2026 SCC OnLine Mad 7527

In the High Court of Madras

(BEFORE P. VELMURUGAN AND K. GOVINDARAJAN THILAKAVADI, JJ.)

OSA Nos. 219 & 220 of 2020

K. Bharathi ... Appellant in both OSAs;

Versus

Vanbey Holdings Pvt Ltd, Rep. by its Managing Director and Others ... Respondents in both OSAs.

With

OSA Nos. 293 & 294 of 2020

Tarun Kumar and Others ... Appellants in both OSAs;

Versus

Vanbey Holdings Pvt Ltd, Rep. by its Managing Director and Others ... Respondents.

And

OSA Nos. 99, 258 & 260 of 2021

Vanbey Holdings Private Limited, Rep. by its Managing Director ... Appellant in all the OSAs;

Versus

City Centre Point, A registered Partnership Firm rep. by its Partner and Others ... Respondents.

OSA Nos. 219, 220, 293, 294 of 2020, 99, 258, 260 of 2021 and CMP Nos. 3780 of 2022, 1569, 15220 of 2023, 13501, 13502 of 2024, 13132, 13135 of 2025, 16665, 16666 of 2025, 8281 of 2026

Decided on August 21, 2026, [Reserved On : 09-07-2026]

Advocates who appeared in this case:

For Appellant : Mr. V. Raghavachari

Senior Counsel for Mr. Avinash Wadwani

For Respondents : Mr. Joseph Kodianthara

Senior Counsel for Mr. Najeeb Usman Khan for R 1

Mr. N.P. Vijay Kumar for R 3 & R 4

Mr. V. Prakash, Senior Counsel for Ms. R. Sowmya for R 5 & R 8

Mr. V. Prakash, Senior Counsel for Ms. Shubharanjani Ananth for R 7

Mr. C.S. Kiran for R 9

R 2 & R 6 - No appearance

For Appellants : Mr. V. Prakash

Senior Counsel for Ms. Shubharanjani Ananth for 1st Appellant

Mr. V. Prakash

Senior Counsel for Ms. R. Sowmya for Appellants 2 & 3

For Respondents : Mr. Joseph Kodianthara

Senior Counsel for Mr. Najeeb Usman Khan for R 1 Mr. N.P. Vijay Kumar for R 3 & R 4

Mr. V. Raghavachari Senior Counsel for Mr. Avinash Wadhwani for R 5

Mr. C.S. Kiran for R 7 in OSA No. 293/20 & for R 8 in OSA No. 294/20

Mr. M.S. Charles for R 7 in OSA No. 294/20 R 2 & R 6 - No appearance

For Appellant : Mr. Joseph Kodianthara

Senior Counsel for Mr. Najeeb Usman Khan

For Respondents : Mr. N.P. Vijay Kumar for R 2 & R 3

Mr. V. Prakash

Senior Counsel for Ms. R. Sowmya for R 4 & R 8

Mr. V. Raghavachari

Senior Counsel for Mr. Avinash Wadhwani for R 5

Mr. V. Prakash

Senior Counsel for Ms. Shubharanjani Ananth for R 7

Mr. C.S. Kiran for R 10 in OSA No. 99/21

R 1 & R 6 - No appearance

R 9 in OSA.99/21 - Door locked

The Judgment of the Court was delivered by

P. VELMURUGAN, J.:— These original side appeals are directed against the common order dated 26.05.2020 passed by the learned single Judge in Application Nos. 6897 & 6898 of 2018 in E.P. No. 194 of 2004 in C.S. No. 1338 of 1992, respectively.

2. For the sake of convenience, the factual background as set out by the appellant in O.S.A. Nos. 99, 258 & 260 of 2021, namely, Vanbey Holdings Private Limited represented by its Managing Director, being the decree holder and culminating in the execution proceedings on the strength of the compromise consent decree, are referred to in this judgment for better understanding of the dispute raised before this Court and the parties will be hereinafter referred to as arrayed in O.S.A. No. 99 of 2021.

3.1. A Builder's agreement was entered into by the appellant with the respondents 1 to 3 on 17.09.1987 for purchase of commercial-space in the Execution Petition Schedule Property. Subsequently, in the civil suit filed by the respondents 1 to 3 in C.S. No. 1338 of 1992 seeking to declare the building agreement dated 17.09.1987 as null and void, a 'consent compromise decree' dated 13.09.1993 came to be passed. In the said 'consent compromise decree', time for completion of construction was extended at enhanced rates, failing which the sums paid by the appellant were to be refunded with interest thereon, and, on further failure, it was to be executed as a 'money decree'. While a statutory charge exists under Section 55(6) of the Transfer of Property Act, 1882, a charge on the execution petition schedule property was also recognized under the decretal terms.

3.2. Since the respondents 1 to 3 did not comply with the consent compromise decree, the appellant filed the execution petition in E.P. No. 194 of 2004. The Execution Petition Schedule Property comprised 21 Grounds or thereabouts, of which the 2nd respondent owns approx. 7 Grounds & 596 sq.ft. and the 3rd respondent owns approx. 13 Grounds & 1804 sq.ft. In the execution proceedings, an order of Attachment was passed on 19.04.2005 followed by a Prohibitory order on 21.04.2005. Thus the respondents 1 to 3/judgment debtors could not alienate the Execution Petition Schedule Property to the appellant's detriment. The Prohibitory order also prohibited other persons from receiving the attached property by purchase, gift or otherwise. Thereafter, proceedings were taken on various dates for the sale of the execution petition schedule property between 10.08.2011 and 25.07.2018.

3.3. The material on record relating to the conduct of the respondents in the E.P. No. 194 of 2004 and/or proceedings connected thereto inter alia would disclose that these auction sales were scuttled by the judgment debtors either by directly filing applications and appeals or by setting up third party intervenors for such purposes at the eleventh hour. The judgment debtors also indulged in suppression of material facts, fabrication of documents, collusion and forgery before various authorities including the Registrar of Companies, Chennai as well as before the learned Arbitrator culminating in the arbitral award dated 11.04.2018, execution proceedings in AOP No. 16 of 2018 on the file of the District Court, Rajamundhry and culminating in the common order in C.P. Nos. 709 & 710 of 2018 before the National Company Law Tribunal, Chennai, all of which had a bearing on the proceedings in E.P. No. 194 of 2004 and deliberately designed as well as used to illegally impede, obstruct and interfere with the administration of justice in the proceedings in E.P. No. 194 of 2004 before this Court. This Court, in one of the orders dated 08.12.2017 in E.P. No. 194 of 2004, has held that the respondents/judgment debtors are deliberately engaged in the tactics of protracting judicial proceedings.

3.4. When the respondents' were unable to stall the sale proceedings in E.P. No. 194 of 2004 any further in this Court, they hit upon a new ruse. Earlier the 4th respondent's sister, A. Manorama was used to file a separate suit in C.S. No. 658 of 2013 as a shareholder seeking to impugn the consent compromise decree dated 13.09.1993 in C.S. No. 1338 of 1992, which was passed 20 years ago, and the plaint in that suit was rejected by this Court. The 5th respondent, who is the 4th respondent's mother-in-law and the 6th respondent's mother as well as related to respondents 7 & 8 (erstwhile directors), contrived with the other respondents to initiate proceedings under the Insolvency & Bankruptcy Code, 2016 and obtained a favourable common order dated 22.06.2018 in C.P. Nos. 709 & 710 of 2018 from the Hon'ble NCLT, Chennai Bench, which was relied on by the respondents in proceedings in E.P. No. 194 of 2004 before this Court to illegally interfere with and stall the auction sale claiming moratorium under Section 14 of the Insolvency & Bankruptcy Code.

3.5. Pertinently, the alleged claim of the 5th respondent was made on the basis of (i) a purported unregistered Loan Agreement dated 19.06.2009 purportedly creating contingent rights in an immovable property and (ii) purported unregistered and insufficiently stamped mortgage deeds dated 01.04.2015 and 15.04.2016, whose execution is in any event in violation of the Prohibitory Order dated 21.04.2005, and which further had not been previously disclosed to this Court in E.P. No. 194 of 2004 during the five earlier sale proclamations till July, 2018 or even to the statutory authorities contemporaneously either by the 5th respondent or the judgment debtors.

3.6. The documentation filed in support of the 5th respondent's initiation of proceedings in C.P. Nos. 709 & 710 of 2018 on the file of the Hon'ble NCLT, Chennai Bench, a quasi-judicial authority, and relied on by the respondents to prevent this Court from proceeding further with the E.P. No. 194 of 2004 is the result of suppression of material facts, fabrication of documents, forgery, collusion and fraud played by the respondents to interfere with the administration of justice before this Court. The sum total of the respondents' acts of suppression of material facts, collusion, forgery, fabrication of documents, perjury, forgery, impersonation and fraud was made up of many parts including (i) false & fabricated filing of documentation with the Registrar of Companies, Chennai; (ii) fabrication and forgery of the purported Loan Agreement dated 19.06.2009, which is in violation of this Court's Prohibitory Order dated 21.04.2005 in E.P. No. 194 of 2004; (iii) fabrication of the unregistered and insufficiently stamped Mortgage Deeds dated 01.04.2015 and 15.04.2016; (iv) collusive and fraudulent arbitral proceedings culminating in the learned Arbitrator being misled into passing the arbitral Award dated 11.04.2018; (v) collusive and fraudulent registration of purported Mortgage Deed on 25.05.2018 in violation of this Court's Prohibitory Order dated 21.04.2005; (vi) collusive and fraudulent execution proceedings in AOP No. 16 of 2018 before the learned District Judge, Rajamundhry; (vii) collusive and fraudulent proceedings in C.P. Nos. 709 & 710 of 2018 before the Hon'ble NCLT, besides (viii) the impersonation and use of third parties in various proceedings before this Court including in A. No. 2614 of 2013 in E.P. No. 194 of 2004 (Segu Mohideen) and C.S. No. 346 of 2014 (Shanti Subramanian) etc.

3.7. The 4th respondent, Manohar Prasad was adjudicated to be an 'insolvent' on 28.09.2015 in I.P. No. 5 of 2013 by this Court, but he continued illegally to act on behalf of respondents 2 & 3 including in E.P. No. 194 of 2004. The 4th respondent is also stated to have also purportedly transferred his assets to the 5th respondent (mother-in-law) & others after his being judged insolvent. The recorded evidence in *Segu Mohideen's case* [A. No. 2614 of 2013 in EP. No. 194 of 2004], S.A. Srinivasan's affidavit dated 22.11.2017 in A. No. 5333 of 2017 in E.P. No. 194 of 2004 and Shanti Subramanian's counter affidavit dated 28.09.2017 in A. No. 5302 of 2017 in E.P. No. 194 of 2004 along with the enclosures thereto, would establish the respondents' role in applications purportedly filed through third parties. As a consequence of the respondents' continuing illegal, vexatious, and fraudulent actions in or in relation to the proceedings in E.P. No. 194 of 2004, the consent compromise decree dated 13.09.1993 in C.S. No. 1338 of 1992 has not been able to be executed, despite the execution petition schedule property having been attached on 19.04.2005 and the sale having been ordered six times by this Court.

3.8. In such extraordinary circumstances involving suppression of material facts, collusion, perjury, fabrication of documents impersonation, forgery and fraud played by the respondents in relation to the proceedings in E.P. No. 194 of 2004 before this Court, the appellant was constrained to file A. Nos. 6897, 6898, 8122 & 8126 of 2018 in E.P. No. 194 of 2004 under Article 215 of the Constitution of India to bring to the notice of this Court the interference with the administration of justice by the respondents in respect of proceedings in EP. No. 194 of 2004 before this Court, seeking [in A. No. 6897 of 2018 in E.P. No. 194 of 2004] to punish the respondents as per law, and also [in A. Nos. 8122 & 8126 of 2018 in E.P. No. 194 of 2004] to declare that the common order dated 22.06.2018 in C.P. Nos. 709 & 710 of 2018 from the Hon'ble NCLT. Chennai Bench having been obtained by the respondents through suppression of material facts, collusion and fraud, was non-est and not binding on the appellant herein. The appellant also filed A. No. 6898 of 2018 to extend the time for auction of the Execution Petition Schedule Property that was initially scheduled for 25.07.2018 in E.P. No. 194 of 2004 to any further date.

4. The learned single Judge, after perusing the records and upon hearing the submissions made by the respective senior counsel/counsel for the parties, by order dated 26.05.2020, disposed of A. Nos. 6897 & 6898 of 2018 in E.P. No. 194 of 2004 as follows:—

"(i) Respondents 2-5, 7-8 are held guilty of wilful disobedience of the Prohibitory Order dated 21.04.2005 and the order of attachment dated 25.04.2005 in E.P. No. 194 of 2004.

(ii) The alleged mortgage created by the loan agreement dated 19.06.2009 is hereby declared as illegal, null and void.

(iii) As a corollary, the deposit of original title deeds by Respondents 3 and 2 on 01.04.2015 and 15.04.2016, respectively, and the registered memorandum of deposit of title deeds dated 25.05.2018 are also declared as illegal, null and void.

(iv) Consequently, Respondent 5 is directed to deposit the original title deeds of the property attached by this Court with the Registrar General of this Court within two weeks from the date of receipt of a copy of this order. The said documents shall be held in custodia legis subject to further orders in E.P. No. 194 of 2004. In the event of non-compliance, Respondent 5 shall serve a sentence of simple imprisonment for 15 days. This would be without prejudice to any other action by the Applicant in this regard.

(v) Respondents 2 and 3 shall each pay a fine of Rs. 2,000/- (Rupees two thousand only) for wilful disobedience of the orders of this Court within two weeks from the date of expiry of the moratorium, failing which a sentence of 15 days simple imprisonment shall come into effect.

(vi) Respondents 4, 7-8 shall each pay a fine of Rs. 2,000/- (Rupees two thousand only) for wilful disobedience of the orders of this Court within two weeks from the date of receipt of a copy of this order, failing which a sentence of 15 days simple imprisonment shall come into effect.

(vii) Respondent 5 shall pay a fine of Rs. 1,000/- (Rupees one thousand only) for wilful disobedience of the orders of this Court within two weeks from the date of receipt of a copy of this order failing which a sentence of 7 days simple imprisonment shall come into effect..

(viii) The auction sale proceedings shall be deferred until the Hon'ble NCLT determines whether C.P. Nos. 709 and 710 of 2018 are maintainable and also decides on matters incidental or consequential thereto.

(ix) Consequently, the Applicant is granted leave to re-apply, if appropriate, if the Hon'ble NCLT decides that the IBC proceedings are a nullity."

5. Aggrieved thereby, O.S.A. Nos. 219 & 220 of 2020 have been filed by the 5th respondent, O.S.A. Nos. 293 & 294 of 2020 have been filed by the respondents 7, 8 & 4 respectively and O.S.A. Nos. 99, 258 & 260 of 2021 have been filed by the decree holder/Vanbey Holdings, which are being disposed of by this common judgment.

6. Mr. Joseph Kodianthara, learned Senior Counsel appearing for the appellant raised the following grounds:—

A. The learned Judge erred in not noticing that fraud avoids all judicial acts - ecclesiastical or temporal and an order fraudulently obtained, is to be treated as a nullity by every Court - superior or inferior and can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.

B. The learned Judge, after rightly concluding that (i) respondents 2 to 5, 7 & 8 were guilty of having committed contempt of this Court; (ii) the material indicates prima facie fraud; (iii) the documents viz., Mortgages purportedly created under and pursuant to the purported Loan Agreement dated 19.06.2009 are void under Section 64 of CPC, has erred in choosing not to exercise its jurisdiction, inter alia, vested under Article 215 of the Constitution of India & Section 44 of the Indian Evidence Act, 1882 to declare that the common order dated 22.07.2018 in C.P. Nos. 709 & 710 of 2018 on the file of the Hon'ble NCLT, Chennai Bench, having been based on the respondents' suppression of material facts, fabrication of documents, collusion and fraud, is non-est and not binding on the appellant so as to facilitate the continued diligent prosecution of the execution proceedings in E.P. No. 194 of 2004 filed to execute a consent compromise decree passed on 13.09.1993, in which an order of attachment and order of prohibition were passed in 2005 and auction sale ordered six times.

C. It is the case of the 2nd & 3rd respondent companies themselves [acting through their current RPs in the proceedings in A. No. 6897 of 2018 in E.P. No. 194 of 2004] that the 2nd & 3rd Respondents' initiation of the proceedings culminating in the common order dated 22.06.2018 in C.P. Nos. 709 & 710 of 2018 on the file of the Hon'ble NCLT, Chennai Bench were fraudulent. Hence, in the light of the 2nd & 3rd Respondents stand on affidavit/recorded submissions in this Court as well as in the face of the other overwhelming evidence on record of the egregious fraud/interference with the administration of justice, which has not been controverted by the respondents in any material form or in a manner known to law in these proceedings, the learned single Judge ought to have exercised his jurisdiction under Article 215 of the Constitution of India & Section 44 of the Indian Evidence Act, 1882 to declare that the common order dated 22.06.2018 in C.P. Nos. 709 & 710 of 2018 as nonest and not binding on the appellant, and proceeded further in accordance with law.

D. The respondents' suppression of material facts, fabrication of documents, perjury, forgery, collusion and fraud etc., before the Hon'ble NCLT, Chennai Bench in C.P. Nos. 709 & 710 of 2018 to fraudulently obtain favourable orders, and which were relied on by the respondents in this Court to illegally impede, stall and interfere with the proceedings in E.P. No. 194 of 2004, is only a portion albeit a significant one of the sum total of the respondents' suppression of material facts, fabrication of documents, impersonation, perjury, forgery, collusion and fraud etc., deliberately designed, used and/or relied on to interfere with the administration of justice in relation to proceedings in E.P. No. 194 of 2004 before this Court.

E. The learned Judge erred in not noticing that the jurisdiction of the Hon'ble NCLT, Chennai Bench (a quasi judicial authority) is confined to and restricted to matters entrusted to it by the Companies Act, 2013, or the Insolvency & Bankruptcy Code, 2016. Consequently, the Hon'ble NCLT, Chennai Bench, or any other authority or forum whatsoever would not have jurisdiction to enquire into the respondents' many acts of suppression of material facts, fabrication of documents, forgery, perjury, impersonation, collusion and fraud played upon this Court and/or relied upon in E.P. No. 194 of 2004 to impede/obstruct/prevent this Court from proceeding further with the execution proceedings.

F. The learned Judge erred in not noticing that an existing, prior and pending execution proceedings in E.P. No. 194 of 2004 before this Court to execute a 'consent compromise decree' dated 13.09.1993 in C.S. No. 1338 of 1992, which the appellant had been diligently prosecuting and in which the execution schedule property was attached by this Court in 2005, was sought to be illegally obstructed and interfered with through a combination of the suppression of material facts, fabrication of documents, forgery, impersonation, perjury, collusion and fraud by the respondents acting in concert.

G. The learned Judge erred in not noticing that by exercising the power vested in this Court, especially when serious allegations of suppression of material facts, collusion, forgery, perjury fabrication of documents, impersonation and fraud committed in proceedings are made, this Court would only be enforcing the rule of law to hold the respondents to account for their illegal actions, and would not, by any stretch of imagination, be interfering with the jurisdiction of the Hon'ble NCLT, a forum with limited jurisdiction, and in any event, a Coram non judice without any jurisdiction to adjudicate on the fraud played on this Court.

H. The learned Judge erred in not noticing that the Hon'ble NCLT's jurisdiction is confined only to contractual matters inter-partes, and that the Hon'ble NCLT lacks authority and power to adjudicate on matters within the purview and jurisdiction of this Court, namely, the suppression of material facts, fabrication of documents, perjury, forgery, impersonation, collusion and fraud committed by the respondents in or in relation to proceedings and prevent this Court from proceeding further with the execution proceedings.

I. Despite a prima facie finding that fraud has been committed by respondents 2, 3, 4, 5, 7 & 8, and coupled with the stand of respondents 2 & 3 (on affidavit as well as in recorded submissions) that the initiation of the proceedings before the Hon'ble NCLT were fraudulent, the impugned order to await conclusion of proceedings in the Hon'ble NCLT, has the effect of rewarding the respondents for their illegal acts, since it was the respondents' intention [through material suppression of facts, fabrication of documents, forgery, perjury. impersonation, collusion and fraud] to impede and stall by means fair or foul - the auction sale and prevent this Court from proceeding further as per law in E.P. No. 194 of 2004.

J. The learned Judge erred in not finding respondent no. 6 guilty of contempt in the face of her recorded role in the material suppression of facts, collusion and fraud in the aid of her mother (the 5th respondent) and husband (the 4th respondent) including conspiring to file fabricated documents before the ROC as well as other quasi-judicial authority including the Hon'ble NCLT; disobeying this Court's order dated 23.01.2019 in A. No. 6897 of 2018 in E.P. No. 194 of 2004 and stating deliberate falsehoods in the affidavit dated 06.03.2019 in A. No. 6897 of 2018 in E.P. No. 194 of 2004.

K. The learned Judge erred in not noticing that the ‘moratorium’ under Section 14 of the I&B Code, 2016 would apply only in bonafide proceedings before the Hon'ble NCLT initiated bonafidely to revive a company. In this case, respondents 2 & 3 themselves [through their purported directors] have purportedly claimed on affidavit that the substratum of the said companies is lost, and that the only asset of the companies is the execution petition schedule property. Therefore, revival even according to the said deponents themselves was not possible. Equally it is neither the legislative intent nor judicial precedent that the benefit of Section 14 of the I&B Code, 2016 be conferred on persons whose intention is not bonafide resolution but to fraudulently interfere in the administration of justice by preventing a court of law from proceeding further in accordance with law and/or calculated to deceive or deprive genuine creditors and other stakeholders of the sum that they are legally entitled to.

L. It was incumbent on the Resolution Professional of respondent no. 3 to place the complete facts especially the 'Forensic Report' of the 3rd respondent's accounts admittedly in her possession, which would conclusively further corroborate and establish the fraud perpetrated on this Court by the respondents.

M. The learned Judge erred in not noticing that the impugned decretal order, in effect for all practical purposes, has the unintended consequence of conferring the benefit of the moratorium in respect of a fraudulently initiated proceedings before the Hon'ble NCLT and further, in effect, staying the execution proceedings in E.P. No. 194 of 2004 filed to execute a consent compromise decree passed on 13.09.1993 and diligently prosecuted by the appellant as well as legitimizing the fraudulent & contumacious conduct of respondents 2 to 8, and, unintentionally, punishing the appellant for its diligent pursuit of legal redress.

N. The learned Judge erred, despite noticing the fraud, in not exercising its jurisdiction as vested and warranted by law and the further unintended consequence that it has also effectively rendered the applications in A. Nos. 8122 and 8126 of 2018 in E.P. No. 194 of 2004 seeking a declaration that the common order dated 22.06.2018 in C.P. Nos. 709/IB/2018 and 710/IB/2018 on the file of the Hon'ble NCLT, Chennai Bench, which were heard together and common oral/written arguments filed, infructuous without even actually deciding the said two applications.

O. The learned Judge erred in not noticing that the judgment in *Embassy Property Developments Pvt Ltd.* v. *State of Karnataka* ['Embassy Case'l, while holding that the Hon'ble NCLT has jurisdiction to go into issues of fraudulent initiation of proceedings, does not prohibit or bar any other competent Court from deciding on the issue of suppression of material facts, fabrication of documents, forgery, perjury, impersonation, collusion & fraud, if any, committed in respect of proceedings before that Court, more so, if a High Court (court of record) seeking to enforce the rule of law and uphold the sanctity of pending judicial proceedings on its file. In the instant case, when the allegations are serious in nature that the respondents have interfered with the administration of justice in a proceedings before this Court by a series of illegal actions viz., suppression of material facts, fabrication of documents, forgery, perjury, impersonation, collusion & fraud, which included placing reliance on fraudulently initiated proceedings in the Hon'ble NCLT to prevent this Court from proceeding further with the proceedings in E.P. No. 194 of 2004, it is only this Court, and not the Hon'ble NCLT, Chennai Bench, that would have the jurisdiction to adjudicate on the serious issues of the respondents' suppression of material facts, fabrication of documents, forgery, perjury, impersonation, collusion & fraud.

7. The learned Senior Counsel for the appellant, by way of filing detailed written submissions, made the following legal submissions:—

a) Application No. 6897 of 2018 was filed under Article 215 of the Constitution of India r/w Section 2(b) of the Contempt of Courts Act, 1971 & Section 151 of the CPC. The respondents did not advance any argument against invocation of power under Article 215 of Constitution of India, but confined their submissions to the Contempt of Court's Act, 1971. There is inherent power in the High Court (being a Court of record) and Supreme Court to punish for contempt [*SBCA* v. *UOI*, (1998) 4 SCC 409]. The power to punish for contempt in Article 215 of the Constitution is in addition to statutory powers for punishment for contempt [*T. Sudhakar Prasad* v. *St. of AP*. (2001) 1 SCC 516 : (2001) 121 STC 365 (paras 9 & 10) and *Rama Narang* v. *Rakesh Narang*, (2006) 11 SCC 114 : AIR 2006 SC 1883 - paras 18, 23, 24, 25, 30-33]. Therefore, the objection raised by the respondents as to the maintainability that the application as filed would attract the provisions of Section 2(c) of the Contempt of Courts Act, and therefore, the prior consent of the Attorney General ought to be obtained by relying upon the judgment in *Bal Thackeray's case*, is not legally sustainable. *Bal Thackeray's case* turned on its own facts, as that case was filed by a political opponent against the respondent therein for criminal contempt for making a speech allegedly lowering the dignity of the Court. The consent of the learned AG to initiate contempt was sought, after setting a deadline for the decision. On the expiry of the self-appointed deadline and without waiting for a decision from the learned AG, the applicant therein, proceeded to file for criminal contempt before the High Court. The Court also passed orders therein, without taking suo motu cognizance in the absence of the consent of the learned AG. Pertinently, the application therein was also not one filed under Article 215 of the Constitution of India, nor was suo motu cognizance taken by the Court based on the material produced before the Court.

b) So far as the submission that 'mortgage' not being an 'alienation,' there is no violation of the Prohibitory Order relying upon Pitamber Govinda Bhavsar [1970 SCC OnLine Bom 85 : AIR 1972 Bom 43] is concerned, the learned Senior Counsel submitted that a "mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced… [Section 58(a) of the TP Act, 1882]. Further, ownership of an immovable property is a 'bundle of rights. The various rights need not belong to the same person e.g. 'Mortgagor 'Mortgagee'; 'Lessor' 'Lessee'; 'life estate etc. The subordinate or subsidiary rights would be a transfer of property. Such transfer would constitute alienation of the property (*See MC Thomas* v. *Sree Emoor Bhagavathy Devaswom - Kerala* HC-OP (C) 181 of 2011).

c) Submissions of Theory of Subrogation : Claim before Arbitral Tribunal [Hon'ble Justice Vega Suri Appa Rao was not based on the theory of 'subrogation'. It was based on the purported Loan Agreement dated 19.06.2009. Similarly, before the NCLT also, the claim was based on purported Loan Agreement dated 19.06.2009.

d) No "stepping-in to the shoes of India Bulls" : The 5th Respondent has sought to contend that she would step into the shoes of India Bulls Financial Services Pvt Ltd. This is incorrect. All inter-se disputes among the parties [including Respondent nos. 2, 3, 5 & India Bulls Financial Services Ltd.] were deemed to have been settled vide 'Memorandum of Settlement dated 13.05.2013. The 5th Respondent was a party to the said Memorandum of Settlement. Consequently, no disputes whatsoever inter se the parties [including between the 5th Respondent and Respondent nos. 2 & 3] survives.

e) The 'theory of Subrogation' from Indian Bank onwards would not apply on facts either, as the charge was created in favour of the applicant on 13.09.1993 in C.S. No. 1338 of 1992, in addition to the statutory charge under Section 55(6) of TP Act under the Building Agreement dated 17.09.1987, which was carried forward in the Consent Compromise Decree.

f) There is no assignment of debt from one creditor to another. There is no continuous liability. There is no privity of contract among the parties in the various transactions. In any event, under Section 64 of CPC, private alienations regarding a property under attachment is void. Further, there was no specific assignment of any right as well, in any of the documents to the subsequent lender, and would be evident, when read with the Memorandum of Settlement dated 13.05.2013, reached among all parties to the 1st arbitration under Hon'ble Jutice (Retd) Mr. P. K. Balasubramanyan. This would establish that the claim of the 5th Respondent is not bonafide and/or legally tenable.

g) Fraud avoids all judicial acts ecclesiastical or temporal. The order dated 22.06.2018 in C.P. Nos. 709 & 710 of 2018 was obtained by suppression of material facts and by relying on documentation that on the face of it, are illegal/inadmissible/fabricated and designed to interfere with the administration of justice. Hence, the said common order, so obtained from the NCLT on 22.06.2018, being a nullity and non-est in the eye of law, will not bind the appellant. Such a judgment, decree or order has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings. Hence, these proceedings have been correctly instituted in law in this Court for the interference with the administration of justice by this Court.

h) No independent suit is required to be filed in the event of fraud and collusion. Section 44 of the Evidence Act, 1872. The very basis of the claim itself, upon which, the said company petitions have been founded is fraudulent, and when the corporate veil of the JDs is pierced, it will reveal how the 4th Respondent, Manohar Prasad [in connivance with 'related parties' including his wife, A. Padma Manohar, his mother-in-law, K. Bharathi, his close relatives, Mr. K. Tarun Kumar & Mr. A. Sriramulu, amongst others (the Respondent Nos. 4 to 8 herein)] has interfered with the administration of justice and by suppression of material facts & deliberate misleading of the NCLT has obtained the said orders. A patent fraud has been deliberately played upon this Court to interfere with its administration of justice, and illegally frustrate its orders including on 14.06.2018 in E.P. No. 194 of 2004, to bring the Execution Petition Schedule Property for sale for the 6th time on 25.07.2018 by fraudulent misconduct, collusion and illegalities, between the Judgment Debtors/its directors and their relatives/shareholders as well as connected parties.

i) Whether Section 238 of the IBC is a bar : Section 44 of the Indian Evidence Act, 1872 enables a party, otherwise bound by a previous adjudication, to show that it was not final or binding, if it is vitiated by fraud. It is always competent to any court to vacate any judgment or order, if it be proved that such judgment or order was obtained by manifest fraud. For Section 238 of the IBC Code to apply, fraud ought to be absent. The considerations are different for matters involving fraud, suppression of material facts and collusion, especially in the light of this Court's powers under Article 215 of the Constitution of India and Section 44 of the Evidence Act, 1872. Thus, the law is well settled that no independent suit as a condition precedent is necessary [*Gram Panchayat of Village Naulakha* v. *Ujagar Singh*, (2000) 7 SCC 543 (Paras 6 & 8)].

j) No equity in favour of Respondents : Besides the *Respondents' case* being legally & factually untenable, there is no equity either in favour of the Respondents who have delayed, protracted and attempted to frustrate the execution of a consent compromise decree by hook or by crook for the past three decades. The Respondents ought not be permitted to take advantage of their own wrong and must be held to account as per law for their repeated abuse of the process of law and interference with the administration of justice by this Court. The perpetrators of such fraudulent and illegal acts cannot seek any equity from this Court. It would be evident that during the proceedings, the Respondents did not advance any arguments on the allegations of fraud, illegalities and criminal acts. It is clear that a party coming with unclean hands, cannot seek any equity from this Court.

k) With reference to the contention that in contempt jurisdiction, the directions issued by the learned single Judge could not be issued, is against well settled principles in the various judgments of the Hon'ble Supreme Court, as enumerated herein below. The power of this Court under Article 215 of the Constitution cannot be whittled down in any manner, and such power necessarily has to be exercised to render complete justice particularly in a case involving fraud, collusion, contumacious conduct and wilful defiance and violation of orders of this Court to interfere in the administration of justice. As held by the learned single Judge, the contemnors cannot be allowed the benefit of their acts constituting such contempt.

8. The learned Senior Counsel, rebutting the contention that in contempt jurisdiction further orders/directions cannot be passed/issued, has relied upon the following judgments:

- *Balwantbhai Somabhai Bhandari* v. *Hiralal Somabhai Contractor (deceased) Rep. by LRs.*, (2023) 17 SCC 545, (para 81,82,86,89 & 90).

- *Surjit Singh* v. *Harbans Singh*, (1995) 6 SCC 50-(para 4).

- *Delhi Development Authority* v. *Skipper Construction Co. (P)*

Ltd, (1996) 4 SCC 622. (para 17, 19 & 21)

- *State Bank of India* v. *Dr. Vijay Mallya*, (2024) 12 SCC 85 : (2025) 3 SCC (Civ) 633. (para 14 & 16). Similarly, on the issue of fraud, he relied upon the following judgments:

- *S.P. Chengalvaraya Naidu* v. *Jagannath*, (1994) 1 SCC 1 (para 5 & 6)

- *A.V. Papayya Sastry* v. *Government of A.P*, (2007) 4 SCC 221 - (para 22, 39).

- *Hamza Haji* v. *State of Kerala*, (2006) 7 SCC 416- (para 25).

- *Nidhi Kaim* v. *State of Madhya Pradesh*, (2017) 4 SCC 1-(para 81 & 98)

9. In view of the above, the learned Senior Counsel for the appellant prayed to allow OSA Nos. 99, 258 & 260 of 2021 and dismiss the other OSA Nos. 219, 220, 293 and 294 of 2020 filed by the respondents; award the severest of punishments to the Respondents for patent, wilful and contumacious contempt of orders passed by this Court taking into account their improper conduct for the past 30 years; take further action against Respondents 5 - Bharathi and/or Respondent 10, Mr. Vijay Kothari for aggravated contempt in having intentionally and wilfully misrepresented facts before the Division Bench in the OSAs and for continued non-compliance with the direction (iv) of the learned single Judge in the impugned judgment and not having deposited the entire title deeds till date, despite even orders passed by the Hon'ble Supreme Court (Please see CMP No. 8281/2026 in OSA No. 99/2021); quash Insolvency Company Petition Nos. 709 & 710/2018 filed by the 5th Respondent before NCLT, Chennai on the ground of fraud and collusion and therefore being null and void and not binding on the Appellant/Decree Holder nor this Court in execution proceedings in E.P No. 194/2004, and allow Application Nos. 8122 & 8126/2018; permit continuation and culmination of the execution proceedings in E.P. No. 194/2004 before this Court to enforce the consent decree of 13.09.1993.

10. Mr. N.P. Vijay Kumar, the learned counsel appearing for the Resolution Professionals of the respondents 2 & 3 reiterated the submissions made before the learned single Judge that the execution proceedings before this Court including the orders of attachment and prohibition, were not referred to in the arbitration initiated by Mrs. K. Bharathi or in the proceeding before the NCLT; that the loan agreement and the memorandum of deposit of title deeds dated 25.05.2018 were referred to; that other than Kotak Mahindra Bank, Mrs. K. Bharathi is the only alleged secured creditor of the respondent-2; that the NCLT is authorised to consider and decide cases relating to fraud and collusion; that in other words, even if such allegations are made, the machinery

created by the IBC cannot be bypassed; that the holder of a statutory lien or the holder of a lien created by contract and registered as required by Section 125 of the Companies Act, 1956, is a secured creditor in the matter of winding up of the insolvent company; that the effect of an attachment under the Code of Civil Procedure is to prevent alienation, whereas it does not confer title or interest in the property; that the initiation of proceedings by Mrs. K. Bharathi before the NCLT is fraudulent; that the NCLT is the appropriate forum to undertake the insolvency resolution or liquidation of respondent-3, as the NCLT is best equipped to take into consideration the interest of all stake holders and endeavour to resolve the insolvency; that a sum of about Rs. 200 crore is due to the other secured creditor, namely, Kotak Mahindra Bank and that the interest of such stake holders cannot be disregarded by this Court so as to interfere with the orders and proceedings of the NCLT, whereby insolvency resolution proceedings are under way and a moratorium has been imposed.

11.1. Mr. V. Raghavachari, the learned Senior Counsel appearing for respondent-5 would submit that the entire order has been premised on an erroneous fact, wherein the learned Judge has incorrectly stated in Paragraph-25 that a charge was created on the property as early as 13.09.1993, the date of the consent decree. Whereas the consent decree dated 13.09.1993 does not create any charge on the schedule mentioned property, but only provides a default clause for non-completion of the super structure. Based on this observation alone, the learned Judge has concluded that a subsequent mortgage could not have been created on the property. The same is mentioned in Paragraph-26 of the impugned order. The learned Judge in fact states that if it was not for this charge, he would have agreed to the view that the prohibitory order dated 21.04.2005 could have been interpreted to mean that only sale or transfer should not be made hence allowing for a mortgage. He would further submit that when the prayer sought by the appellant is in the nature of a criminal contempt, the appellant ought to have followed the provisions of the Contempt of Courts Act, 1971 and adhered to Section 15, which mandates that the permission of the Advocate General needs to be sought, as held by the Hon'ble Supreme Court in the case of *Bal Thakcrey* v. *Harish Pimpalkhute*, (2005) 1 SCC 254 : 2005 SCC (Cri) 307. However, the learned Judge has incorrectly applied Article 215 of the Constitution of India, which only ensures that the power to punish always remains with the Court of Record and to safeguard the rights of the Court of Record from any legislations being passed to remove such a right to punish. Article 215 ought to be read with the Contempt of Courts Act, 1971, which provides the procedure and punishments and as long as the Contempt of Court Act, 1971 is not in violation of Article 215 of the Constitution of India, the same cannot be ignored.

11.2. The impugned order has completely ignored the rights of the alleged contemnor/respondent-5 herein. As per the provisions of the Contempt of Courts Act, 1971, a charge ought to be framed, chance ought to have been provided to the alleged contemnor to place before the Court her defense. She also has the right to submit evidence and for trial to be conducted. The learned Judge has given all of this a go-by to hold that a matter of contempt is largely between the Court and the contemnor and proceeded to hear and dispose of the matter in what is basically a summary procedure. The impugned order states that the principles of natural justice have been followed, since notice was provided to all the parties before the applications were adjudicated. On the contrary, the respondent-5 was never given a chance to offer evidence or for trial to be conducted. In fact, until the very end, the respondent-5 was not sure what was the reason she was accused of committing contempt. The prayers in the application were not clear as to the reason why punishment was being sought and a charge was never framed for the respondent-5 to defend herself. When there is no power to mould the relief converting a prayer for criminal contempt as a prayer for civil contempt and even assuming that the application ought to be considered as a prayer for civil contempt, there is no clarity in the pleadings as to which order was wilfully disobeyed and hence, the respondent-5 could not have been punished for contempt.

11.3. The learned Senior Counsel also pointed out that the appellant, in spite of having an order of attachment and a prohibitory order, chose to not draw the attention of the Sub Registrar of the concerned jurisdiction and only if the attachment was mentioned in the Encumbrance Certificate, third parties like the respondent-5 would have known about the same. But the learned Judge is seeking to punish the respondent-5, who is a third party to the suit, for disobeying an order whose existence is not something she ought to have been aware off and mere presumption of knowledge is not warranted. The impugned order has gone on the premise that the respondent-5 was aware of the execution proceedings and the order of Attachment and Prohibitory order, while there has not been a document to evidence the same. The learned Judge has come to this conclusion since the respondent-5 is the mother-in-law of Mr. Manohar Prasad, the 4th respondent herein, knowledge can be deduced. The mortgage deed dated 19.06.2009 has been declared as illegal, null and void without even looking at the original document, thereby granted a decree to the appellant in an application without the appellant filing a separate suit and affording the respondent-5 a chance to defend the document and lead in evidence on the same. The learned Judge ought not to have made factual observations that there is a prima facie evidence of fraud, ignoring the collateral proceeding before the National Company Law Tribunal on the exact same issue.

11.4. The impugned order suffers from patent illegality, as the learned Judge has drawn various observations and conclusion on the belief that prima facie a fraud has been committed against the appellant, ignoring the well settled principles that a plea of fraud cannot be proved by mere pleading and mandates a proper trial to establish the same. When the learned Judge held that the documents being fraud is a matter before the National Company Law Tribunal and the same ought to be decided there, ought not to have cancelled the Mortgage Deed dated 19.06.2009 and ought to have relegated this matter to the National Company Law Tribunal for deciding the same or kept this matter in abeyance until the same is decided by the National Company Law Tribunal. Instead of exercising either of these options, the learned Judge has gone ahead and made factual observations without affording a chance to the respondent-5 to prove the documents and has passed the impugned order of cancellation of the mortgage deed dated 19.06.2009 and also dated 01.04.2015, 15.04.2016 and also 25.05.2018. When the respondent-5 is a third party to the decree passed in C.S. No. 1338 of 1992 and a separate and independent suit ought to be filed to seek any action against the same, the learned Judge has passed the impugned order without appreciating the role and the scope of the powers vested with an Execution Court as per the Civil Procedure Code, 1908.

11.5. The impugned order has failed to appreciate the sanctity of Section 63 of the I&B Code barring the jurisdiction of the civil Court to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code and the learned Judge has overstepped on the jurisdiction of the NCLT by essentially dealing with and deciding the issues that are subject matter of the proceedings before the NCLT. The learned Judge has failed to appreciate the interpretation of the Prohibitory order dated 21.04.2005, wherein the order prohibited the judgment debtor in alienating the property by sale, gift or otherwise. The Prohibitory order clearly states to prohibit the alienation of property by sale, gift or such transactions wherein the ownership of the property is transferred. Whereas the subject matter of the present dispute is mortgage where the transfer of ownership is conditional and not absolute as in the case of a sale or gift. The learned Judge has failed to appreciate the difference that was drawn in the Prohibitory Order aforementioned. The learned Judge has failed to appreciate the interpretation laid down in the case of in *Pitambar Govinda Bhavsar* v. *Abdul Gafar Abdul Rajak Deshmukh*, 1970 SCC OnLine Bom 85 of the Bombay High Court and the principles laid down in *Chhotu Ram* v. *Urvasi Gulati*, (2001) 7 SCC 530 as well as *Parents Association of Students* v. *M.A. Khan (Parents Association of Students)*, (2009) 2 SCC 641 by holding this respondent-5 liable for civil contempt in a case where two interpretations are possible. The judicial principle for instances where the order is ambiguous and two interpretations are possible is that a contempt proceeding against the same would not be maintainable. However, the learned Judge has overlooked this judicial principle and held the respondent-5 liable for a contempt.

11.6. The impugned order has also failed to appreciate that the disputed Mortgage deed i.e., the Deed dated 19.06.2009 is not a new encumbrance created on the property, whereas is merely a substitution of the Mortgage deed created by Indian Bank in the year 1989. This Mortgage created by Indian Bank in 1989 was thereafter transferred to IL & FS. The Mortgage created by IL & FS was thereafter transferred to India Bulls. The charge which was created as early as 1999 was substituted at various instances by other financial institutions and ultimately accrued in favour of this respondent-5 in lieu of the sale of the Sun TV shares she owned and pledged in favour of India bulls for the benefit of respondents 1 to 3. However, the learned Judge in paragraphs 25, 26 and 27 of the impugned order has failed to appreciate that the subject mortgage deed dated 19.06.2009 is not a new encumbrance but a mere subrogation of a mortgage created as early as 1989 and has erred in holding the mortgage deed dated 19.06.2009 to be void. As per paragraph 27 of the impugned order, the learned Judge has arrived at this finding on the basis of a prima facie fraud and collusion against the appellant. It is a settled principle in law that the findings of fraud and collusion cannot be arrived at in the absence of an exhaustive trial. The learned Judge has convicted the respondent-5 for contempt on the basis of mere doubts of fraud. The learned Judge has presumed that there is collusion between the respondent-5 and the respondents 4, 6 to 8 for the only reason that the respondent-5 is the mother in law of respondent-4. The learned Judge has failed to appreciate this respondent-5 to be an independent third party to the affairs of the Company, namely, respondents 2 and 3 and has also failed to appreciate the rights of this respondent-5 independent of the other respondents and has drawn conclusions based on the relationship between respondent-4 and this respondent-5. The learned Judge has failed to appreciate that the Judgment Debtors i.e. the respondents 1, 2 and 3 had paid a sum of Rs. 1 Crore on 09.08.2011 and that the amount as per consent decree which was passed on 13.03.1993 was barely Rs. 4,00,000/- with 24% interest per annum. The learned Judge has failed to appreciate the acts done by the Judgment Debtors in the past instance and had rushed to convict them for contempt based on a prima facie inference of fraud.

11.7. The learned Judge has failed to respect the law laid down in the *Embassy Property Developments Pvt. Ltd* v. *State of Karnataka*, Civil Appeal No. 9170 of 2019 and 9171 of 2019 by the Hon'ble Supreme Court and adjudicated the dispute despite being ousted of this Court's jurisdiction. The impugned order ought to be set aside solely for this reason. The learned Judge has failed to appreciate the direct and consequential impact this order would have on the NCLT proceedings and has gone ahead to pronounce an order for a dispute which is sub judice before the NCLT. The Mortgage deed declared to be void in the impugned order is the same Mortgage deed that is questioned before NCLT and Paragraph 31 of the impugned order makes the NCLT proceedings and order futile.

11.8. The learned Judge solely based on the existence of a prima facie fraud and collusion has declared the Mortgage Deed in favour of the respondent-5 dated 19.06.2009 and also the deposit of title deed by respondents 2 and 3 dated 01.04.2015 and 15.04.2016 respectively, and the registered memorandum of deposit of title deeds dated 25.05.2018 as illegal, null and void. The learned Judge had erred in granting an order for a prayer that was not sought by the appellant. The appellant in Application Nos. 6897, 6898 of 2018 did not seek for the mortgage deed, loan agreement and the allied documents to be set aside. Despite the same, the learned Judge has set aside the mortgage deed dated 25.05.2018, loan agreement dated 19.06.2009 and also the deposit of title deed by Respondents 2 and 3 dated 01.04.2015 and 15.04.2016, respectively. This part of the impugned order has been passed in spite of bringing it to the attention of the learned Judge that there is a collateral proceeding in the NCLT seeking for the Mortgage deed to be set aside, thereby impinging on the jurisdiction of the NCLT and erred in convicting this respondent-5 and the respondents 4, 7 & 8 for wilful disobedience i.e. Civil Contempt in the absence of the prayer and based on the allegations of fraud made by the appellant.

11.9. The learned Senior Counsel, by way of filing detailed written submissions inter alia (i) that the respondent-5 is a third party to the proceedings and not amenable to contempt jurisdiction or execution stage; (ii) that by operation of Section 92 of the Transfer of Property Act, 1882, the respondent-5 stood subrogated with effect from the date of discharge, to the rights of the original mortgagee/charge holder (Indian Bank and its assignees IL&FS and India Bulls) over the schedule property; that the finding of fraud without a trial or without adducing any evidence is untenable; that the proceeding is barred by Section 20 of the Contempt of Courts Act, 1971, as no court shall initiate any proceedings for contempt after the expiry of one year from the date on which the contempt is alleged to have been committed; that the creation of the security does not fall within the four corners of the 2005 orders; that the declaration of the loan agreement and mortgages as null and void is a jurisdictional overreach; that there is a bar of jurisdiction of this Court on account of the IBC moratorium under Section 14 and the order of NCLT dated 25.04.2022, also relied upon the following judgments:—

1. *Midnapore Peoples' Coop. Bank Ltd.* v. *Chunilal Nanda*, (2006) 5 SCC 399
2. *Kanwar Singh Saini* v. *High Court of Delhi*, (2012) 4 SCC 307 : (2012) 2 SCC (Civ) 497 : (2012) 2 SCC (Cri) 423
3. *Embassy Property Developments Private Limited* v. *State of Karnataka*, (2020) 13 SCC 308 : (2020) 9 Comp Cas-OL 609
4. *R.N. Dey* v. *Bhagyabati Pramanik*, (2000) 4 SCC 400
5. *Anil K. Surana* v. *State Bank of Hyderabad*, (2007) 10 SCC 257 : (2007) 3 SCC (Cri) 638
6. In the matter of *B. Yegnanarayaniah*, 1973 SCC OnLine Mad 132 : AIR 1974 Mad 313 (DB)
7. *Andi Thevan* v. *Nagayasami Chettiar*, 1927 SCC OnLine Mad 244 : (1928) 28 LW 213 (DB)
8. *Balkrishan Gupta* v. *Swadeshi Polytex Ltd.*, (1985) 2 SCC 167 : 1985 SCC (Tax) 215 : (1985) 58 Comp Cas 563
9. *Diravyam Pillai* v. *Veeranam Ambalam*, 1939 SCC OnLine Mad 12 : (1939) 2 Mad LJ 822 (DB)
10. *Akhoy Kumar Banerjee* v. *Corporation of Calcutta*, 1914 SCC OnLine Cal 146 : AIR 1915 Cal 478 (DB)
11. *Ashok Paper Kamgar Union* v. *Dharam Godha*, (2003) 11 SCC 1
12. *Sahdeo alias Sahdeo Singh* v. *State of Uttar Pradesh*, (2010) 3 SCC 705 : (2010) 2 SCC (Cri) 451
13. *Abhishek Kumar Singh* v. *G. Pattanaik*, (2021) 7 SCC 613
14. *Tamilnad Mercantile Bank Shareholders Welfare Association (1)* v. *Tamilnad Mercantile Bank Limited*, (2008) 15 SCC 529
15. *Anil Ratan Sarkar* v. *Hirak Ghosh*, (2002) 4 SCC 21

12. Mr. V. Prakash, learned Senior Counsel appearing for the respondents 7, 8 & 4, by way of filing detailed written submissions inter alia (i) that the power vested under Article 215 of the Constitution of India is exercisable only in consonance with the procedure set out under the Contempt of Courts Act, as there is no provision under the Madras High Court Contempt of Court Rules to convert an application for criminal contempt to as civil contempt and that the application no. 6897/2018 was not filed as per the form and manner prescribed under the Contempt of Courts Act and Rules framed thereunder; (ii) that the appellant has already recovered disproportionately and continues litigating for a windfall; (iii) that the appellant suppressed the pre-existing encumbrance from the Court; (iv) that the appellant is a

shell/non-operating entity whose sole business is the present litigation; (v) that the 7th respondent had no role in the original transaction; (vi) that the 5th respondent's mortgage is not a fresh fraudulent device but a continuation of a legitimate mortgage chain; (vii) that the appellant acquiesced to earlier mortgages and never objected; (viii) that the contempt application was procedurally improper; (ix) that the finding of fraud rendered by the learned single Judge rested only on a family relationship and not on evidence; (x) that the form of application to NCLT for initiation of IBC proceedings did not provide for disclosure of relationship between Creditor and Director of the corporate debtor; (xi) that the NCLT has already rejected the Forensic Audit Report heavily relied by the appellant; (xii) that a third party creditor's fraud challenge to the CIRP was already dismissed; (xiii) that the appellant relied on privileged/non-public documents without proper standing; (xiv) that the appellant selectively concealed favourable facts about the 4th respondent; (xv) that the decree in favour of appellant is unregistered; (xvi) that the property's repeated auction failures were structural, not the respondents' fault; (xvii) that the findings of the learned single Judge in paragraphs 24, 27, 28, 29, 30 & 31 are perverse and contrary to law, sought for interfering with the impugned order by relying upon the following judgments in support of his contentions:—

1. *Dr. L.P. Misra* v. *State of U.P.*, (1998) 7 SCC 379
2. *Pallav Sheth* v. *Custodian*, (2001) 7 SCC 549 : (2001) 107 Comp Cas 76
3. *Bal Thackrey* v. *Harish Pimpalkhute*, (2005) 1 SCC 254 : 2005 SCC (Cri) 307
4. *Anil Ratan Sarkar* v. *Hirak Ghosh*, (2002) 4 SCC 21
5. *S. Thirupathi Rao* v. *M. Lingamaiah*, (2024) 20 SCC 188
6. *Secretary, Government of Tamil Nadu* v. *S. Raja*, 2026 SCC OnLine SC 659
7. *Sudhir Vasudeva* v. *M. George Ravishekaran*, (2014) 3 SCC 373
8. *R.N. Dey* v. *Bhagyabati Pramanik*, (2000) 4 SCC 400
9. *Tamilnad Mercantile Bank Shareholders Welfare Association* v. *S.C. Sekar*, (2008) 15 SCC 529
10. *Director of Education, Uttaranchal* v. *Ved Prakash Joshi*, (2005) 6 SCC 98 : 2005 SCC (Cri) 1357
11. *Ananda Rao Korada RP* v. *Varsha Fabrics Pvt. Ltd.*, (2020) 14 SCC 198 : (2020) 9 Comp Cas-OL 136
12. *ICICI Bank Ltd* v. *SIDCO Leathers Ltd.*, (2006) 10 SCC 452 : (2006) 131 Comp Cas 451
13. *Bhoop Singh* v. *Ram Singh Major*, (1995) 5 SCC 709
14. *Pitambar Govinda Bhavsar* v. *Abdul Rajak Deshmukh*, 1970 SCC

OnLine Bom 85 : AIR 1972 Bom 43

15. *Midnapore Peoples' Cooperative Bank Ltd.,* v. *Chunilal Nanda*, (2006) 5 SCC 399

16. *Maninderjit Singh Bitta* v. *Union of India*, (2011) 11 SCC 315

13. Mr. C.S. Kiran, the learned counsel appearing for the respondent -10 would submit that the four original documents, which were in the custody of the respondent-10, have been deposited into this Court, as recorded in the order dated 26.02.2026 passed in the present appeals.

14. There is no representation on behalf of the respondents 1 & 6 and the notice sent to the respondent-9 has been returned as 'door locked'.

15. We have given our anxious consideration to the submissions made by the respective learned Senior Counsel/Counsel appearing for the parties and also perused the materials available on record.

16. The case of the appellant/decree holder is that a Builder's agreement was entered into between the appellant and the respondents 1 to 3 on 17.09.1987 for purchase of commercial space in the execution petition schedule property and subsequent to the filing of the civil suit by the respondents 1 to 3 in C.S. No. 1338 of 1992 seeking to declare the agreement dated 17.09.1987 as null and void, a 'consent compromise decree' came to be passed on 13.09.1993, under which the time for completion of construction was extended at enhanced rates, failing which the sums paid by the appellant were to be refunded with interest thereon. Any default thereafter would make the consent compromise decree to be executed as a money decree. Until the sums are settled in full, a charge on the execution petition schedule property was also recognised under the decretal terms. Since the respondents 1 to 3 did not comply with the terms of consent compromise decree dated 13.09.1993, the appellant initiated execution proceedings in E.P. No. 194 of 2004, in which an order of attachment was passed on 19.04.2005 followed by issuance of prohibitory orders on 21.04.2005, whereby the respondents/judgment debtors were not only prohibited from alienating the execution petition schedule property, but also prohibited other persons from receiving the attached property through purchase, gift or otherwise. Thereafter, proceedings were taken on various dates between 10.08.2011 and 25.07.2018 for the sale of the property and according to the appellant, these auction sales were scuttled by the judgment debtors either by directly filing applications and appeals or by setting up third party intervenors for such purposes. Further, the judgment debtors colluding with the respondents 4 to 8 also indulged in suppression of material facts, fabrication of documents and forgery before various authorities, which ultimately culminated in the common order dated 22.06.2018 passed in C.P. Nos. 709 & 710 of

2018 by the National Company Law Tribunal, Chennai under the Insolvency and Bankruptcy Code, not only to illegally impede, obstruct and interfere with the administration of justice in the proceedings in E.P. No. 194 of 2004 before this Court, but also to stall the auction sale claiming moratorium under Section 14 of the Insolvency & Bankruptcy Code, on the basis of the unregistered loan agreement dated 19.06.2009 purportedly creating contingent rights in an immovable property and the purported unregistered and insufficiently stamped mortgage deeds dated 01.04.2015 and 15.04.2016, whose execution in any event is in violation of the prohibitory order dated 21.04.2005, which had not been previously disclosed to this Court in E.P. No. 194 of 2004 during the five earlier sale proclamations till July, 2018 or even to the statutory authorities contemporaneously either by the 5th respondent or the judgment debtors. Even though the 4th respondent was adjudged insolvent on 28.09.2015 in I.P. No. 5 of 2013, he not only continued to act illegally on behalf of respondents 2 & 3 till the stage of the execution proceedings, but also purportedly transferred his assets to the 5th respondent (mother in law) and others after being adjudged insolvent, in addition to the filing of purported applications through third parties. In such extraordinary circumstances involving suppression of material facts, collusion, perjury, fabrication of documents impersonation, forgery and fraud played by the respondents in relation to the proceedings in E.P. No. 194 of 2004 before this Court, the appellant filed the Application Nos. 6897 & 6898 of 2018 in E.P. No. 194 of 2004 under Article 215 of the Constitution of India read with Section 2(b) of the Contempt of Courts Act to punish the respondents as per law and also to extend the time for auction of the execution petition schedule property that was initially scheduled for 25.07.2018 to any further date, respectively, which has been disposed of by the learned single Judge vide order dated 26.05.2020 by issuing the directions (i) to (ix) as stated therein. However, aggrieved by the direction of the learned single Judge in deferring the auction sale proceedings until the NCLT determines whether C.P. Nos. 709 and 710 of 2018 are maintainable and also decides on matters incidental or consequential thereto and also to award the severest of punishments to the respondents for patent, wilful and contumacious contempt of orders passed by this Court taking into account their improper conduct for the past 30 years as well to quash the insolvency Company Petition Nos. 709 and 710 of 2018 filed by the 5th respondent before the NCLT, Chennai on the ground of fraud and collusion and therefore being null and void not binding on the appellant/decree nor this Court in E.P. No. 194 of 2004, the appellant has filed the O.S.A. Nos. 99, 258 & 260 of 2021 before this Court.

17. The case of the Resolution Professionals representing the respondents 2 & 3 inter alia is that when the National Company Law Tribunal is the appropriate forum to undertake the insolvency resolution or liquidation of 3rd respondent and the initiation of proceedings by the 5th respondent before the NCLT is fraudulent, as she is the only alleged secured creditor of the 2nd respondent, by taking into consideration the interest of all stakeholders, this Court should decline to interfere with the orders and proceedings of the National Company Law Tribunal, whereby insolvency resolution proceedings are under way and a moratorium has been imposed.

18. The specific case of the respondents 4, 5, 7 & 8, in a nutshell, is that when the prayer sought for by the appellant is in the nature of a criminal contempt, the appellant ought to have adhered to the provisions of Section 15 of the Contempt of Courts Act, which mandates the obtaining of written consent from the Advocate General, and therefore the application filed by the appellant is not maintainable as per Section 2(c) read with Section 15(i)(b) of the Contempt of Courts Act. However, the impugned order has completely ignored the rights of the 5th respondent, as no charge was framed and no opportunity was given to the alleged contemnor to put forth her defense before punishing her for the wilful disobedience of the order of attachment and the prohibitory order, only on the premise that she is the mother in law of the 4th respondent. Even the alleged mortgage created by the loan agreement dated 19.06.2009 and the deposit of original title deeds by respondents 2 & 3 dated 01.04.2015 and 15.04.2016 respectively, as well the registered memorandum of title deeds dated 25.05.2018, which is not a new encumbrance, but a mere subrogation of a mortgage created as early as 1989 by Indian Bank and thereafter transferred to IL & FS and India Bulls, which ultimately accrued in favour of the 5th respondent in lieu of the sale of the Sun TV shares she owned and pledged in favour of India Bulls for the benefit of the respondents 1 to 3, have been declared as illegal, null and void without even looking at the original document and granted a decree in the application filed by the appellant, ignoring the fact that the 5th respondent is a third party to the decree passed in C.S. No. 1338 of 1992 and against whom a separate suit can only be filed. Since the exact same issue is pending before the National Company Law Tribunal in a collateral proceeding, the impugned order ought not to have been passed holding that there is a prima facie evidence of fraud without even conducting a full-fledged trial. Moreover, Section 63 of the Insolvency & Bankruptcy Code bars the jurisdiction of the civil Court to entertain any suit or proceedings in respect of any matter seized of by the National Company

Law Tribunal. When the prohibitory order dated 21.04.2005 specifically prohibits and restrains the respondents/judgment debtors from alienating the schedule property by way of sale, gift or otherwise, it does not apply to the creation of a mortgage, which is not an alienation. So far as the execution of the money decree is concerned, it was pointed out that the judgment debtors had paid a sum of Rs. 1 Crore on 09.08.2011, whereas the amount payable as per the consent compromise decree dated 13.03.1993 was barely Rs. 4 lakhs with 24 per cent interest per annum. Therefore, the impugned order punishing the respondents 2-5, 7-8 for wilful disobedience i.e., civil contempt in the absence of the prayer and based on the allegations of fraud made by the appellant is wholly unsustainable and the O.S.A. Nos. 219, 220, 293 & 294 of 2020 filed by the respondents have to be allowed by setting aside the impugned order.

19. Having heard the submissions of the respective learned Senior Counsel appearing for the parties, the first point that arises for consideration is whether the application filed by the appellant under Article 215 of the Constitution of India read with Section 2(b) of the Contempt of Courts Act is maintainable for holding the respondents including the judgment debtors guilty of committing contempt?

20. The primary ground of attack on the side of the respondents/contemnors is that when the application has been framed as one for criminal contempt, without obtaining the written consent of the Advocate General, the same is not maintainable. However, the learned Senior Counsel for the appellant/decree holder submitted that when the application has been filed under Article 215 of the Constitution of India and this Court exercises plenary powers, the same cannot be curtailed on the alleged ground of non-compliance of the provisions of Section 15 of the Contempt of Courts Act.

21. Be that as it may, in the light of the settled legal precedents, there can be no quarrel on the inherent power conferred upon the High Court under Article 215 of the Constitution of India to be a Court of record and to exercise all the powers of such a Court including the power to punish for contempt of itself, which cannot be curtailed in any manner by the Contempt of Courts Act, as it only serves as a guide for determination of the nature of punishment which the Court may impose in the case of established contempt. Equally it is well settled that when contempt proceedings are instituted by the affected party like the appellant/decree holder in this case, and once the process is set in motion, after satisfying with the materials placed on record, this Court can take cognizance and proceed further by treating the said application as one for civil contempt after complying with the principles of natural justice. Therefore, considering the facts and circumstances, we concur with the view taken by the learned single Judge that the

application filed by the appellant can be treated as one for civil contempt, as the parties to the lis have been put on notice before considering the application and thus the first point is answered.

22. However, to decide whether the respondents have committed wilful disobedience of the orders of this Court, the relevant orders passed in this regard have to be looked into. As held by the learned single Judge, it is not in dispute that the consent compromise decree came to be passed on 13.09.1993 and paragraph-7 thereof shows that till the date of payment by the plaintiffs in full of the amount specified therein, there shall be charge on the land and building known as Gemini Towers in favour of the defendant therein. Therefore, a charge was created over the property in favour of the appellant/decree holder on and from the date of passing the compromise consent decree. It is also not in dispute that the judgment debtors were parties to the consent decree and were fully aware about the creation of the charge. Thereafter, in the execution proceedings initiated by the appellant, an order of attachment of the immovable properties shown in Schedules A & B therein was passed on 19.04.2005, followed by the passing of the prohibitory order on 21.04.2005 not only prohibiting and restraining the respondents 1 to 3 from alienating the property specified in the Schedules A & B by sale, gift or otherwise, but also restraining the other persons from receiving the same by purchase, gift or otherwise.

23. Now it has to be considered whether the judgment debtors were parties to the consent decree and were therefore fully aware about the creation of the charge and whether the attachment order and the prohibitory order bind the respondents from creating the alleged subsequent mortgage. In this context, it will be relevant to refer to the findings recorded by the learned single Judge in paragraphs 27 to 30 of the impugned order, which are extracted hereunder:—

> "27. In light of the specific language in both the prohibitory order and attachment order, it is abundantly clear that the order also prohibits third parties from dealing with the property. The action of the Judgment Debtors, their promoter, directors and Respondent 5 should be examined against this factual background. On perusal of the alleged loan agreement dated 19.06.2009, I find that it is executed by Mrs. K. Bharathi, Respondent 5 herein, as the alleged lender, and by Respondents 2 and 3 herein as the guarantor and borrower respectively. Interestingly and significantly, Respondent 2 herein was not even a borrower as regards the loan from Indiabulls. Both Respondents 2 and 3 were represented by their director, Mr. A. Ravishankar Prasad. On examining the alleged loan agreement closely, there is no reference therein to the consent decree dated 13.09.1993, the prohibitory order dated 21.04.2005 or the order of attachment dated 25.04.2005. In fact, it does not refer to the

execution proceedings at all although the said proceedings were first initiated as early as in 2004. I also find that recitals VII to XVIII thereof record that a loan was taken from Indiabulls Securities Limited and Indiabulls Financial Services Limited (collectively Indiabulls) and that Respondent 5 stood as guarantor by pledging 97,89,919 shares held by her in Sun TV Network Limited in favour of the lender. On perusal of the Arbitral Award dated 18.02.2012 (the First Arbitral Award) in the arbitration between, inter alia, the pledgors, including Respondent 5 herein, Respondents 2 and 3 herein, Manohar Prasad, Ravishankar Prasad and Indiabulls, I find that the execution proceedings and the prohibitory order and attachment order of this Court were not referred to therein. A pledge agreement allegedly executed by Respondent 5 herein on 26.06.2008, which is prior to the alleged loan agreement dated 19.06.2009, is referred to therein. By the First Arbitral Award, Respondent 5 was awarded an aggregate sum of about Rs. 33 crore as compensation on the basis that Indiabulls wrongfully called in the pledge and sold the pledged shares but these amounts were to be adjusted against the balance sum due to Indiabulls under the First Arbitral Award as on 13.10.2009. The recitals to the loan agreement further record that Indiabulls invoked the pledge by selling the shares on various dates in the year 2008 and realized the value thereof and that the sale price of the shares is agreed to be acknowledged as a loan from Respondent 5 to Respondent 3 in the books of account of Respondent 3. The average sale price of Rs. 115/- per share is also recorded in the recitals. The relevant recitals of the loan agreement are set out below because they are prima facie indicative of fraud and collusion:

XII

“To satisfy the apprehensions of the lender, the borrower agreed to pay the lender, the equivalent amount realized by Indiabulls by selling the shares alongwith 24% per annum on such amount from the date of sale of the shares till the actual date of payment of the amount.”

XIII

“The borrowers agreed to acknowledge the value of shares as loan in their books of account payable to the Lender as soon as Indiabulls litigation was over.”

XIX

“Pending litigation, the lender and borrower reconciled the account and mutually arrived to a decision that the borrower became liable to pay a sum of Rs. 84,79,08,065/- (Rupees Eighty Four crores Seventy nine lakhs eight thousand sixty five only) to the lender along with 24% per annum from 15 th December 2008 till the actual date of payment"

XX

"The lender lost faith on the borrower, hence, she renegotiated terms and conditions. Pursuant to fresh terms and conditions, the borrower agreed to repay the loan amount to the lender within 365 days (one year) from the date of settlement and payment with the Indiabulls. However, if the Borrower fails or commits default in making payment to the lender on the last day of the year the guarantor shall stand as guarantor for repayment to the lender and shall also create equitable mortgage of his immovables properties in favour of the Lender"

When the First Arbitral Award and the loan agreement are examined, grave doubts arise as to the genuineness of the loan and the manner of computation thereof, especially when the following is taken into account : Respondent 2 was not a borrower from Indiabulls, the First Arbitral Award envisages adjustment of the awarded compensation and not payment thereof, the alleged consent of Respondents 2 and 3, as recorded in the loan agreement, to treat the sale price of the pledged shares as a loan and the crystallisation of the outstanding at about Rs. 84.79 crore with interest thereon at 24% per annum from 15.12.2008. Indeed, as stated earlier, there is *prima facie* evidence of fraud. However, I do not propose to delve deeper into this issue because it is not necessary for purposes of deciding the contempt application and on account of the conclusion herein in respect of the NCLT proceedings.

28. As security for the abovementioned alleged loan, Clause 8 and 9 of the alleged loan agreement stipulated that the borrower/Respondent 3 herein shall create an equitable mortgage of the property described in Schedule-1 in favour of the lender and that the guarantor/Respondent 2 herein shall create an equitable mortgage of the property described in Schedule - 2 in favour of the lender. Both the schedule 1 and 2 properties are the properties under attachment and prohibitory orders of this Court in the execution proceedings. On carefully examining the aforesaid loan agreement and the attendant facts and circumstances, I am of the view that the Corporate Judgment Debtors, their promoter and directors willfully omitted any reference to the prohibitory order and the order of attachment although they were fully aware that the said orders prevented them from creating an equitable mortgage over the property. In the facts and circumstances, including the agreement by Respondent 5 to adjust the amount awarded by the First Arbitral Award towards compensation against the dues of Manoharamma Hotel Investments (P) Ltd. and Respondent 3, I am unwilling to accept that Respondent 5 was unaware of the execution proceedings

and the orders passed herein.

29. Many years after the date of the alleged loan agreement, it appears that an arbitration proceeding was initiated by Respondent 5 against Respondents 2 and 3 herein. The Arbitral Award dated 11.04.2018 (the Second Arbitral Award), in the said proceeding, refers to a Memorandum of Agreement of Equitable Mortgage dated 1.04.2015 purportedly executed by Respondent 3 herein and to a Memorandum of Agreement of Equitable Mortgage dated 15.04.2016 purportedly executed by Respondent 2 herein and to the deposit of the original documents of title by Respondents 2 and 3. Both these alleged mortgage documents are not on record. Although reference is made to the above mentioned documents, the Second Arbitral Award does not refer to the execution proceedings before this Court or the orders passed therein. By the Second Arbitral Award, Respondents 2 and 3 were directed to register the memorandum of deposit of equitable mortgage in respect of the relevant parcels of land so as to complete the equitable mortgage and to file the relevant forms with the Registrar of Companies to register the charge. Pursuant thereto, a memorandum of deposit of title deeds was executed on 25.05.2018 and registered on the same date as Document No. 572 of 2018 on the file of the Joint Sub-Registrar, Chennai Central. This document is on record and is executed by Respondent 2, represented by its director, A. Sriramulu, who is Respondent 8 herein and Respondent 3, represented by its director, Tarun Kumar, who is Respondent 7 herein, on the one hand; and Respondent 5 herein, on the other. On perusal of this document, I find that, once again, there is no reference to the execution proceedings or the orders of prohibition or attachment. Another aspect to bear in mind is that the auction sale proceedings were underway before this Court, including at least two endeavours to sell the property in the year 2018, when the aforesaid purported mortgage documents were executed and actions taken pursuant or related thereto. One cannot also completely disregard the fact that the first arbitration, the loan agreement, the second arbitration and the memorandum of deposit of title deeds involve the mother-in-law of one of the promoters of Respondents 2 and 3 and the said corporate entities.

30. When these facts are viewed holistically and cumulatively, it is beyond all reasonable doubt that Respondents 2 and 3, their promoter and complicit directors, at the relevant time, which includes Respondents 4, 7 and 8, wilfully disobeyed the prohibitory order and the order of attachment. In this connection, as correctly pointed out by the learned senior counsel for the Applicant and the learned counsel for the RP of Respondent 2, Section 64 of the CPC

declares that any private transfer of title or interest in a property that has been attached by an order of Court is void. There is no doubt that the alleged mortgage, in this case, is by way of private transfer by Respondents 2 and 3 in favour of Respondent 5. Hence, the said transfer by way of the alleged mortgage is void. In light of the above discussion and analysis, I conclude that the mortgage created over the property by the loan agreement dated 19.06.2009 is illegal, null and void because it contravenes the prohibitory order and attachment order. Consequently, the deposit of the original title deeds - in respect of the respective land parcels, by Respondent 3 and 2 on 01.04.2015 and 15.04.2016, respectively - with Respondent 5 and the registered memorandum of deposit of title deeds dated 10.05.2018 are also illegal, null and void. I further conclude that Respondents 2,3 (the Corporate Judgment Debtors) and Respondents 4, 7-8 are guilty of wilful disobedience of the orders of this Court. As regards Respondent 5, although she is a third party to the proceedings, as stated above, the prohibitory order also prohibits third parties from receiving the property and the said order has, therefore, also been disobeyed by Respondent 5. Her close involvement in the affairs of the Judgment Debtors and other group companies is underscored by the fact that she guaranteed the debts of Respondent 3 and Manoharamma Hotel Investments (P) Ltd. and even agreed under the First Arbitral Award to adjust the amounts awarded to her as compensation against the dues of the above entities to Indiabulls. In addition, she is the mother-in-law of Manohar Prasad. In these facts and circumstances, I conclude that she wilfully disobeyed the orders. As stated above, the consequence of creating a mortgage in breach of the attachment order is that the mortgage is void as per Section 64 CPC. The above consequence follows irrespective of the commission of contempt. In this case, the conduct of the Corporate Judgment Debtors, their promoter, directors and Respondent 5 is also contumacious and the consequences thereof should be considered."

24. We are in entire agreement with the above findings rendered by the learned single Judge and reject the contentions raised by the respondents that the creation of the security does not fall within the four corners of the 2005 orders; that the declaration of the loan agreement and mortgages as null and void is a jurisdictional overreach; that the 5th respondent stood subrogated with effect from the date of discharge, to the rights of the original mortgagee/charge holder (Indian Bank and its assignees IL&FS and India Bulls) over the schedule property; that the finding of fraud without a trial or without adducing any evidence is untenable.

25. Moreover, the main object of passing the orders of attachment

and prohibition were to restrain the respondents and other third parties from creating any further encumbrance over the property and whatever encumbrance created subsequent to the orders of attachment and prohibition will not bind the appellant/decree holder in the execution proceedings, as the fact remains that by suppressing the material facts, parallel proceedings have been initiated before the statutory authority/NCLT and the order dated 22.06.2018 has been obtained in C.P. Nos. 709 & 710 of 2018 by one of the parties. Since the matter is pending before the National Company Law Tribunal and a moratorium has been imposed under Section 14 of the Insolvency & Bankruptcy Code, as held by the learned single Judge, civil proceedings against the company under insolvency resolution cannot be proceeded with until the moratorium period ends. Probably, the moratorium period might have been over now. Therefore, it is open to the parties herein and other stakeholders to establish before the said statutory authority whether the institution of proceedings before it are fraudulent or not and pursue their further course of action depending on its outcome, in the manner known to law. Hence, the finding of the learned single Judge to keep the auction sale proceedings in abeyance until the NCLT decides on the maintainability of C.P. Nos. 709 & 710 of 2018 and matters incidental or consequential thereto, cannot be faulted. In view of the same, we do not propose to go into the ratio laid down by the Hon'ble Supreme Court in the judgments cited by the parties in support of their respective contentions in this judgment.

26. Now coming to the quantum of punishment imposed by the learned single Judge is concerned, though Section 12 of the Contempt of Courts Act provides the punishment for contempt with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both, in view of the finding recorded by the learned single Judge exercising his discretionary power, which is extracted as follows,

> "29 (sic). In my view, the Corporate Judgment Debtors, i.e. Respondents 2 and 3, were parties to the compromise consent decree and to the execution proceedings, including the attachment order and the prohibitory order. Being juristic persons, they acted through the agency of the promoter, namely, Manohar Prasad, whose central role is evident from the First Arbitral Award, which arose out of a transaction which is the basis for the alleged subsequent loan and the alleged security therefor; and the omplicit directors, i.e. Respondents 7 and 8, namely, Tarun Kumar and Sriramulu, who executed the registered memorandum of deposit of title deeds. However, Respondents 2 and 3 are currently managed by the respective RP and are subject to a moratorium. Ordinarily, in the facts and circumstances, I would have imposed a sentence of

imprisonment on the promoter and complicit directors but I am not doing so partly because the Corporate Judgment Debtors are under a corporate insolvency resolution process. Thus, I impose a monetary penalty on the contemnors. Respondents 1 and 2 shall each pay a fine of Rs. 2000 within two weeks from the expiry of the moratorium period. Respondents 4 and 7-8 shall each pay a fine of Rs. 2000 within two weeks from the date of receipt of a copy of this order with a default sentence of 15 days of simple imprisonment. As regards Respondent 5, I concluded earlier that Respondent 5 is also complicit in such contumacious conduct. However, as a third party, in the overall facts and circumstances, I conclude that a sum of Rs. 1,000/- should be paid as fine by Respondent 5 within two weeks from the date of receipt of a copy of this order with a default sentence of 7 days simple imprisonment. Nevertheless, in the overall facts and circumstances, undoubtedly, the contemnors should not be permitted to benefit from such contumacious conduct. This is ensured by declaring that the mortgage is void and also by directing that the original title deeds that were deposited by Respondents 2 and 3 with Respondent 5 should be deposited with the Registrar General of this Court by Respondent 5. In the event of default, I am of the view that a fine would not suffice in as much as the contemnors would continue to profit from aggravated contumacious conduct. Therefore, in case of default, there will be a sentence of simple imprisonment of Respondent 5 for 15 days."

We are not inclined to interfere with the consequential directions issued in (i) to (ix) of the impugned order considering the peculiar facts and circumstances. However, so far as direction (iv) is concerned, this Court vide order dated 26.02.2026 passed in the present appeals, after recording the letter dated 22.02.2023 received from the mortgagee/9th respondent in O.S.A. No. 219 of 2020 listing out the four original documents mentioned therein that were handed over to him by the 5th respondent and produced before the Court, has directed the said documents to be kept in safe custody by the Joint Registrar (O.S.) of this Court and the same should not be released without orders of this Court.

27. So far as the contention raised by the respondents that the judgment debtors had paid a sum of Rs. 1 Crore on 09.08.2011, whereas the amount payable as per the consent compromise decree dated 13.03.1993 was barely Rs. 4 lakhs with 24 per cent interest per annum is concerned, considering the fact that no material has been placed to substantiate the said claim, we are not inclined to delve further on this.

28. For all the aforementioned reasons, all the original side appeals

are dismissed. Consequently, all the connected CMPs are closed with liberty to the parties to re-apply, if required, after the NCLT decides the IBC proceedings one way or the other. Considering the facts and circumstances, there shall be no order as to costs. Needless to mention that the original title documents shall be held in *custodia legis* subject to further orders in the E.P. No. 194 of 2004.
