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C.A.No. 747 OF 1997

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Item No.	Court No.	Section
102	03	IX

S U P R E M E   C O U R T   O F   I N D I A  
Record of Proceedings

Civil Appeal No. 747 of 1997

Gopikishan S. Damani	Appellant (s)
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vs.

A.K. Menon & Anr.	Respondent(s)
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Date:25/09/2001 This/These matter(s) was/were called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE B.N. KIRPAL  
HON'BLE MR. JUSTICE N. SANTOSH HEGDE  
HON'BLE MR. JUSTICE P. VENKATARAMA REDDI

For the Appellant (s): Mr. Gopal Jain, Adv.  
Ms. Ruby Singh Ahuja, Ms. Nandini Gore,  
Mr. R N Karanjawala and Ms. Manik  
Karanjawala, Advs.

For the Respondent(s): Mr. Shiraz Rustomjee, Adv.  
Mr. A Subba Rao, Adv.  
Mr. P Parmeswaran, Adv. (NP)

UPON hearing the counsel the Court made the following  
ORDER

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The appeal is disposed of in terms of the signed order.

(D.P. Walia)  
Court Master

(S.L. Goyal)  
Court Master

(Signed Order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 747 OF 1997@@  
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Gopikishan S Damani

..Appellant(s)

vs.

A.K. Menon & Anr.

..Respondent(s)

O R D E R@@  
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On 31st March, 1992, the appellant owed respondent No. 2 (Dhanraj Mills Private Limited) a sum of Rs.90,48,631/-. Under the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, Dhanraj Mills Private Limited was notified.

After notifying Dhanraj Mills Private Limited, a public notice was issued on 10th September, 1992 by the Custodian calling upon all debtors of notified parties to inform the Custodian the amounts due by them to the notified party and to pay the same to the Custodian.

The appellant did not make any payment. According to it, on 22nd February, 1993, it received summons from Income Tax Department asking it to forward some documents relating to the transactions between the appellant and the notified party. Copies of the accounts between the parties were forwarded on 2nd March, 1993. However, on 3rd August, 1994, letter was received by the appellant from the Custodian whereby the Custodian demanded an amount of Rs.95,58,631/- stated to be outstanding and due from the appellant herein. The appellant was also informed that in cases of belated payments the ...2/-

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Special Court ordered payment of interest at the rate of 24 per cent.

In reply to the said letter, the appellant stated that according to its books of account, it is only a sum of Rs.90,48,631/- which was due and not Rs.95,58,631/- claimed by the Custodian. The appellant enquired as to how the payment was to be made to discharge its liability of Rs.90,48,631/-.

The Custodian, by his letter dated 16th September, 1994, informed the appellant that a sum of Rs.90,48,631/- may be deposited in the attached account of respondent No. 2. It was further stated that this payment would be without prejudice to further liabilities and it was mentioned that in an affidavit filed by Dhanraj Mills Private Limited the amount outstanding and due from the appellant was stated to be Rs.95,58,611/-. Payment for interest at the rate of 24 per cent was reiterated by the Custodian.

It is not in dispute that on 9th September, 1994 a sum of Rs.90,48,631/- was paid by the appellant into the account of the Custodian. It is a few months thereafter that Misc. Application No. 190/95 was filed by the Custodian claiming interest at the rate of 24 per cent from the appellant herein.

By order dated 5th November, 1996, the Special Court passed the decree against the appellant for a sum of Rs.90,48,631/- along with interest at the rate of 24 per cent per annum from 1st April, 1992 till 9th December, 1994. It was further stated that the appellant herein was to be given credit for the sum of Rs.90,48,631/- which was paid on 9th ....3/-

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December, 1994 and this sum which was paid was to be adjusted

first towards interest and thereafter towards principal. A concession was given to the appellant, inasmuch as it was directed that if interest at the rate of 20 per cent from 1st April, 1992 to 9th December, 1994 on the amount of Rs.90,48,631/- was paid within the period of four weeks of the passing of the order, the decree would be marked as fully satisfied.

Subsequently on 6th January, 1997, the Special Court clarified a mistake which had been committed in its original order of 5th November, 1996. As a result of the clarification, the interest was to be payable not just on Rs.90,48,631/- from 1st April, 1992 to 9th December, 1994 but interest was also to be payable on the balance principal amount, inasmuch the payment of Rs.90,48,631/- made on 9th December, 1994 was first to be adjusted towards interest and then towards principal. The rest of the order of 5th November, 1996 stood unamended except that the interest was to run till the date of payment.

After hearing the counsel for the parties, we are of the opinion that in the special circumstances of the case where a sum of Rs.90,48,631/- was paid without much ado and thereafter a further sum of Rs.48,73,865/- on 12th December, 1996 was paid pursuant to the order dated 5th November, 1996, it will be in fitness of things that there should be some concession in the rate of interest. The Special Court gave a concession of 4 per cent by reducing the rate of interest from ...4/-

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24 per cent to 20 per cent. The rate of interest should further be reduced to 18 per cent, especially because we are not deciding the question as to whether the payment of Rs.90,48,613/- which was made in December, 1994, was first to be adjusted against the principal or not. Without going into the correctness of the conclusion of the Special Court that the same was to be adjusted first towards interest and not against the principal, we feel that ends of justice will be met by varying the decision of the Special Court to a limited extent, namely, reducing the rate of interest to 18 per cent. Rest of the decree passed by the Special Court stands.

The appeal is disposed of in the aforesaid terms.

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.....J.  
(B.N. KIRPAL)

.....J.  
(N. SANTOSH HEGDE)

.....J.  
(P. VENKATARAMA REDDI)

New Delhi;  
September 25, 2001.