

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.60 OF 2024**  
**[LEAVE TO APPEAL]**

Securities and Exchange Board of India ] Applicant

**Vs.**

Anil Dashrathlal Modi and another ] Respondents

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Mr. Aspi Chinoy, Senior Advocate i/b Mr. Vijay Hiremath a/w Mr. Swaraj Jadhav, Mr. Vivekanand Swaroop i/b Ms. Sharika K.G, for Applicant.

Mr. Manish K. Bohra, for Respondent No.1.

Mr. P.H. Gaikwad, A.P.P, for Respondent No.2-State.

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**CORAM** : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 11<sup>th</sup> FEBRUARY, 2025.

PRONOUNCED ON : 17<sup>th</sup> FEBRUARY, 2025.

**ORDER:**

1. By this application under section 378 (4) of the Code of Criminal Procedure, 1973 (for short “Cr. P.C”), the applicant-Securities and Exchange Board of India (for short “SEBI”) challenges a judgment dated 5<sup>th</sup> March, 2024 rendered by the SEBI Special Judge, City Civil and Sessions Court, Greater Bombay in SEBI Special Case No.235 of 2014, by which the Special Judge acquitted the respondent No.1 of the offence punishable under

section 24 (2) of the Securities and Exchange Board of India Act, 1992 (for short “SEBI Act, 1992”).

2. An investigation had been carried out by SEBI into buying, selling or dealing in the scrip of Oasis Matrix Limited during the period between 8<sup>th</sup> April, 2022 and 9<sup>th</sup> July, 2022 in order to ascertain as to whether provisions of SEBI Act, 1992 and Rules and Regulations made thereunder have been violated during the aforesaid period.

3. For that purpose, during the course of investigation, Investigating Authority had issued summons to the respondent No.1 under section 11-C (2) and section 11-C (5) of the SEBI Act, 1992 calling upon him to appear before the Investigating Authority (for short “IA”) for furnishing certain documents.

4. Despite service, respondent No.1 failed to appear before the Investigating Authority. Consequently, Adjudication Proceedings were initiated under section 15A (a) of the SEBI Act, 1992. A penalty of Rs.25,00,000/- (Rs. Twenty Five Lakh only) under section 15A (a) was imposed on the respondent No.1 vide order

dated 16<sup>th</sup> March, 2009. The respondent No.1 was directed to pay/deposit penalty by way of demand draft within forty five days of receipt of the order.

5. The said order was duly served upon the respondent No.1 by the speed post with letter dated 17<sup>th</sup> March, 2009 which was sent by Registered Post with Acknowledgment Due. It was rightly addressed to “Shri Anil K. Modi, 1204 *Bhaiyani Bari*, Anand Chowk, *Shamalani Pole, Rajpur, Ahmedabad*”. It is contended that it bears signature of respondent No.1 - Anil K. Modi. It also bears a date/delivery stamp of the Postal Department dated 20<sup>th</sup> March, 2009. The reverse of the “Acknowledgment” and the “stamp of the office of posting” dated 18<sup>th</sup> March, 2009 thereon indicate that the complainant/SEBI had prepaid and the said letter dated 17<sup>th</sup> March, 2009 was posted to the respondent No.1 on his correct address. Despite due service of the order, respondent No.1 failed to comply with the said order passed by the Adjudicating Authority within stipulated time.

6. Reminders were also issued by Registered Post with Acknowledgment Due on 1<sup>st</sup> June, 2009 and 13<sup>th</sup> July, 2009 calling

upon him to pay amount of penalty, however, respondent No.1 failed to pay the same.

7. It is, *inter alia*, contended that he did not prefer any statutory appeal as provided under section 15T of the SEBI Act before the Security Appellate Tribunal (for short “SAT”).

8. Finally, the respondent No.1 appeared before the SEBI Special Court. A charge was framed against him. He pleaded not guilty and claimed that he had not received the adjudication order dated 16<sup>th</sup> March, 2009.

9. I heard Mr. Aspi Chinoy, learned Senior Counsel at a considerable length and Mr. Manish Bohra, learned Counsel appearing for the respondent No.1. I have also perused the impugned judgment and other documents on record.

10. A short question which needs to be answered is, as to whether the learned Special Judge has committed an error in law and fact by arriving at a conclusion that the respondent No.1 has not been duly served with Adjudicating Order “Exhibit 75” which was issued by

Registered Post with Acknowledgment Due with letter dated 17<sup>th</sup> March, 2009?

11. At the outset, learned Senior Counsel has invited my attention to the acknowledgment receipt at page 86 which clearly indicates the seal of the postal department and correct address of the respondent No.1 as “*Shri Anil K. Modi, 1204 Bhaiyani Bari, anand Chowk, Shamalani Pole, Rajpur, Ahmedabad*” which he has denied. The respondent No.1 has interestingly not denied the correctness of his name and address.

12. The crucial evidence in that regard would be of respondent No.1 – Anil Modi himself. Surprisingly, during his examination-in-chief, he simply testified that one Mr. Shah who was doing a job with him for sixteen years used to obtain his signatures. This witness did not know for what purpose Mr. Shah was obtaining his signatures. This is something quite strange indicating the demeanor of the witness. He nowhere testified that he did not sign the postal acknowledgment at “Exhibit 23”. What he admits in cross is that his name and address has been correctly mentioned over the acknowledgment receipt. He feigned ignorance that he does not

know whose signature was there on the acknowledgment receipt. No sane man will accept and believe the evidence of this witness to be true. It is quite obvious that it is his signature since he did not even say in his examination-in-chief that he did not sign the acknowledgment. He appears to have taken false pretext that one Shah used to obtain his signature without letting him know for what purpose he used to take his signature.

13. The law on this aspect is no more *res integra* as has rightly been argued by the learned Senior Counsel by placing a useful reliance on the judgment of the Supreme Court in case of **C.C. Alavi Haji Vs. Palapetty Muhammed and another**<sup>1</sup>. It would be apposite to extract paragraphs 10,13,14 and 18 of the judgment;

*“10. It is, thus, trite to say that where the payee dispatches the notice by registered post with correct address of the drawer of the cheque, the principle incorporated in Section 27 of the G.C. Act would be attracted; the requirement of Clause (b) of proviso to Section 138 of the Act stands complied with and cause of action to file a complaint arises on the expiry of the period prescribed in Clause (c) of the said proviso for payment by the drawer of the cheque. Nevertheless, it would be without prejudice to the right of the drawer to show that he had no*

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<sup>1</sup> (2007) 6 Supreme Court Cases 555

*knowledge that the notice was brought to his address.*

*“13. According to Section 114 of the Act, read with illustration (f) thereunder, when it appears to the Court that the common course of business renders it probable that a thing would happen, the Court may draw presumption that the thing would have happened, unless there are circumstances in a particular case to show that the common course of business was not followed. Thus, Section 114 enables the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Consequently, the court can presume that the common course of business has been followed in particular cases. When applied to communications sent by post, Section 114 enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the G.C. Act is a far stronger presumption. Further, while Section 114 of Evidence Act refers to a general presumption, Section 27 refers to a specific presumption. For the sake of ready reference, Section 27 of G.C. Act is extracted below:*

*27. Meaning of service by post. - Where any Central Act or Regulation made after the commencement of this Act authorizes or*

*requires any document to be served by post, whether the expression ‘serve’ or either of the expressions ‘give’ or ‘send’ or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.*

*14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement “refused” or “not available in the house” or “house locked” or “shop closed” or “addressee not in station”, due service has to be presumed. [Vide Jagdish Singh Vs. Natthu Singh (1992) 1 SCC 647 ; State of M.P. Vs. Hiralal, (1996) 7 SCC 523 and V.Raja Kumari Vs. P. Subbarama Naidu, (2004) 8 SCC, 774] It is, therefore, manifest that in view of the presumption available under Section 27 of the Act, it is not necessary to aver in the complaint under Section 138 of the Act that service of notice was*

*evaded by the accused or that the accused had a role to play in the return of the notice unserved.*

*18. In the instant case, the averment made in the complaint in this regard is:*

*“Though the complainant issued lawyers notice intimating the dishonour of cheque and demanded payment on 4.8.2001, the same was returned on 10.8.2001 saying that the accused was “out of station”.*

*True, there was no averment to the effect that the notice was sent at the correct address of the drawer of the cheque by “registered post acknowledgment due”. But the returned envelope was annexed to the complaint and it thus, formed a part of the complaint which showed that the notice was sent by registered post acknowledgment due to the correct address and was returned with an endorsement that “the addressee was abroad”. We are of the view that on facts in hand the requirements of Section 138 of the Act had been sufficiently complied with and the decision of the High Court does not call for interference”.*

14. It was a case under Section 138 of the N.I Act. A notice was sent by registered post with acknowledgment due which returned “un - served”.

15. In view of section 27 of the General Clauses Act, section 114 of the Indian Evidence Act read with Illustration (f) thereunder , once notice is sent by registered post by correctly addressing the drawer of the cheque, service of notice is deemed to have effected. It is needless to reiterate the law on section 27 of the General Clauses Act and Section 114 of the Indian Evidence Act.

16. Here, there is no doubt that unless the postal charges are prepaid the Postal Department would not issue the notice by registered post. The word “unless contrary is proved” carries importance, in the sense, respondent No.1 has not at all proved it contrary that he did not receive the notice though he, in clear terms, admits his name and address over the postal acknowledgment. As such, presumption in favour of the applicant remained un-rebutted. As such, application is allowed. Leave to appeal is granted.

17. Registry is directed to register the appeal.

18. Application is disposed of.

19. Let the appeal be fixed under the caption “for Final Hearing”  
on 7<sup>th</sup> March, 2025.

**[PRITHVIRAJ K. CHAVAN, J.]**