

(1995) 07 AHC CK 0057

In the Allahabad High Court

Case No : Special Appeal No. 84 of 1995

Prakash Timbers Pvt. Ltd. and other

APPELLANT

Vs

Smt. Sushma Shingla and another

RESPONDENT

Date of Decision : 07-07-1995

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5, 6(5), 6(6)
Civil Procedure Code, 1908 (CPC) — Section 115, 151
Companies Act, 1956 — Section 10, 10(4), 2
Company Law Board (Qualification, Experience and other Conditions of Service of Members) Rules, 1993 — Rule 2
Company Law Board Regulations, 1991 — Regulation 3, 47
Constitution of India, 1950 — Article 136, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 193, 195, 226, 228
Displaced Persons (Debts Adjustment) Act, 1951 — Section 4
Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 19, 20
Representation of the People Act, 1951 — Section 36(2)
Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Section 9
Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1994 — Section 9
Special Courts Act, 1979 — Section 3(2)
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7

Citation : AIR 1996 All 262 : (1997) 89 CompCas 770

Hon'ble Judges : A.L. Rao, C.J.;Sudhir Narain, J

Bench : Division Bench

Advocate : Suman Agrawal and Sri Murli Dhar, for the Appellant;

Final Decision : Disposed Of

Judgement

Sudhir Narain, J.—A preliminary objection has been raised in this appeal by the respondents first set that the Special Appeal against the judgment of the learned single Judge, deciding the first appeal under S. 10-F of the Companies Act, 1956, against the order dated 15-9-1995, passed by the Company Law Board, Principal Bench, New Delhi, was not maintainable under Chapter VIII, Rule 5 of the

Allahabad High Court Rules (hereinafter referred to as "Rules").

2. The brief facts are that Prakash Timbers Private Limited, appellant No. 1 was incorporated as a company in the year 1961. It decided to bring into existence another subsidiary company and, consequently, Hridaya Narain Yogendra Prakash Properties Private Limited was incorporated as wholly owned subsidiary of Prakash Timbers Private Limited. In August 1991, Smt. Sushma Shingla and Smt. Sandhya Sharan, respondents 1 and 2 requested that a meeting of the Board of Directors be called to discuss the mismanagement in the company but no such meeting was called. In the third week of March, 1992, they received a letter from the Assistant Registrar of the Companies that it had come to their notice that they had sold their shares to one Shri Sonit Tandon, their nephew. They filed a petition before the Company Law Board, under S. 10-E of the Companies Act, 1956 (in short "the Act") stating that there was mismanagement in the company and they have been wrongly removed from the Board of Directors. They prayed that they be appointed in the Board of Directors of Prakash Timbers Private Limited and the transfer executed by the parent company on 20th April, 1992, pertaining to the roof of the building situate at 165, Civil Lines, Bareilly, to Bareilly Corporation Bank, be set aside, and prayed for certain other reliefs. During the proceedings before the Company Law Board; New Delhi, the parties came to a compromise. The Company Law Board passed an order in terms of the said compromise on 15th September, 1994. The present appellants filed appeal against the said order before this Court under S. 10-A of the Act challenging the validity of the order passed in terms of the compromise scheme particularly regarding clause (iii) of the order which was a part of the compromise. The appeal was dismissed by the learned single Judge on 15-1-1995 and against this order the present special appeal has been filed.

3. Learned counsel for the respondent urged that the appellant had already preferred an appeal, against the order of the Company Law Board before this Court under S. 10-F of the Act. This special appeal does not lie against such an order. 4. It is necessary to examine Rule 5 of Chapter VIII which reads as under:--

"5. Special Appeal -- An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of its power of superintendence or in the exercise of criminal jurisdiction (or in the exercise of jurisdiction conferred by Art. 226 or Art. 227 of the Constitution in respect of any judgment, order or award -- (a) of a Tribunal, Court or statutory arbitrator made or purported to be made in the exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule of the Constitution or, (b) of the Government or any Officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any

such Act of one Judge)".

5. This Rule broadly speaking is in two distinctive parts. One in respect of order passed by a learned single Judge against (i) Orders of a Court, and the other (ii) in respect of orders passed in exercise of jurisdiction under Arts. 226 and 227 of the Constitution of India. The special appeal does not lie against these orders but with certain exceptions, It is not necessary to analyse these exceptions here. In the present case, the learned single Judge has passed the order in an appeal preferred under S. 10-F of the Act against the order of Company Law Board passed under S. 10-E of the Act. The question is whether the Company Law Board can be treated as Court. In case it is treated as Court, special appeal shall not lie against its order under Rule 5 of the Rules of the Court.

6. The question as to whether a person or a body of persons constitute a Tribunal or a Court, has been subject-matter of consideration in various cases and that has to be examined keeping in view their essential ingredients, characteristics, jurisdiction and function which they perform. In *Brajnandan Sinha Vs. Jyoti Narain*, their Lordships of the Supreme Court traced out origin and development of concept of the word "Court" The word "Court" meant a place of sitting where the king used to dispense justice. Coke on Littleton and Stroud defined the word "Court" as the place where justice is judicially administered. According to Stephen (at page 69):

"In every Court there must be at least three constituent parts -- the actor, reus and judex, the actor or plaintiff, who complains of an injury done the reus, or defendant, who is called upon to make satisfaction for it; and the judex, or judicial power, which is to examine the truth of the fact, and to determine the law arising upon that fact, and if any injury appears to have been done, to ascertain, and by its officers to apply, the remedy".

7. The word "Civil Court" has nowhere been defined in the Civil Procedure Code. Code of Criminal Procedure also does not define the word "Court". Section 3 of the Evidence Act defines "Court" as including all Judges and Magistrates and all persons, except arbitrator, legally authorised to take evidence. This definition is not exhaustive but only for the purpose of Evidence Act.

8. Sections 19 and 20 of the Indian Penal Code (Act 4 of 1960) define the words "Judge" and "Court" of Justice respectively as under :--

"19. "Judge" -- The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment. 20. "Court of Justice" -- The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially."

9. The difficulty arises where a person or body of persons is constituted to determine the rights of the parties in accordance with the powers conferred upon it under a Statute and such person or body has to determine, following the procedure, which is exercised by a Court and has to decide judicially after giving an opportunity of hearing to the parties and after taking evidence and pronouncing its verdict on facts and law which is in dispute.

10. Lord Sankey L.C. in the case of *Shell Company of Australia v. Federal Commissioner of Taxation* 1931 AC 275, observed that a body or Tribunal may be constituted entrusting them work of judicial character but they are not Courts in the accepted sense though they may possess some of the trappings of the Court. The phrase "Trappings of the Court" suggested that the Tribunal may have many attributes which the Court possesses but still it will not be regarded as a Court and the following negative propositions were enumerated:

1. A tribunal is not necessarily a Court in the strict sense because it gives a final decision;
2. Nor because it hears witnesses on oath;
3. Nor because two or more contending parties appear before it between whom it has to decide;
4. Nor because it gives decisions which affects the rights of subjects;
5. Nor because there is an appeal to a Court;
6. Nor because it is a body to which a matter is referred by another party."

11, In *Shri Virindar Kumar Satyawadi Vs. The State of Punjab*, the Supreme Court laid down the test where an authority can be said to be acting as a Court in the following words:--

"It may be stated broadly that what distinguishes a Court from a quasi judicial tribunal is that it is charged with a duty to decide that dispute in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of an authority to decide the matter on consideration of the evidence adduced and in accordance with law. When a question, therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act, it possesses all the attributes of a Court".

12. Examining the nature of the work entrusted to a Returning Officer, deciding the validity of nomination paper under S. 36(2) of Representation of the People Act, it was held that Returning Officer is not a Court. He was to exercise power, judicial in character, but as the parties had no right to insist on producing evidence in support of their case, he could not be termed as Court. Similarly, in

Brij Nandan Sinha's case (supra) a Commissioner, appointed under the Public Servants (Inquiries) Act (Act No. 37 of 1850) was held not a Court within the meaning of the term as used in the Contempt of Courts Act. The position of the Commissioner was held as merely of a fact finding authority and a report made by him to the Government was merely his expression of opinion which lacked both finality and authoritativeness which were essential tests of a judicial pronouncement.

13. The majority opinion expressed in *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, was that an Industrial Tribunal constituted under the Industrial Disputes Act, 1947, though discharges judicial function, is not a Court. It is armed with extraordinary power derived from the Statutes and exercises judicial power of the State. It follow the procedure provided under the Act and Rules which are modeled on the Code of Civil Procedure. The Industrial Tribunal though possesses all the necessary attributes of a Court of Justice but it was observed that "that circumstance does not make them anything else but tribunals exercising judicial power of the State though in a degree different from the enjoyed by ordinary Courts of Law. They may be rightly described as quasi-judicial bodies because they are out of hierarchy of the ordinary judicial system."

14. In *Rama Rao and Another Vs. Narayan and Another*, the question came up for consideration as to whether a nominee of Registrar appointed under S. 95 of Maharashtra Co-operative Societies Act (Act 24 of 1965) deciding the dispute regarding the rights of the members of the Co-operative Societies can be held to be a Court. The nominee appointed by the Registrar was entitled to decide the dispute referred to him by the Registrar and was given power under S. 94 of the Act, to summon and enforce attendance of witnesses including the parties or any of them in the same manner as provided in the case of a Civil Court by the Code of Civil Procedure. It was held that the nominee was required to act judicially but the obligation to act judicially did not make him a Court within the meaning of S. 195 of the Code of Criminal Procedure. Nominee derives his authority not from the Statute but from the investment by the Registrar in his individual discretion. The power so invested, is liable to be suspended and may be withdrawn. He is, therefore, not entrusted with the judicial power of the State and is merely an arbitrator authorised within the limits of the power conferred to adjudicate upon the dispute referred to him.

15. A distinction between Court, Tribunal and an arbitrator came up for consideration before their Lordships of the Supreme Court in *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay*, wherein the question was whether the decision of the arbitrator to whom industrial dispute is voluntarily referred to under S. 10-A of Industrial Disputes Act, 1947, can be termed as a Court. It was held that the arbitrator acting under the said provision is neither a Court for a Tribunal even though some of the trappings of the Court are present. The

arbitrator under S. 10-A of the Act is not in the same position as a private arbitrator. He lacks essential and fundamental requisites that he is not invested with the State's inherent judicial power. He is appointed by the parties and the power to decide the dispute between the parties who appoint him as derived by him from the agreement of the parties and from no other source. The mere fact that his appointment once made by the parties is recognised by S. 10-A of the Act and thereafter he is clothed with certain powers having the trappings of the Court, does not mean that the power of adjudication which he is exercising is derived from the State.

16. Sri Sudhir Chandra, learned counsel for the appellant placed reliance upon the decision *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, wherein the question was that a Registrar exercising powers under S. 40-A of Bihar and Orissa Co-operative Societies Act, 1935, is Court within the meaning of the Contempt of Courts Act, 1952. The Assistant Registrar decided the dispute as to whether the bank was entitled to realise the amount claimed by it against the appellant in that case. After examining the scheme of the relevant provisions of the Act, the Supreme Court found that the Registrar has not merely the trappings of the Court but he is given the same power as are given to ordinary Civil Courts of the land by the CPC including the power to summon and examine witnesses on oath, the power to order inspection of document, to hear the parties after framing issues, to review his own orders and even exercise the inherent jurisdiction of Courts mentioned in S. 151 of the Code of Civil Procedure. The power which was entrusted was the power to review and also the inherent jurisdiction which could be exercised by the Civil Court under S. 151 of the Code of Civil Procedure. In that context it was held that the Registrar is a Court within the meaning of Contempt of Courts Act, 1952.

17. Learned Counsel for the respondent has further placed reliance upon *Bal Gopal Das Vs. Mohan Singh and Another*, . The controversy was whether the Tribunal constituted u/s 4 of the Displaced Persons Debt Adjustment Act, 1951 is a Court subordinate to High Court within the meaning of Sec. 115 of the CPC and a revision lies under the said provision in the High Court. The majority view was that the Tribunal was a Court as the Civil Court itself was conferred power of a Tribunal. S. D. Khare, J. gave the following reason for coming to the conclusion that the Tribunal is a Civil Court:

"I, however, am of the view that the Tribunal constituted u/s 4 of the Act does not, in reality, have an entity different from that of the "Civil Court", specified as authority to exercise jurisdiction under the Act, that the specifications u/s 4 of the Act merely involves that the authority of the Civil Court (Civil Judge or the District Judge, as the case may be) is enlarged so that it exercises jurisdiction under the Act also. In my opinion the word "Tribunal" has been used and other phraseology has been employed merely for the purpose of drafting to avoid confusion, so that the decree passed by the Civil Court exercising jurisdiction under the Act, which is a Special Act applicable to displaced persons only, might

be readily differentiated from its decrees passed under the common law of the land. That became necessary because certain special powers (e.g. of reduction of debts of the displaced persons) and certain special restrictions (e.g. not executing the decree by the arrest of the debtor) are the special features of the Act."

18. In *Chatur Mohan v. Ram Behari*, 1964 All 562 : (1964 All LJ 256), the question was whether the Munsiff exercising the jurisdiction u/s 7-E of the U. P. (Temporary) Control of Rent and Eviction Act (Act 3 of 1947) acts as a Civil Court or as *persona designata*. The majority view was that the intention of the legislature in enacting Section 7-E of the Act was that the Munsif passed the order as part of ordinary jurisdiction and not as *persona designata*. The legislature could confer its special jurisdiction upon an authority presiding over a Court and when it does so, it does not lose its identity as a Court. Hon"ble Hidayatullah, J. (as he then was) in *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, drew distinction between a Tribunal and a Court in the following words (at page 1680):

"All Tribunals are not Courts, though all Courts are Tribunals. The word "Courts" is used to designate those Tribunals which are set up in an organised State for the administration of justice. By administration of justice is meant the exercise of judicial power of the State to maintain and uphold rights and to punish "wrongs". Whenever there is an infringement of a right or an injury, the Courts are there to restore the *vinculum juris*, which is disturbed."

"By "Courts" is meant Courts of Civil Judicature and by "Tribunals" those bodies of men who are appointed to decide controversies arising under certain special laws. Among the powers of the State is included the power to decide such controversies. This is undoubtedly, one of the attributes of the State, and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before Tribunals, and the residue goes before the ordinary Courts of Civil Judicature. Their procedures may differ, but the functions are not essentially different. What distinguishes them has never been successfully established. Lord Stamp said that the real distinction is that Courts have an air of detachment". But this is more a matter of age and tradition and is not of the essence. Many Tribunals, in recent years, have acquitted themselves so well and with such detachment as to make this test insufficient."

"Courts and Tribunals act "judicially" in both senses, and in the term "Court" are included the ordinary and permanent Tribunals and in the term "Tribunal" are included all others, which are not included.""

19. It was held that the Central Governraent while exercising the appellate power u/s 111 of the Companies Act, functions as a Tribunal and not as a Court though it had trappings of the Court as it exercises judicial power of the State to adjudicate upon the rights of the parties.

20. In *Kihoto Hollohan v. Zachillhu* 1992 (Suppl) 651 (2) SCC 651 , the question was whether the Chairman or the Speaker of the House acting under paragraph 6(1) of the Xth Schedule of the Constitution of India deciding the question as to the disqualification on the ground of defection acts as a Tribunal. It was held that the Speaker of the House or the Chairman while deciding the question of defection acts as Tribunal. The Supreme Court relied upon the observation made in *Hari Nagar Mill's case* (supra) and quoted with approval following observations made in *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, .

"The main and the basic test, however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function. Applying this test, there can be no doubt that the power which the State Government exercises under Rule 6(5) and Rule 6(6) is a part of the State's judicial power.... There is, in that sense, a lis, there is affirmation by one party and denial by another, and the dispute necessarily involves the rights and obligations of the parties to it. The order which the State Government ultimately passes is described as its decision and it is made final and binding."

21. Keeping in view the test laid down in the cases referred to above by their Lordships of the Supreme Court drawing a distinction between Tribunal and Court, it is necessary to examine the scheme of the relevant provisions of the Companies Act, 1956 (hereinafter referred to as the "Act") to find out as to whether Company Law Board, while deciding a case, acts as a Tribunal or a Court.

22. The word "Court" has been defined u/s 2(xi) of the Act which means with respect to any other matter relating to a company, the Court having jurisdiction under the Act with respect to that matter relating to that Company, as provided in Section 10 of the Act and with respect to any offence against the Act, the Court of a Magistrate of the 1st Class or as the case may be, the Presidency Magistrate having jurisdiction to try such offence. Section 10 of the Act refers to the High Court and the District Court. Throughout the Act wherever the expression "Court" occurs it has to be understood in the sense in which the said expression has been used in Section 10. The Company Law Board has not been treated as a Court u/s 10 of the Companies Act.

23. The Company Law Board is constituted by the Central Government by a notification published in the Official Gazette as provided u/s 10-E of the Act. This section was introduced by the Amendment Act of 1963 for creation of a new administrative authority, namely, the Board of Company Law Administration to exercise certain statutory powers as well as powers delegated by the Central Government. Subsection (2) provides the number of the members to be appointed by the Government by notification. Sub-section (4-C) provides that every Bench of the Board shall have powers which are vested in a Court under the CPC while trying the suit, in respect of the matters enumerated therein e.g. discovery and inspection of documents, enforcing the attendance of witnesses,

compelling for production of documents, examination witnesses on oath, reception on evidence and granting adjournments. Subsection (6) further provides that the Company Law Board shall have power to regulate its own procedure.

24. The members of the Company Law Board are appointed in accordance with Company Law Board (Qualification, Experience and other Conditions of Service of Members) Rules, 1993. Under Rule 2(e) of Rules 1993 "Member" means a "Judicial Member" or Technical Member". The qualification of both such Members are different for the purpose of appointment. A Technical Member is not a person holding a judicial office before his appointment. The Company Law Board functions in different Benches as may be formed by the Chairman of the Board under Regulation 3 of Company Law Board Regulations 1991 (hereinafter referred to as "the Regulations"). The Board has to perform the functions under the various provisions of the Act. Some of them are judicial in nature and some of them are quasi-judicial and some of the functions are more in the administrative nature. The procedure to be adopted for regulating its own business is contained in various paras of the Regulations. The Regulations only ensure that a fair opportunity should be given to the party who may be affected by the order and the person who files the petition before the Board.

25. Broadly speaking, the Company Law Board has trappings of a Court in the sense that it has to determine a matter placed before it judicially, give fair opportunity of hearing to the parties who may be affected by the order, to accept the evidence and also to order for inspection and discovery of documents, compel the attendance of the witnesses and in the last, to pass a reasoned order which gives finality to its decision subject to right of appeal to a party u/s 10-F of the Act or such other legal remedy which is available under law to a party.

26. The Board, however, exercises the power conferred under the Act or in any other statute which confers a power on the Board to adjudicate upon a matter entrusted to it under law; or by the Central Government as provided u/s 10-E(1-A) of the Act. The power of the Board is not confined only under the provisions of the Act but it has also to exercise its power on a matter which is delegated to it by the Central Government. All the members of the Board are not Judicial Members but there are also Technical Members. Section 10-E of the Act has been amended from time to time and the drastic amendments were made by the Amendment Act, 1988.

27. Sub-section (4-D) of Section 10 of the Act indicates that every Bench shall be deemed to be a Civil Court for the purpose of Section 195 of the Criminal Procedure Code and Ss. 193, 226 and 228 of the I.P.C., Regulation 47 of the Regulations 1991 also provides that a Bench shall be deemed to be a Court or lawful authority for the purpose of prosecution or punishment who willfully disobeys any direction or order of such Bench. Sub-section (4-D) of the Act and Regulation 47 are the deeming clauses and treat the Board as a Court for limited purpose. This however, does not treat the Board as ordinary Civil or Criminal

Court. The Board is constituted as a body entrusted to perform the duties under the Act or under certain statutes or by the Central Government as contemplated under the Act.

28. The matters which are not within the jurisdiction of the Board, are decided by the High Court or the District Court as provided u/s 10 and other provisions of the Act, The residue may go to ordinary Civil Court or some other competent authority. The Board has to decide the matters placed before it in a judicial or quasi-judicial manner equipped with certain powers which are possessed by the Courts but considering its scope, function and special jurisdiction conferred on it, the Board can be held only as Tribunal and not Court.

29. Learned Counsel for the appellant placed reliance upon the decision in *Canara Bank Vs. Nuclear Power Corporation of India Ltd. and Others*, wherein the Supreme Court considering the provisions of Section 7 and Section 9-A of the Special Court (Control of Offences Relating to Transaction and Security) Act held that the Company Law Board is a Court relating to the matter covered under the said Act. In that case the Canara Bank had made an application before the Company Law Board u/s 111 of the Companies Act seeking relief against the Nuclear Power Corporation of India Ltd., which had refused to register in its book in the name of Canara Bank Bonds of the Nuclear Power Corporation purchased by Canara Bank. The Standard Chartered Bank had claimed ownership of those Bonds. The Canara Bank alleged that it had acquired the said Bonds from the Andhra Bank Financial Services Ltd. through one Hiten P. Dalai who had acted as a broker. While the application of the Canara Bank was pending disposal before the Company Law Board, the Special Court Act was amended by the Special Court (Control of Offences Relating to Transaction and Securities) Amendment Ordinance, 1994 and Section 9-A was introduced. The Canara Bank and the Nuclear Power Corporation took the stand that the application of the Canara Bank stood transferred to the Special Court by virtue of the provisions of S. 9-A(2) of the Special Court Act. The Standard Chartered Bank opposed such prayer on the ground that u/s 9-A(2) of the Special Courts Act only such matters can be transferred which were pending before a Court. The Company Law Board did not accept the contention of the Canara Bank. The Supreme Court in appeal accepted the contention of the Canara Bank and held that a matter which was pending before the Company Law Board relating to the security was exclusively triable by the Special Court. The controversy was whether the Company Law Board be held as a "Court" within the meaning of Sec. 9-A(2) of the Special Courts Act which reads as under -

"(2) Every suit, claim or other legal proceedings (other than on appeal) pending before any court immediately before the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Ordinance, 1994, being a suit claim or proceeding, the cause of action whereon it is based is such that it would have been, if it had arisen after such commencement, within the jurisdiction of the Special Court under sub-section (1), shall stand transferred

on such commencement to the Special Court and the Special Court may, on receipt of the records of such suit, claim or other legal proceeding, proceed to deal with it, so far as may be, in the same manner as a suit, claim or legal proceeding from the stage which was reached before such transfer or from any earlier stage of de novo as the Special Court may deem fit."

30. By reason of Section 3 of the Special Court Act a custodian was empowered on being satisfied on information received that any person had been involved in any offence relating to transactions in securities to notify the name of such person in Official Gazette. The name of Hiten P. Dalai was notified under the provisions of Section 3(2) of the Special Court Act. It was to try the offence referred to in sub-section (2) of Section 3 of the Special Courts Act. The dispute which had been raised before the Company Law Board was after the enforcement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Ordinance, 1994 (which was later on replaced by an Act), was exclusively cognizable by the Special Court. The pending matters were to be transferred u/s 9-A(2) of the Act. The Supreme Court considered the nature of the controversy involved and the purpose of the Act, took the following view:

"In our view, the word "Court" must be read in the context in which it is used in a statute. It is permissible, given the context, to read it as comprehending the courts of civil judicature and courts or some Tribunals exercising curial, or judicial powers. In the context in which the word "Court" is used in Section 9-A of the Special Court Act, it is intended to encompass all curial or judicial bodies which have the jurisdiction to decide matters or claims, inter alia, arising out of transactions in securities entered into between the stated dates in which a person notified is involved."

So far as the purposive approach of the Supreme Court to find out the meaning of the word "court" as used in Section 9-A(2) of the Act, will be clear from the following observations:

"The object of amending the Special Court Act invest the Special Court with the power and authority to decide civil claims arising out of transactions in securities entered into between the stated dates in which a person notified was involved has already been stated. In these circumstances, it is proper to attribute to the word "Court" in Section 9-A(1) of the Special Court Act, not the narrower meaning of a Court of civil judicature which is part of the ordinary hierarchy of Courts, but the broader meaning of a curial body acting judicially to deal with matters and claims arising out of transactions in securities entered into between the stated dates in which a person notified is involved. An interpretation that suppresses the mischief and advances the remedy must, plainly, be given."

It is in the context of the provisions of Special Courts Act as well as function of Company Law Board while dealing with the matter u/s 111 of the Companies Act, the Supreme Court held that the Company Law Board is a "Court".

31. All the Courts are tribunals but all the tribunals are not Courts. The ordinary

Courts of civil judicature are vested with inherent powers and are structured in a hierarchy. In the *Canara Banks* case it was pointed out by the Supreme Court that when the Constitution spoke of "Courts" under Article 136 and other Articles it contemplated Courts of Civil Judicature but not tribunals other than such Courts.

32. Rule 5 of Chapter VIII of Rules of the Court refers to the word "Court" in the context of ordinary Court of civil judicature. It has used the word "Court" in contradistinction to the word "Tribunal" when referring to the orders of Tribunal. Rule 5 provides for Special Appeal from the judgment of the single Judge in exercise of civil judicature. Rule 5 is reproduction of Clause 10 of the Letters Patent. The word "Court" under the Letters Patent meant the Court of civil judicature. There is no specific purpose to give special meaning to the word "Court" in relation to any matter which is cognizable by Company Law Board.

33. In view of the discussions made above, we hold that the Special Appeal filed by the appellant is maintainable.

Order accordingly.