

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2110 OF 1999

Stock Exchange Bombay

... Petitioner.

V/s.

Varughese P. Danial,
Income Tax Officer, Ward 16(1) & Ors. ...Respondents.

Mr. Arnav Mohanty, Advocate i/by Khaitan & Co. for the
Petitioner.

Mr. A. R. Malhotra, Advocate for Respondent Nos. 1 to 5.

**CORAM : UJJAL BHUYAN AND
MILIND N. JADHAV, JJ.**

DATE : JANUARY 30, 2020.

PC :

1 Heard Mr. Arnav Mohanty, learned counsel
for the Petitioner; and Mr. Malhotra, learned standing
counsel Revenue for Respondent Nos. 1 to 5. However,
there is no representation on behalf of Respondent Nos.
6, 7 and 8.

2 In this Writ Petition filed by the Stock
Exchange Bombay, now called as Bombay Stock
Exchange Limited, the following prayers have been
made :-

“(a) that this Hon’ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records in relation to the recovery proceedings initiated by the Respondents against M/s. Sumatilal Jamnalal and/or Mr. Sumatilal Jamnalal and/or Paresh Sumatilal Karodia and after going into the legality and validity thereof to quash and set aside the impugned notices dated 7th December 1988 and 20th March 1989 and the impugned prohibitory orders dated 4th February 1987 and 7th March 1990 being Exhibits F-2, G, J-2 hereto;

(b) that this Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondents to withdraw forthwith the recovery proceedings initiated against it in respect of the dues of M/s. Sumatilal Jamnalal and/or late Mr. Sumatilal Jamnalal and/or Paresh Sumatilal Karodia and ordering and directing the Respondents to withdraw forthwith the impugned notices dated 7th December 1988 and 20th March 1989 and the impugned prohibitory orders dated 4th February 1987 and 7th March 1990 being Exhibits F-2, G, J-2 hereto;

(c) that this Hon’ble Court be pleased to declare that the Petitioner is permitted to

exercise the right of nomination in respect of the membership right of late Mr. Sumatilal Jamnalal and/or Paresh Sumatilal Karodia in favour of such person as the Petitioner may decide and to apply the consideration received therefor and also to appropriate all other securities placed with the Petitioner by M/s. Sumatilal Jamnalal and which have vested in the Petitioner in accordance with the Rules, Bye-laws and Regulations of the Petitioner;

(d) that pending the hearing and final disposal of the present petition, the Respondents be restrained from taking any steps against the Petitioner pursuant to the recovery proceedings initiated by the Respondents in the case of M/s. Sumatilal Jamnalal and/or Mr. Sumatilal Jamnalal and/ or Paresh Sumatilal Karodia;

(e) that pending the hearing and final disposal of the present petition, the Petitioner be permitted to exercise the right of nomination in respect of the membership right of late Mr. Sumatilal Jamnalal and Paresh Sumatilal Karodia in favour of such person as the Petitioner may decide and to apply the consideration received therefor and also to appropriate all other securities placed with the Petitioner by M/s. Sumatilal Jamnalal and which have vested in the Petitioner in accordance with the Rules, Bye-laws and Regulations of the Petitioner;”.

3 Mr. Malhotra, learned standing counsel Revenue fairly submits that the same Petitioner had approached this court by filing several Writ Petitions, pertaining to different card holders of the Stock Exchange. Those Writ Petitions came to be clubbed into two groups - group (i) comprising Writ Petitions Nos. 215 and 217 of 2003 and group (ii) comprising Writ Petition Nos. 709 of 1998, 572 of 2000 and 606 of 2000. Writ Petitions of both the groups were disposed off by this court vide separate orders dated 15th October, 2015, following decision of the Supreme Court in **Bombay Stock Exchange vs. B.S.Kandalgaonkar**, 2015 (2) SCC 1. However, he submits that because of subsequent developments, Revenue has preferred Writ Petitions before this court being Writ Petition Nos. 208 and 360 of 2017 which were admitted on 22.03.2017 for hearing.

4 Mr. Arnav Mohanty, learned counsel appearing for the Petitioner agrees with the submissions made by Mr. Malhotra, learned standing counsel Revenue for the Respondents, about disposal of the above writ petitions.

5 Submissions made have been considered.

6 For the sake of convenience, we reproduce below the order passed by this court (Coram: M.S. SANKLECHA & G.S. KULKARNI, JJ.) dated 15.10.2015 in Writ Petition Nos. 215 and 217 of 2003 :-

“These petitions challenge the prohibitory and attachment orders issued by the Income Tax Department in respect of the income tax dues payable by Bharat S. Khona and Akhil Dalal who were card holders of the Bombay Stock Exchange in the hands of the petitioner. These prohibitory and attachment orders are issued by the Income Tax Department with regard to membership card licensed to Bharat S. Khona and Akhil Dalal and security deposit amounts of the defaulter members Bharat S. Khona and Akhil Dalal with the petitioner - Exchange.

2. It is agreed position between the parties that the decision of the Apex Court in Bombay Stock Exchange Vs. B.S. Kandalgaonkar & Ors. cover both the issues in principle in favour of the petitioner. The Apex Court has held that the membership card is only a personal privilege granted by the petitioner - Exchange and that no right to that card has ever been transferred to the card holder for the petitioner - Exchange so as to enable its attachment by the Income Tax Department. So far as security deposit is concerned, the Apex Court has held that the petitioners would have a priority on the security deposits over the Income Tax Department.

3. However Mr. Malhotra, the learned Counsel for the revenue points out that the issue with regard membership card is completely covered

in favour of the petitioner. However so far as the prohibitory orders were issued by the Income Tax Department in respect of security deposit of the defaulting card holder is concerned, any amount in excess after meeting it's liabilities should be handed over to the Income Tax Department. This is so as the amounts in excess in the hands of the petitioner stand attached in favour of the Income Tax Department. The defaulting member of the petitioner-Exchange would not have any right over the same. Mr. Banarjee, the learned Counsel for the petitioner does not dispute the aforesaid position.

4. Mr. Malhotra further states that the petitioner- Exchange is entitled to exercise it's lien over the security deposit in accordance with the by-law 400 of the petitioner -Exchange's By-laws. Mr. Banarjee on instructions, in all fairness, so as to have complete transparency in these matters states that before making payment in terms of by-law 400, petitioner would intimate the manner in which the security deposits would be adjusted to the Deputy Commissioner of Income Tax, Circle 4(1)(2) having his office at Room No.640, Sixth Floor, Aaykar Bhawan, M.K. Road, Mumbai in respect of Writ Petition No. 215/2003 and to the Income Tax Officer 4(1)(1) having his office at Room No.636, Sixth Floor, Aaykar Bhawan, M.K.Road, Mumbai in respect of Writ Petition No. 217/2003 having jurisdiction over the defaulting assessee's case as informed by Mr. Malhotra, the learned Counsel for the revenue on taking instructions. The communication dated 19 October 2015 addressed by the office of Principal Commissioner of Income Tax to Mr. Malhotra informing him of the judicial officers in case of defaulting assessees is taken on record and marked 'X' for identification.

5. In case there is no response/objection within a period of three weeks from the communication of the above intimation by the jurisdictional income tax officer to the petitioner-Exchange, then the petitioner would be entitled to make the disbursements in accordance with the intimation/notice given to the jurisdictional Income Tax Officer. Needless to state the excess if any, after the adjustment of the security deposit would be made available to the Income Tax Department by the petitioner-Exchange.”

7 We are of the view that the above decision squarely covers the /is involved in the present Writ Petition. Therefore, it can be disposed of in terms of the above decision.

8 Accordingly and in the light of the above the present Writ Petition is also disposed of in the above terms.

Shalikram
P. Borey

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signed by
Shalikram P.
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(MILIND N. JADHAV, J.)

(UJJAL BHUYAN, J.)

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