which defendant no.1 may purchase from the market and deliver to plaintiffs;

(b) In the alternative to clause (a), and in any event after four weeks, pay the amount equivalent to value of 11,49,680 fully paid equity shares as on the date of this

decree or payment/realisation, whichever is higher.

(c) Pay a sum of Rs.5,80,87,582/- towards unearned dividend for the shares plaintiffs would have become entitled to with accretions based on 28,742 excess shares that defendant no.1 sold illegally less Rs.5,61,413.30 already paid pursuant to order dated 22nd July, 1997.

(d) Interest on all amounts be paid at 24% p.a. from the date hereof until payment/realisation.

66 The issues are answered accordingly and suit stands decreed accordingly.

67 No order as to costs.

(K.R. SHRIRAM, J.)