

The Stock Exchange, Bombay v. V.S. Kandalgaonkar and Others

Civil Appeal No. 4354 of 2003

[2014] 14 SCR 409 | 2014-09-25

Whether the member's income-tax arrears could be recovered from vested membership-card proceeds and deposited securities, and whether Revenue outranked the Exchange's lien under the historical rules.

226(3)(i) | 226(3)(x) | Second Schedule, Rule 26

Three-judge bench | R.M. Lodha, CJI | Kurian Joseph, J. | R.F. Nariman, J.

Assessment years: 1989-90, 1990-91

Card proceeds, member-owned securities and lien priority are different holdings

The Exchange won the appeal but lost its ownership argument about deposited securities: those assets remained the member's, subject to the Exchange's secured lien. Membership-card proceeds under Rule 16 were treated separately. The High Court's Rs 35,60,218 payment direction and securities-handover direction were not stayed in 2003, but actual payment, sale, restitution or refund is not established by this judgment. Paragraph 3 dates the writ petition 24 December 1996 although its prayers challenge a 27 December 1996 letter; no correction is certified. The final order sets aside the High Court judgment without an express remand or costs direction. Do not extend this historical rule-specific result to every government debt, rival secured claim, demutualised exchange or later insolvency/priority regime. Comprehensive later treatment, current law and 2025 mapping remain unverified.

01 FACTS OF THE CASE

Suresh Damji Shah, a member of the Stock Exchange, Bombay, was declared a defaulter with immediate effect by notice dated 29 June 1994 because he had not met his obligations and liabilities. Revenue's section 226(3) notice of 5 October 1995 asked the Exchange to apply the proceeds from auction of his membership card towards income-tax dues of Rs 25.43 lakh for assessment years 1989-90 and 1990-91. The Exchange replied on 11 October 1995 that membership was an inalienable personal privilege and that, upon default, the nomination right vested in the Exchange under Rule 9 (paragraph 2; physical page 5/SCR 413).

A prohibitory order of 10 May 1996 restrained payments relating to Shah to anyone other than the Department and claimed Rs 37.48 lakh plus interest. The Exchange's solicitors sought withdrawal on 18 July 1996; Revenue refused by letter dated 27 December 1996. Shah's application for readmission was rejected on 13 February 1997. These are separate reported events; the judgment does not identify any additional assessment years behind the increased demand or quantify the interest (paragraph 2).

The Exchange challenged the recovery notice, prohibitory order and refusal letter in Bombay High Court W.P. No. 220 of 1997, also seeking permission to exercise the nomination right and apply the resulting consideration and deposited securities under its rules. Paragraph 3 describes that petition as dated 24 December 1996 although its quoted prayers challenge the 27 December 1996 letter. The original contains both dates; the chronology is unresolved. The High Court dismissed the writ petition on 27 March 2003. In SLP (Civil) No. 8245 of 2003, the Supreme Court's order of 7 May 2003 did not stay the High Court's specific payment and securities-handover directions, but stayed its declaration of law (paragraphs 3-5; physical pages 6-7/SCR 414-415).

The High Court had distinguished sale of the card from a supposed attachable surplus under Rule 16, referring in its issue formulation to a general-body resolution of 13 October 1999. It also treated the member's other assets as attachable and Revenue and the Exchange as creditors of equal degree, giving government dues priority under section 73(3) CPC. Its quoted directions required Rs 34,06,680 of card-sale surplus and Rs 1,53,538 of clearing-house credit balance, totalling Rs 35,60,218, to be paid to the Tax Recovery Officer, plus delivery or sale of the securities and appropriation of their realised value. Those are the directions under appeal, not findings that payment or sale actually occurred (paragraphs 9-10; physical pages 22-24/SCR 430-432).

Source: See the proposition-specific paragraph and PDF-page references below.

02 DISCUSSION BY THE HON'BLE COURT

The Court examined three distinct questions within the tax-recovery dispute: ownership of the membership/card-sale proceeds, ownership of deposited securities, and priority of the Exchange's lien. Section 226(3)(i), reproduced in paragraph 7, concerns money due or becoming due to the assessee, or held or subsequently held for the assessee; clause (x) addresses failure to comply with a notice. Second Schedule Rule 26 supplies attachment machinery for debts, shares and other movable property. Those provisions did not dispense with identifying whose property or money was involved or what prior security burdened it (physical pages 7–9/SCR 415–417).

On membership, Rules 5 and 9 made the right a personal permission subject to the Exchange's rules, with nomination ceasing and vesting in the Exchange on default. After distinguishing privilege from accrued property through Isha Valimohamad, the Court applied Stock Exchange, Ahmedabad v. Assistant Commissioner of Income Tax. Under Rule 16(iii), the ultimate surplus from exercise of the vested nomination right went to the Exchange, subject to its stated discretion; it did not belong to the defaulting member. The High Court therefore erred in making those card-sale proceeds available for the member's tax dues. This answered the first contention in the Exchange's favour. The Ahmedabad quotation mentions section 281B and Rajesh Shah; neither that member nor a separate section 281B order is a fact of the present Suresh Damji Shah proceedings (paragraphs 14–17; physical pages 26–30/SCR 434–438).

The Court rejected the Exchange's second contention that the deposited securities had become its property. Rules 36–46 were a security regime. Cash, bank deposit receipts and securities were deposited; the word transferred in Rule 38 described delivery and holding for ready realisation, not divestment of ownership. The member continued to bear the risk, could substitute security under Rule 41 and was entitled under Rule 44 to its return when no longer required. A lien under Rule 43 presupposed property belonging to someone else: the Exchange could not sensibly hold a lien over its own goods. Different forms of the same security could not produce opposite ownership results (paragraph 17, Re: (2), subparagraphs (i)–(x); physical pages 30–33/SCR 438–441).

The annual reports and letters concerning registration of shares in Bank of India's name, dividends and voting rights were counsel's support for the rejected ownership theory, not a judicial finding that beneficial ownership had passed. Bye-laws 326 and 330 addressed realisation and distribution of the defaulter's deposited assets. Crucially, Bye-law 400(ix) returned the ultimate surplus of those other assets to the defaulter, unlike card-money under Rule 16(iii). The Court used Bombay Stock Exchange v. Jaya Shah only to reinforce this distinction. It expressly said that decision had no direct application to the present facts. The remand mentioned in paragraph 18 belongs to Jaya Shah and its limitation cut-off issue, not to this appeal (paragraphs 13, 16–19; physical pages 26, 29 and 33–36/SCR 434, 437 and 441–444).

On the third contention, the Exchange succeeded because ownership and priority are

02 DISCUSSION BY THE HON'BLE COURT

different inquiries. *Dena Bank v. Bhikhabhai Prabhudas Parekh & Co.* confined the common-law preference for Crown debts to ordinary or unsecured creditors, rather than prior secured claims. The Court considered the definition of secured creditor in section 2(e) of the Provincial Insolvency Act, 1920, which includes a lien, the security-interest definition in the SARFAESI Act, and authorities explaining possessory and statutory liens. The extended K.S. Saradambal discussion of company winding up supplied supporting reasoning; it was not a separate winding-up adjudication of Shah or an independent Companies Act disposition in this case (paragraph 19, Re: (3); physical pages 36–42/SCR 444–450).

Rule 43 gave the Exchange a first and paramount lien securing the sums and exchange-related obligations described in that rule. The Court held that rules made by recognised exchanges under the Securities Contracts (Regulation) Act were subordinate legislation: sections 7A, 8 and 30, Parliament's laying requirement and section 3(51) of the General Clauses Act supported the statutory character. Revenue's reliance on harbour-authority cases did not answer the different question whether this Exchange, as a secured creditor, ranked ahead of income-tax dues. A harbour authority's particular priority even over secured creditors was not the rule being awarded to every Exchange lien (paragraphs 20–23; physical pages 42–46/SCR 450–454).

Finally, the Court stated that the Income-tax Act did not itself confer paramountcy on these tax dues. The Crown-debt doctrine continued through Article 372, as explained in *Collector of Aurangabad v. Central Bank of India*, but did not defeat the Exchange's secured position. Paragraph 25 makes the alternative reasoning explicit: whether Rule 43's lien was statutory or arose from agreement made no material difference here, because the Exchange was a secured creditor. This supports priority over the government's claim in this case; it does not decide every statutory first-charge conflict, subsequent insolvency regime or contest between rival secured creditors (paragraphs 24–25; physical pages 46–47/SCR 454–455).

Source: See the proposition-specific paragraph and PDF-page references below.

03 JUDICIAL DECISION

Civil Appeal No. 4354 of 2003 was allowed and the Bombay High Court Division Bench judgment was set aside. The Exchange succeeded on membership-card proceeds and secured-lien priority, but failed on its claim that deposited securities were no longer the member's property. Paragraph 26 does not separately restate orders quashing every recovery instrument, direct a quantified refund, record repayment, determine Shah's underlying tax liability or order his readmission. It orders no remand and contains no express direction about costs (physical page 47/SCR 455).

Source: See the proposition-specific paragraph and PDF-page references below.

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Stock Exchange, Bombay overall; Revenue's member-ownership argument accepted but asserted priority rejected

Civil Appeal 4354/2003 allowed; impugned Bombay High Court judgment set aside

Reasoned final merits judgment; no remand

Rule-specific membership-card, deposited-asset and secured-lien distinctions. No tax-quantum determination, blanket attachment immunity for member-owned assets, proved payment/refund, or universal current-law priority rule.

Source: See the proposition-specific paragraph and PDF-page references below.

05 AKHB REVIEW POINT

Build the recovery analysis asset by asset. First identify the right and its owner: a vested nomination right/card consideration is different from cash, deposit receipts, securities or a clearing-house balance belonging to the member. Then identify the enforceable lien, obligations secured, dates and priority regime. Member ownership can coexist with the Exchange's priority; neither proposition cancels the other. Keep Rule 16(iii)'s card-money surplus separate from Bye-law 400(ix)'s surplus of other assets.

Read the actual operative order before treating an earlier direction as a completed payment or refund. Here the interim order left specific transfers unstayed, but the final judgment does not say that those transfers occurred or prescribe restitution. The quoted sum of Rs 20,000 in the specimen security declaration and the 2.5% monthly rate in Bye-law 400(viii) are rule/form text, not established deposits by Shah or interest adjudicated against him.

The bounded official departmental check of the 1995 section 226 text corroborates the due-or-held-money mechanism; it does not authenticate the entire historical rule set or settle later law. Before applying this 2014 judgment today, separately check the governing exchange structure, statutory first-charge or secured-creditor provisions, registration requirements and insolvency legislation for the relevant facts and dates. Comprehensive later treatment, current-law application and Income-tax Act, 2025 mapping remain unverified.

Source: See the proposition-specific paragraph and PDF-page references below.

DETAILED DISPOSITION AND CONNECTED GROUPS

Proceeding outcomes

1.

Case number: Civil Appeal No. 4354 of 2003

Originating court: Bombay High Court, Division Bench

Lower court proceeding: W.P. No. 220 of 1997; judgment dated 27 March 2003

Appellant role: Stock Exchange, Bombay, challenging garnishee recovery and priority directions

Outcome: Appeal allowed; impugned High Court judgment set aside. First and third submissions accepted, second submission rejected. No remand or quantified restitution order.

Costs: No express costs direction in the supplied Supreme Court judgment

Pinpoint: Physical pages 4 and 47/SCR 412 D-F, 455 A-C

2.

Case number: SLP (Civil) No. 8245 of 2003

Relationship: Originating special-leave proceeding in this litigation; not a separately disposed companion appeal

Outcome: Interim order dated 7 May 2003 left specific payment and handover directions unstayed but stayed the declaration of law. Paragraph 26 disposes of the resulting civil appeal; no separate final SLP disposition is printed.

Costs: No separate costs direction reported

Pinpoint: Paragraph 5; physical page 7/SCR 415 B-D

Costs: No express costs direction in the supplied judgment

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Identity, jurisdiction, parties and sole judicial author

Source url: [Open cited source](#)

Pdf pages: 1; 4

Paragraphs: Cover; jurisdiction block and paragraphs 1-2, SCR 409 and 412 D-H

Source role: reported metadata and judicial text

2.

Topic: Demand years, amounts, notices and re-admission

Source url: [Open cited source](#)

Pdf pages: 5

Paragraphs: Paragraph 2, SCR 413 A-H

Source role: judicial text

3.

Topic: Writ prayers, unresolved dates, High Court result and originating SLP interim order

Source url: [Open cited source](#)

Pdf pages: 6; 7

Paragraphs: Paragraphs 3-7, SCR 414-415

Source role: judicial text

4.

Topic: Tax recovery machinery and securities legislation

Source url: [Open cited source](#)

Pdf pages: 7; 8; 9; 10; 11; 12; 13

Paragraphs: Paragraph 7, SCR 415 E-421 E

Source role: judicial text

5.

Topic: Historical Exchange rules, declaration, distribution and surplus distinction

Source url: [Open cited source](#)

Pdf pages: 13; 14; 15; 16; 17; 18; 19; 20; 21; 22

Paragraphs: Paragraph 8, SCR 421 F-430 D

Source role: judicial text

6.

Topic: High Court issues, monetary directions and positions on appeal

Source url: [Open cited source](#)

Pdf pages: 22; 23; 24; 25; 26

Paragraphs: Paragraphs 9-13, SCR 430 E-434 E

Source role: judicial text

7.

Topic: Membership privilege and card-proceeds holding

Source url: [Open cited source](#)

Pdf pages: 26; 27; 28; 29; 30

Paragraphs: Paragraphs 14-17, SCR 434 F-438 D

Source role: judicial text

8.

Topic: Deposited securities remain member-owned; Jaya Shah comparison

Source url: [Open cited source](#)

Pdf pages: 30; 31; 32; 33; 34; 35; 36

Paragraphs: Paragraph 17 Re: (2), paragraphs 18-19 before Re: (3), SCR 438 E-444 F

Source role: judicial text

9.

Topic: Secured lien, Crown debt and statutory rule reasoning

Source url: [Open cited source](#)

Pdf pages: 36; 37; 38; 39; 40; 41; 42; 43; 44; 45; 46

Paragraphs: Paragraph 19 Re: (3) through paragraph 24, SCR 444 F-454 H

Source role: judicial text

10.

Topic: Alternative lien reasoning and complete operative disposition

Source url: [Open cited source](#)

Pdf pages: 47

Paragraphs: Paragraphs 25–26, SCR 455 A–C

Source role: judicial text

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

R.F. Nariman, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Securities Contracts (Regulation) Act, 1956, sections 7A, 8, 9 and 30; Exchange Rules 5, 7, 9, 10, 16, 36–38, 41, 43, 44 and 46; Appendix F; Bye-laws 326, 327, 330 and 400; Constitution of India, Articles 226 and 372; General Clauses Act, 1897, section 3(51); Code of Civil Procedure, 1908, section 73(3), as discussed in the overturned High Court reasoning; Provincial Insolvency Act, 1920, section 2(e), and SARFAESI Act, 2002, section 2(zf), as supporting lien/security definitions

IDENTIFIED PROCEDURAL HISTORY

W.P. No. 220 of 1997 dismissed by Bombay High Court on 27 March 2003; SLP (Civil) No. 8245 of 2003 interim order dated 7 May 2003; resulting Civil Appeal No. 4354 of 2003 allowed on 25 September 2014. Source petition-date anomaly preserved.

SPECIFIED COMPARISONS AND THEIR VERIFICATION LIMITS

1.

Status: verified bounded

Subject: Historical section 226 due-or-held-money and default mechanism

Source url: [Open cited source](#)

Version: Page expressly labels Act Income-tax Act, 1961, Year 1995; not a current 2026 consolidation or a Gazette amendment-chain authentication

Read bounds: Displayed lines 195–253: section/Act/year identity, subsections (1)–(5), including all section 226(3) clauses and displayed amendment footnotes. Substantive reliance limited to (3)(i) and (3)(x), matching the mechanism reproduced in primary paragraph 7.

Finding: The expressly labelled 1995 departmental text sets out the due-or-held-money requirement in subsection (3)(i) and default/enforcement consequences in (3)(x), consistent with the mechanism quoted by the Court. This limited statutory corroboration does not verify all historic amendments or present applicability.

Comprehensive status: not verified

DATED OFFICIAL STATUTORY HTML COMPARISONS AND READING LIMITS

1.

Kind: bounded historical statutory html

Title: Income-tax Act, 1961: section 226, departmental 1995 edition

Url: [Open cited source](#)

Source format: Official departmental HTML

Version: Page expressly labels Act Income-tax Act, 1961, Year 1995; not a current 2026 consolidation or a Gazette amendment-chain authentication

Accessed at utc: 2026-10-05T22:26:31+00:00

Read bounds: Displayed lines 195–253: section/Act/year identity, subsections (1)–(5), including all section 226(3) clauses and displayed amendment footnotes. Substantive reliance limited to (3)(i) and (3)(x), matching the mechanism reproduced in primary paragraph 7.

Full document read: False

Physical text pages read:

Physical image pages read:

Provenance: Successful official web-text reading only; no raw HTML integrity hash, PDF byte count, PDF pages, source images or enacted/current consolidated-law certification claimed.

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 47 PDF pages; SHA-256 75ecb5e7f98cb93015cb2462e1ed3ee2a49c0cafd9a9ccd30b8796f004c431ea. Original bytes preserved. Paragraphs 1–26, physical PDF 4–47/SCR 412 F–455 C; one opinion by R.F. Nariman J.; reporter ending excluded from operative text.

Open cited source rendition

full primary text read: True; all primary page images reviewed: False; material primary page images reviewed: True; source integrity verified: True; actual statutory scope verified: True; all listed proceedings accounted for: True; all authored opinions separately accounted for: True; material later treatment limits prominent: True; comprehensive later treatment verified: False; current law verified: False; mapping 2025 verified: False; independent QA complete: True; parent full prose approval: True

Expressly attached to the Rs 25.43 lakh demand in paragraph 2. Additional years behind Rs 37.48 lakh plus interest are not identified; no inference from notice or transaction dates.

Originating SLP (Civil) No. 8245 of 2003 is separately accounted for in proceeding_outcomes; no additional companion appeal is printed.

Paragraph 3 on physical page 6/SCR 414 dates W.P.220/1997 to 24 December 1996 but the quoted prayers challenge Revenue's letter of 27 December 1996. Both appear in the original image; no chronological correction is certified.; The text extraction includes both halves of a scanned spread on physical pages 6 and 7 (and editorial pages 2 and 3). Actual cropped images separately show SCR 414 and 415; off-crop duplicate OCR is not a second opinion or extra proceeding.; The paragraph 17 Ahmedabad quotation concerns Rajesh Shah and section 281B; the present defaulter is Suresh Damji Shah, and the present recovery dispute is section 226(3) and Second Schedule Rule 26.; The remand described in paragraph 18 is the earlier Jaya Shah remand, not this appeal's disposition.; The High Court monetary/security directions are quoted and later set aside. The 2003 interim order left them unstayed, but the 2014 judgment does not establish actual payment, realisation, handover or repayment.; Rs 20,000 in Appendix F and 2.5% per month in Bye-law 400(viii) are quoted specimen/rule terms, not findings of Shah's actual deposited amount or tax-interest rate.; No separate opinion, companion civil appeal, quantified tax assessment result, express remand, refund direction or costs order appears. Public title/date/docket are image-verified; frozen neutral citation 2014INSC678 is retained as metadata, not independently authenticated.

STATUTORY SCOPE

No automatic Income-tax Act, 2025 mapping or present-law equivalence certified.

LATER TREATMENT

Source checked 2026-10-05. Comprehensive subsequent judicial and statutory treatment has not been verified. Only the separately identified 1995 departmental section 226 check is verified within its bounds. Search-result discovery is not later judicial treatment verification.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 47](#)

SHA-256: 75ecb5e7f98cb93015cb2462e1ed3ee2a49c0cafdba9ccd30b8796f004c431ea

[Income-tax Act, 1961: section 226, departmental 1995 edition](#)

AI DISCLOSURE

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