

(2014) 11 SC CK 0047

In the Supreme Court Of India

Case No : Criminal Appeal Nos. 2357-2365 of 2014 (Arising out of S.L.P. (Crl.) Nos. 2479-2487 of 2009)

E. Bapanaiah

APPELLANT

Vs

K.S. Raju

RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

Companies Act, 1956 — Section 10, 10F, 111, 58A, 58A(10)
Constitution of India, 1950 — Article 136, 142, 215, 235
Contempt of Courts Act, 1971 — Section 10, 12, 12(4)
Reserve Bank of India Act, 1934 — Section 45QA
Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Section 9A

Citation : (2014) 87 ALLCC 872 : (2015) 1 ALT(Cri) 460 : (2014) 4 BC 644 : (2015) 124 CLA 445 : (2015) 191 CompCas 246 : (2015) CriLJ 567 : (2015) 2 JCC 898 : (2015) 1 JLJR 187 : (2015) 1 PLJR 325 : (2014) 4 RCR(Civil) 998 : (2014) 4 RCR(Criminal) 914 : (2014) 12 SC

Hon'ble Judges : Vikramajit Sen, J; Prafulla C. Pant, J

Bench : Division Bench

Advocate : B. Kant Rao, Kashyap and K. Sarada Devi, Advocates for the Appellant; C.A. Sundaram, Sr. Adv., Annam D.N. Rao, A. Venkatesh and A. Subba Rao, Advocates for the Respondent

Final Decision : Disposed Of

Judgement

Prafulla C. Pant, J.—Leave granted.

2. These appeals are directed against judgment and order dated 22.8.2008 passed by the High Court of Judicature, Andhra Pradesh, in Contempt Appeal Nos. 3, 4, 5, 6, 7, 8, 9, 10 and 11 of 2007 whereby said Court has allowed all the Contempt Appeals setting aside the order dated 3.8.2007 passed in Contempt Case No. 915 of 2002 wherein K.S. Raju, Promoter Director of M/s. Nagarjuna Finance Limited, Hyderabad, and its other directors were convicted Under Section 12 of Contempt of Courts Act, 1971, and each one of them was sentenced to suffer simple imprisonment for a period of six months and were further directed

to pay fine of Rs. 2,000/- each.

3. At the outset, we have no hesitation to observe that the impugned order does not require interference to the extent the same is passed in Contempt Appeal No. 4 of 2007 filed by Minoo R. Shroof, Contempt Appeal No. 5 of 2007 filed by Nimesh N. Kampani, Contempt Appeal No. 6 of 2007 filed by C.D. Menon, Contempt Appeal No. 7 of 2007 filed by A.P. Kurian, Contempt Appeal No. 8 of 2007 filed by Sridhar Chary, Contempt Appeal No. 9 of 2007 filed by G.S. Raju, Contempt Appeal No. 10 of 2007 filed by P.K. Madhav, and Contempt Appeal No. 11 of 2007 filed by L.V.V. Iyyer, which were allowed for the reason that in the Contempt Case No. 915 of 2002 they were not the Respondents against whom contempt case was filed. There were only three Respondents, namely, K.S. Raju, N. Selvaraj and M/s. Nagarjuna Finance Limited through its Managing Director, against whom contempt petition was filed Under Section 12 read with Section 10 of Contempt of Courts Act, 1971 by E. Bapanaiah (present Appellant) before the High Court. Other eight directors had no opportunity to defend themselves before the conviction was recorded by the learned Single Judge in its concluding paragraph 134 of the judgment in the aforementioned Contempt Case No. 915 of 2002.

4. It is only in respect of conviction of K.S. Raju, Promoter Director of Nagarjuna Finance Limited (for short "NFL") which requires in-depth examination as to whether the Division Bench of the High Court has rightly allowed the Contempt Appeal (No. 3 of 2007) arising out of Contempt Case No. 915 of 2002, or not.

5. Brief facts of the case are that the present Appellant, E. Bapanaiah, (one of the depositors who made deposits with NFL) filed the contempt petition Under Section 12 read with Section 10 of the Contempt of Courts Act, 1971 for the alleged wilful disobedience of order dated 29.2.2000 and one dated 21.8.2001 passed by Company Law Board, Southern Region Bench, and for breach of undertakings/affidavits, including one filed by K.S. Raju (Promoter Director of NFL) before CLB and one given in Company Appeal No. 7 of 2001. It is stated by the present Appellant that the Respondent, K.S. Raju, was Promoter Director of M/s. Nagarjuna Finance Limited, Hyderabad (in short "NFL"). The said company, through its Directors, issued advertisement inviting deposits promising good returns on the deposits with attractive interest thereon, and collected the huge sum from the public. The present Appellant deposited Rs. 40,00,000/- (Rs. forty lakhs) hoping that the same would multiply to double within 45 months as projected in the advertisement. The said amount was deposited in eight fixed deposits of Rs. .5,00,000/- (Rs. five lakhs) each for a period of 45 months on 20.7.1997 and was due for repayment on maturity on 28.4.2001. However, when the NFL failed to re-pay the sum to the depositors, an application (CP No. 35 of 2000) was filed Under Section 58-A of the Companies Act, 1956 before the Company Law Board, Southern Region Bench, for framing the scheme of repayment of deposits in instalments within a period of 48 months. The Company Law Board (CLB), exercising its suo motu powers, allowed the time to NFL on the

request of its directors to approve the scheme of repayment. During the pendency of such application the CLB ordered the Directors, including the Promoter Director K.S. Raju, to file affidavits giving undertaking to the CLB that they would abide by the scheme and pay off the amount due to depositors. On the assurance as given in the undertakings/affidavits filed by K.S. Raju, Promoter Director, and other Directors separately, the CLB passed order dated 29.2.2000. But the Promoter Director and its group companies filed Company Appeal Nos. 9 of 2001 and 7 of 2001 against the said order dated 29.2.2000 passed in CP No. 35 of 2000. In said appeals, on behalf of the Company an undertaking was given to pay half of first year's entitlement of the present Appellant by 20.4.2002. However, no amount was paid. As such, the contempt petition was filed by the present Appellant before the High Court for violation of the orders of the Company Law Board.

6. According to the Appellant, after the scheme was approved, K.S. Raju, Promoter Director of NFL, started pleading that there was change in the management of NFL, and sought to be relieved from his liability as the Promoter Director of NFL, its group companies and from the undertaking given by him to the CLB. The CLB declined to relieve the Promoter Director K.S. Raju from the undertaking given by him and it was directed that he should make the repayment as per the repayment scheme. The Company Appeals were dismissed by the High Court on 3.1.2002. NFL and its Promoter Director failed to comply with the order of the Company Law Board even after dismissal of the Company Appeals. K.S. Raju, the then Promoter Director, was responsible for issuance of the advertisement inviting deposits from the public and failed to repay the deposits as per the undertaking given by him on behalf of the Company. It is further alleged by the present Appellant in the Contempt Petition before the High Court that K.S. Raju kept on evading his liability, and attempted to shirk the responsibility by taking plea that he had resigned from the directorship.

7. A counter affidavit was filed on behalf of K.S. Raju, Promoter Director of NFL, in February, 2003 before the High Court which discloses that the said Respondent disputed and denied the averments made in the Contempt Petition. He pleaded that he had all respect for the Court and had no intention to commit the contempt of the court. He further pleaded that long back he had left to function as Managing Director of NFL. It is further stated by him that he is neither in a position to exercise any control over the Company nor responsible to make repayment of the deposits made in favour of NFL. It was further submitted by him before the learned single Judge of the High Court that in the order dated 29.2.2000 passed by the CLB, the Board did not rely on the assurance or undertaking given by the parties. Only the Managing Director was directed to file the undertaking, as such the undertaking/affidavit given by the Respondent K.S. Raju was not the basis of the order dated 29.2.2000. As such it was contended that there was no contempt of CLB or the Court. It was further pleaded that an agreement was entered into between one M/s. Mahalakshmi Factorial Services Limited (for short "MFSL") and NFL whereby the control of NFL was handed over

to MFSL, and N. Selvaraj (Respondent No. 2 in the Contempt Petition) was nominated as the Chief Executive Officer to look after the affairs of NFL. Lastly, it was pleaded by Respondent K.S. Raju that assuming that he had given undertaking/affidavit on which CLB passed the order said to have been disobeyed, there is no personal liability on said Respondent to repay the amount in question.

8. In the counter affidavits filed on behalf of NFL (through G. Venkatapathi, Executive Director) and N. Selvaraj (Respondent No. 2 in the Contempt Petition) it was disclosed that Sridhar Chary, Managing Director, functioning for over a decade of NFL, was none else than the nominee of K.S. Raju, Promoter Director. It was also pleaded on behalf of NFL that out of Paid-up Capital of Rs. .26.32 crores group companies were holding Rs. .16.16 crores, i.e., approximately 61%. It was also stated by NFL in its counter affidavit before the High Court that Under Articles 104 and 140 of the Articles of Association K.S. Raju had power to appoint the Managing Director and other three Directors as his nominees. N. Selvaraj (Respondent No. 2 in the Contempt petition) denied that he was nominee of MFSL. He further pleaded that there was no change in the management of NFL during his tenure as Managing Director, and he further told that entire control remained with K.S. Raju and his nominees. The Executive Director, G. Venkatapathi of NFL, filed additional counter affidavit in which it is clearly stated that the CLB passed the order on the basis of the undertakings and affidavits filed by the Promoter Director and the group companies. The counter affidavits further revealed that on special audit made in April, 2002, several irregularities were found to have been committed by the Management resulting in failure of recoveries in respect of loans advanced to various companies who were not traceable on the addresses given.

9. An additional counter affidavit was filed by K.S. Raju, Promoter Director, who was contesting the contempt petition with other two Respondents, in which he alleged that the representatives of MFSL have engineered and secured the audit report to save the Directors of said company.

10. Learned Single Judge, after hearing the parties at length, came to the conclusion that NFL and its Promoter Director, K.S. Raju, are guilty of contempt of court. Paragraphs 134 and 135 of the judgment and order dated 3.8.2007 passed by the learned Single Judge read as under:

134. The 1st and 3rd Respondents/contemnors are found guilty and liable to be convicted Under Section 12 of the Contempt of Courts Act. Accordingly, the 1st Respondent as well as the other directors of the 3rd Respondent company are convicted and sentenced to suffer simple imprisonment for a period of six months, together with imposition of fine of Rs. 2,000/- (Rupees two thousand only). The 1st Respondent as well as other directors of the 3rd Respondent shall be detained in Civil Prison for the period of imprisonment as ordered above.

135. Accordingly, C.C. is allowed.

11. Aggrieved by the order dated 3.8.2007 passed by the learned single Judge in Contempt Case No. 915 of 2002 Respondent K.S. Raju, Promoter Director, appears to have filed Contempt Appeal No. 3 of 2007 before the Division Bench of the High Court. His appeal was taken up along with the appeals of the other Directors and disposed of vide impugned order dated 22.8.2008 whereby the appeals of all the Directors, including that of K.S. Raju, were allowed. Hence these appeals before us by the depositor E. Bapanaiah.

(We have already observed in the beginning of this judgment that since the "other Directors" were neither impleaded by name nor had an opportunity to defend themselves, as such setting aside of their conviction and sentence by the Division Bench of the High Court in their appeals, requires no interference. As such further discussion is confined to the issue of allowing of K.S. Raju by the Division Bench of the High Court.)

12. We have heard learned Counsel for the parties at length and perused the papers on record.

13. It is not disputed that E. Bapanaiah made deposit of Rs. .40,00,000/- (Rs. forty lakhs) in eight FDRs each of Rs. .5,00,000/- (Rs. five lakhs) with NFL in response to the advertisement made by the said Company. It is also not disputed that Respondent K.S. Raju was the Promoter Director of NFL, Hyderabad. Not only this, the filing of the undertaking/affidavit dated 14.2.2000 before the Company Law Board, Southern Region Bench is not denied by the Respondent K.S. Raju. The said undertaking/affidavit reads as under:

BEFORE THE COMPANY LAW BOARD SOUTHERN BENCH AT CHENNAI

Company Petition No. NAG6-33/45QA/SRB/99

In the matter of the Companies Act, 1956 Section 58A(9)

In the matter of the Reserve Bank of India Act, 1934, Section 45QA

AND

In the matter of Nagarjuna Finance Limited, Punjagutta, Hyderabad ... Petitioner

AFFIDAVIT

I, K.S. Raju, s/o Late Shri K.V.K. Raju, aged 50 years, residing at, "Digvijayam", Plot No. 933A, Road No. 47, Jubilee Hills, Hyderabad-500033, do hereby solemnly affirm and state as follows:

I am the promoter director of Nagarjuna Finance Limited, the Petitioner in the Company Petition No. NAG6-33/45 QA/SRB/99.

I as such hereby give assurance that Nagarjuna Finance Limited (NFL) shall make repayment of deposits as per the approved scheme by the Hon"ble Company Law Board in the above petition for deferment of repayment of deposits. It is further reiterated that all steps shall be taken to cause NFL to

comply with aforesaid repayment schedule.

The statements made are true to my knowledge and I solemnly affirm that this declaration is true and that no part of it is false.

Place: Hyderabad Date: February 14, 2000

Sd/- K.S. Raju Deponent.

14. Now we have to examine as to whether the defences taken by K.S. Raju, Promoter Director, that he committed no wilful disobedience of the order of the Company Law Board are acceptable or not. It is relevant to mention here that it is not the defence of K.S. Raju that repayment has been made by him or by NFL to the present Appellant E. Bapanaiah (depositor). That being so, we have to see whether there was justification on the part of K.S. Raju, Promoter Director, and his Company (NFL) in not making repayment as per the scheme approved by the CLB, as directed by said authority.

15. Learned Counsel for the Respondent K.S. Raju argued that in the undertaking given by K.S. Raju, only this much has been stated that the Company will make the payment, as such it is not the personal liability of said Respondent. But needless to say that Company functions through its directors, in its operations. Company is not such person which can be sent to jail. It is the director controlling the affairs of Company through whom it has committed the disobedience, if any, and as such, such director has to suffer the consequences of disobedience if it is wilful. We have already discussed above that from the affidavits filed before the High Court, it is clear that K.S. Raju was not only the Promoter Director of NFL, but the Managing Director of said Company, working for a decade, was his nominee, and practically all the powers to run the NFL vested with K.S. Raju, the Promoter Director, and his nominees, whom he appointed Under Articles 104 and 140 of Articles of Association.

16. In our opinion, having considered the submissions of learned Counsel for K.S. Raju, Promoter Director, and considering his role in the operation of the Company, as discussed above, the Division Bench of the High Court erred in law in holding that he was not guilty of wilful disobedience of the order of the CLB. It is pertinent to mention here that after giving undertaking dated 14.2.2000, Respondent K.S. Raju submitted his resignation in September, 2000, which clearly reflects that the same was done in order to save himself and his company, from making the repayment directed to be made by the CLB, and thereby dishonestly made attempt in not making repayment to the depositor E. Bapanaiah.

17. Sub-section (4) of Section 12 of the Contempt of Courts Act, 1971 provides that "where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be

deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each of such person". It further provides that "nothing contained in this Sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission".

18. It is not the case of Respondent K.S. Raju, Promoter Director, who gave undertaking that he had no knowledge of the order of the CLB, or that he made any attempt to prevent the disobedience of the order.

19. Though it is contended by Mr. C.A. Sundaram, learned senior counsel for K.S. Raju that liability to make repayment to the depositors stood transferred to MFSL with whom NFL entered into an agreement after the order dated 29.2.2000 passed, but copy of the order dated 19.9.2000 passed by the CLB (Annexure P-4) on the record discloses that the liability continued with K.S. Raju and group of his companies, as mentioned in direction No. 2 of the order which reads as under:

Heard Shri C.R. Murali, Practising Chartered Accountant and Authorized representative of the company as well as Shri L.V.V. Iyer, Director of the company. The company has made payment of Rs. 73 lakhs to the depositors between 17.7.2000 and 19.9.2000. The company has considered all the 430 hardship cases; attended to complaints to nine depositors received at the Bench Office and disposed of 1424 complaints received at his office by taking appropriate action as per the Scheme approved by the CLB. According to Shri Iyer, the company finds it difficult to make payment to the depositors in accordance with the scheme of account of the poor rate of recovery of receivables and for want of the required additional expertise and infrastructure for recovery of the monies due to the company. Hence, the management of the company has entered into a strategic alliance with M/s. Mahalakshmi Factoring Services Limited, Bombay (MFSL), which would provide necessary infrastructure and skills to accelerate the process of realization of the receivables to make repayment to the depositors. Accordingly, additional professionals have been inducted into the Board of the Company to strengthen the recovery and disbursement mechanism. MFSL has agreed to resume the responsibility in realizing the dues of the company. MFSL is involved in the management of the company, Shri N. Selvaraju, President of the Company and Shri C. Muthuswamy, Director of MFSL have filed affidavits undertaking to discharge the obligations towards the depositors in terms of the scheme approved by the CLB.

Taking into consideration the facts and circumstances of the case, submissions made on behalf of the company, it is ordered as under:

1. The Company shall-

i. make payment to the depositors in every category as per the Scheme approved by the CLB;

- ii. furnish additional particulars of the cases where payments are due to the depositors and the actual payment made by the company in such cases;
- iii. attend to the complaints of nine depositors received at the bench office and report compliance;

2. The affidavits filed by:

- a) Shri K.S. Raju, Promoter Director of the Company;
- b) M/s. New India Finance Ltd.
- c) M/s. Chinnar Securities Pvt. Ltd.
- d) M/s. Nagarjuna Housing Development Finance Ltd.
- e) M/s. Nagarjuna Engineering & Construction Company Pvt. Ltd.
- f) M/s. Nagarjuna Holdings Private Limited
- g) M/s. Paschim Holdings Pvt. Ltd.
- h) M/s. K.S. Raju Associates & Holdings Pvt. Ltd.
- i) M/s. Corporate Securities & Holdings Pvt. Ltd.
- j) M/s. K.S. Raju Associates and Estates Pvt. Ltd.
- k) M/s. K.R.R. Holdings Pvt. Ltd.; and
- l) Shri Sridhar Chari, Managing Director of the company assuring repayment of deposits by the company as per the scheme approved by the CLB shall remain in force till discharging the obligations in terms of the order dated 29.2.2000 of the CLB.

3. The arrangements made between the company and MFSL shall not be of any consequence in relation to the repayment schedule approved by the CLB. The company, its promoter Director and Group Holding Companies shall continue to be responsible for due compliance of the order stated supra.

4. The progress made in implementation of the scheme will be reviewed on 14.11.2000 at 10.30 p.m.

20. When an application Under Section 634A of the Companies Act, 1956 was moved by the present Appellant before the CLB, the Board, by speaking order dated 21.8.2001, after considering rival submissions, observed in paragraphs 6 and 7 as under:

6. In regard to the plea of Shri Murali that the provisions of Section 634A cannot be invoked by the applicant, it may be observed that this Section is explicit which runs as follows:

Section 634A: Any order made by the Company Law Board may be enforced by that Board in the same manner as if it were a decree made by a Court in a suit

pending therein, and it shall be lawful for that Board to send, in the case of its inability to execute such order, to the Court within the local limits of whose jurisdiction,-

(a) in the case of an order against a company, the registered office of the company is situated, or

(b) in the case of an order against any other person, the person concerned voluntarily resides, or carries on business or personally works for gain.

Section 634A is clear that as in the case of a court, the orders of the Company Law Board can be enforced by it in the same manner as if it were a decree made by a court. This section further permits the CLB, in case of its liability to execute the order, to seek the assistance of the court having competent jurisdiction for execution of its order. In view of this there is no force in the argument of Shri Murali.

7. Taking into consideration the facts and circumstances of the case, the opportunity afforded to the Company and the legal position stated hereinabove, I hereby order that the Company shall pay 30 per cent of the deposit amount together with interest at the contracted rate upto the date of maturity and thereafter till the date of payment at the rate of 14.5 per cent within 30 days of receipt of this order, failing which the applicant is at liberty to move the Court, within whose jurisdiction the registered office of the Company is situated to execute the order of the CLB.

21. The above order appears to have been challenged in Company Appeal Nos. 7 & 9 of 2001 by both the parties-depositor E. Bapanaiah and NFL, respectively. Both these company appeals were heard and disposed of by order dated 3.1.2002 by the High Court. The concluding paragraphs of the common order passed by the High Court in the Company Appeals, are quoted below:

In the circumstances, the submission of the learned Counsel for the Respondent company that it is entitled to wait till the month of April 2002 cannot be accepted and the Respondent company is therefore bound to make the payments every month as per the Clause 11(f) read with Clause 12 (iv) of the scheme.

Coming to the second submission made by the learned Counsel for the Respondent company, though I do not propose to go into the larger question whether the nature of the power exercised Under Section 634A of the Companies Act is in the nature of the power exercised as an executing court, but I must say the impugned order is not in conformity with the original order of the Company Law Board dated 29th February, 2000. But, a combined reading of Clause 1(i) and 12(iv) of the scheme, the Respondent company is bound to pay 30% of the amount due to the Petitioner within 1 year from the date of the maturity (28.4.2001) spread over 12 equal monthly instalments.

Coming to the submission made by the learned Counsel for the depositor, I do not see any reason why he should have any grievance against the impugned

order. It is open for him as indicated by the Company Law Board in the impugned order to move the appropriate court for the execution of the order of the Company Law Board dated 29th February 2000.

In the circumstances, both the company appeals are dismissed.

22. However, after above order was passed by the High Court, a proviso is added by Legislature to Section 634A of the Companies Act, 1956, which reads as under:

Provided that the provision of this section shall not apply on and after commencement of the Companies (Second Amendment) Act, 2002.

As such, on the date (3.8.2007) order passed by learned single Judge, the depositor had no option of getting executed the order of CLB as a decree passed in a suit, and present Appellant could not have been asked to avail remedy Under Section 634A of the Companies Act.

23. No doubt, a company which defaults in repayment of deposit can be dealt with as per provisions contained in Sub-sections (9) and (10) of Section 58A of the Companies Act, 1956, which read as under:

(9) Where a company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit the Tribunal may, if it is satisfied, either on its own motion or on the application of the depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest direct, by order, the company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:

Provided that the Tribunal may before making any order under this Sub-section give a reasonable opportunity of being heard to the company and the other persons interested in the matter.

(10) Whoever fails to comply with any order made by the Tribunal Under Sub-section (9) shall be punishable with imprisonment which may extend to three years and shall also be liable to a fine of not less than rupees five hundred for every day during which such non-compliance continues.

(Expression "Tribunal" was substituted in the above mentioned provisions vide Act No. 11 of 2003 in place of words "Company Law Board")

24. During arguments it is stated before us by the learned Counsel for the parties that the prosecution was also launched against the Respondent K.S. Raju but he was discharged. However, Special Leave Petition is said to have been pending in said matter. We are of the view that the depositors cannot be left without remedy merely for the reason that prosecution could have been launched against the company.

25. Powers of the High Courts to punish for contempt including the powers to

punish for contempt of itself flow from Article 215 of the Constitution of India. Section 10 of the Contempt of Courts Act, 1971 empowers the High Courts to punish contempts of its subordinate courts which reads as under:

10. Power of High Court to punish contempts of subordinate courts.-Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860).

26. As to the question whether CLB is a court subordinate to High Court or not, in *Canara Bank v. Nuclear Power Corporation of India Ltd. and Ors.* 1975 Supp (3) SCC 81, this Court has held that CLB in the proceedings before it Under Section 111 of the Companies Act since performs curial functions, hence it is a "court" within the meaning of Section 9-A of Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. In *Mohammedbhikhan Hussainbhai and etc. Vs. The Manager, Chandrabhanu Cinema and Others etc.,* , the Gujarat High Court has taken the view that if the High Court is an appellate court of some authority under a statute, such authority can be deemed to be a subordinate court within the ambit of Contempt of Courts Act, 1971 and, therefore, the High Court can exercise powers of dealing with contempt of such authority provided the act of contempt was not punishable for offences under Indian Penal Code. In *N. Venkata Swamy Naidu Vs. Sri Surya Teja Constructions Pvt. Ltd. and Others,* , High Court of Andhra Pradesh observed as under:

28. Under Section 10F of the Companies Act 1956, any person aggrieved by any decision or order of the Company Law Board may file an appeal to the High Court, within sixty days from the date of communication of the decision or order of the Company Law Board, on any question of law arising out of such an order. The Company Law Board is thus judicially subordinate to the High Court and, even if its administrative control is held not to vest in the High Court Under Article 235 of the Constitution of India, it would nonetheless be a Court subordinate to the High Court Under Section 10 of the Contempt of Courts Act.

27. The present case relates to a civil contempt wherein an undertaking given to Company Law Board is breached. Normally, the general provisions made under the Contempt of Courts Act are not invoked by the High Courts for forcing a party to obey orders passed by its subordinate courts for the simple reason that there are provisions contained in Code of Civil Procedure, 1908 to get executed its orders and decrees. It is settled principle of law that where there are special law and general law, the provisions of special law would prevail over general law. As such, in normal circumstances a decree holder cannot take recourse of Contempt of Courts Act else it is sure to throw open a floodgate of litigation under contempt jurisdiction. It is not the object of the Contempt of Courts Act to

make decree holders rush to the High Courts simply for the reason that the decree passed by the subordinate court is not obeyed. However, there is no such procedure prescribed to execute order of CLB particularly after proviso is added to Section 634A of the Companies Act, 1956, vide Companies (Second Amendment) Act, 2002.

28. Therefore, having considered submissions of learned Counsel for the parties, and material on record, and further considering the relevant provisions of law and the cases referred above, and exercising powers Under Article 136 read with Article 142 of the Constitution, we think it just and proper to interfere with the order passed by the Division Bench of the High Court whereby the Division Bench erroneously set aside the finding and sentence awarded by the learned single Judge against K.S. Raju. In our opinion, Respondent K.S. Raju wilfully disobeyed the order of CLB and breached the undertaking given to CLB, and thereby committed Contempt of Court subordinate to High Court as such the Division Bench of the High Court has erred in law in allowing the Contempt Appeal No. 3 of 2007 filed by K.S. Raju and setting aside his conviction and sentence, recorded against him by the learned Single Judge in Contempt Case No. 915 of 2002.

29. For the reasons, as discussed above, we allow the present appeal filed against Respondent K.S. Raju, and set aside the impugned order of the Division Bench of High Court. Accordingly, order dated 3.8.2007, passed in Contempt Case No. 915 of 2002, to the extent of conviction and sentence recorded against K.S. Raju (Respondent) stands restored. However, exercising powers Under Article 142 of the Constitution of India, to do complete justice between the parties, we allow sixty days time to Respondent K.S. Raju, with effect from pronouncement of this judgment to repay the entire amount to the depositor/Appellant as directed by CLB, and if within the said period of sixty days payment is not made to the depositor/Appellant, Respondent K.S. Raju shall be taken into custody to serve out sentence as recorded against him by the learned Single Judge vide order dated 3.8.2007 in Contempt Case No. 915 of 2002. If the amount is paid to the present Appellant as directed by this Court within sixty days, the sentence shall be reduced to the extent of fine only. Rest of the appeals filed by the depositor in respect of all other directors, who were not impleaded by name before the High Court in the contempt Case No. 915 of 2002, and acquitted by the impugned order passed by Division Bench of High Court, are dismissed.