2023INSC805

**REPORTABLE**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4955 OF 2022

BALWANTBHAI SOMABHAI BHANDARI .... APPELLANT(S)

VERSUS

HIRALAL SOMABHAI CONTRACTOR (DECEASED) REP. BY LRS. & ORS. ....RESPONDENT(S)

WITH

CIVIL APPEAL NO. 5041 OF 2022

AND

CIVIL APPEAL NO. 4869 OF 2023

**J U D G M E N T**

**J. B. PARDIWALA, J.:**

*"When we speak of the 'rule of law' as a characteristic of our country, (we mean) not only that with us no man is above the law, but (what is a different thing) that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. Respect for law and its institutions is the only*

*assurance that can hold a pluralist nation together. Any attempt to achieve solutions to controversies, however, ideologically and emotionally surcharged, not on the basis of law and through judicial institutions, but on the strength of numbers will subvert the fundamental values of our chosen political organisation. It will demolish public faith in the accepted constitutional institutions and weaken people's resolve to solve issues by peaceful means. It will destroy respect for the Rule of Law and the authority of courts and seek to place individual authority and strength of numbers above the wisdom of law."*

*Mohd. Aslam v. Union of India,*
*(1994) 6 SCC 442.*

1. Since the issues raised in all the captioned appeals are the same; the parties are also same and the challenge is also to the self-same judgment passed by the High Court of Gujarat those were taken up for hearing analogously and are being disposed of by this common judgment and order.

2. There are in all three appeals before us.

3. The Civil Appeal No. 4955 of 2022 and Civil Appeal No. 5041 of 2022 are statutory appeals under Section 19(1) of the Contempt of Courts Act, 1971 (for short, 'the Act 1971') filed by the contemnors who stood punished by the High Court whereas the Civil Appeal No. 4869 of 2023 is an appeal filed at the instance of the beneficiaries of contemptuous transactions with the

permission of this Court. In other words, the appellants of Civil Appeal No. 4869 of 2023 are the purchasers of the suit properties from the contemnors. The beneficiaries of the contemptuous transactions are also before this Court as the High Court while holding the appellants of the two statutory appeals referred to above guilty of contempt for their deliberate and wilful disobedience of the undertaking given to the court also declared the sale transactions to be void.

**STATUTORY APPEALS UNDER SECTION 19 OF THE CONTEMPT OF COURTS ACT, 1971**

4. The appellants of the two statutory appeals have been held guilty of contempt by the High Court of Gujarat for their deliberate and wilful disobedience of the undertaking given to the concerned Court, which came to be recorded *vide* order dated 14.10.2015 passed in the Special Civil Application No. 16266 of 2013. The impugned order passed by the High Court holding the appellants guilty of contempt dated 13.07.2022 came to be passed in the Misc. Civil Application No.121 of 2018 filed by the respondents herein in the Special Civil Application No. 16266 of 2013.

5. The operative part of the impugned order passed by the High Court reads thus:

"*ORDER*

(i) *We hold that accused Nos. 3.1 to 3.4 and accused No. 4 guilty of Contempt for their deliberate and wilful disobedience of the undertaking given to this Court which came to be recorded by order dated 14.10.2015 passed in Special Civil Application No. 16266 of 2013.*

(ii) *We impose cost of Rs. 1,00,000/- (Rupees One Lakh only) on accused Nos.3.1 and 3.2 in lieu of sentencing them to imprisonment and in addition direct them to pay fine of Rs. 2,000/- (Rupees Two Thousand only) each and the amount of fine shall be paid within a period of three weeks from today and in default thereof they shall undergo simple imprisonment for a period of two (2) months.*

(iii) *We sentence accused Nos. 3.3, 3.4 and accused No. 4 to undergo simple imprisonment for a period of two months and pay fine of Rs. 2,000/- (Rupees Two Thousand only) each and in default to undergo simple imprisonment for a period of two (2) months.*

(iv) *It is declared that following sale deeds executed by accused Nos. 3.1 to 3.4 through accused no. 4 as power of attorney holder in favour of purchaser as non est and it is hereby ordered to be cancelled, quashed and set aside and respondents are directed to restore the position which was prevailing prior to the execution of the aforesaid sale deeds which was prevailing at the time of the order dated 14.10.2015 passed in Special Civil Application No. 16266 of 2013.*

*The said sale deeds are as follows: -*

***LIST OF SALE DEEDS***

| *Sr. No.* | *Sale Deed Date* | *Plot Area* | *Plot No.* | *Considera tion* | *Name of the purchaser* |
|---|---|---|---|---|---|

| | | | | | |
|---|---|---|---|---|---|
| *1* | *9-11-15* | *118.48* | *79* | *103115/-* | *Jagdish Chug* |
| *2* | *9-11-15* | *118.48* | *80* | *103115/-* | *Rama Rani* |
| *3* | *19-2-16* | *118.48* | *119A* | *8500/-* | *Prakash Kundu* |
| *4* | *19-2-16* | *118.48* | *199B* | *8500/-* | *Prakash Kundu* |
| *5* | *19-2-16* | *118.48* | *200* | *8500/-* | *Prakash Kundu* |
| *6* | *15-3-16* | *118.48* | *122B (56)* | *8500/-* | *Mafatlal Kalidas HUF* |
| *7* | *15-3-16* | *118.48* | *122C (55)* | *8500/-* | *Mafatlal Kalidas HUF* |
| *8* | *17-5-17* | *152* | *27* | *8500/-* | *Sudesh Dingra* |
| *9* | *17-5-17* | *152* | *27A* | *8500/-* | *Shilpi Ravi* |
| *10* | *17-5-17* | *152* | *28* | *8500/-* | *Roshan Lal* |
| *11* | *25-7-17* | *118.48* | *176* | *8500/-* | *Sami Kumar* |
| | | | | *2,82,730/-* | |

| | | | | | |
|---|---|---|---|---|---|
| *3 Sale deeds done /added afterwards* | | | | | |
| *12* | *30-10-18* | *19.26* | *Shop No. 7* | *49000/-* | *Trilokram Mali* |
| *13.* | *25-7-17* | *118.48* | *175* | *8500/-* | *Yogesh kumar Patel* |
| ***Total*** | | | | ***3,40,230/-*** | |

*The Jurisdictional Sub-Registrar/s be informed to make necessary entries in the records accordingly.*

*(v) It would be open for the purchasers to recover the amount of sale consideration from the accused Nos. 3.1 to 3.4 and accused no. 4.*

*(vi) The present Misc. Civil Application stands allowed with costs quantified at Rs. 1,00,000/- payable jointly and severally by accused nos. 3.1 to 3.4 and accused no. 4 to the applicants towards the cost of the present proceedings.*

*64. After pronouncement of the above order, Mr. Mihir Joshi, learned Senior Advocate seeks for stay of operation of this judgment for a period of four weeks. Having regard to the facts of above case, we are of the considered view that it would be just and necessary to stay this order for a period of four weeks from today. Accordingly, we grant stay of this judgment for a period of four weeks from today subject to accused Nos. 3.1 to 3.4 and accused No. 4 depositing of fine amount and costs as ordered hereinabove before this Court within two weeks from today."*

6. It all started with an order passed by a learned Single Judge of the High Court dated 14.10.2015 in the Civil Appeal No. 11412 of 2015 in the Special

Civil Application No. 16266 of 2013 referred to above. The order dated 14.10.2015 referred to above reads thus:

> *"It is stated at the Bar by Mr. Sanjanwala learned senior advocate, on instructions from his clients, that the property qua the subject matter of this entry and the petition, shall not be sold out till the main petition is heard and decided, which satisfies the conscious of Mr. Mihir Thakor learned senior advocate appearing with Mr. Prabhav Mehta learned advocate and he states that he may not press the Letters Patent Appeal, on instructions. Hence, this Civil Application stands disposed of accordingly. It goes without saying that the order was passed adinvitum/by consent of the learned advocates."*
>
> (Emphasis supplied)

7. Thus, it appears that a statement was made by the learned counsel appearing for the contemnors before the High Court in the form of an undertaking and that too upon instructions of the clients that the subject matter i.e., the property would not be sold till the main petition i.e., the Special Civil Application No. 16266 of 2013 is finally disposed of.

8. On the strength of the aforesaid order one Letters Patent Appeal (LPA) filed by the respondents herein against an interim order also came to be disposed of *vide* order dated 21.10.2015, which reads thus:

> *"Mr. Prabhav Mehta learned advocate for the applicants states that in view of the order dated 14 October, 2015 passed by learned single Judge in Civil Application No. 11412 of 2015 in SCA No. 16266 of 2013, wherein the statement is recorded that the property in question qua the subject matter of this entry shall not be sold until the main petition is heard and decided, he seeks permission to withdraw the proceedings. Permission is granted. Accordingly, the Civil Application No. 10627 of 2015 and LPA(Stamp) No. 1195 of*

*2015 in SCA No. 16266 of 2013 with the Civil Application (Stamp) No. 10539 of 2015 shall stand disposed of as withdrawn."*
(Emphasis supplied)

9. It appears that despite having undertaken that the property qua the subject matter of the disputed entry would not be disposed of till the final disposal of the main matter; the appellants herein proceeded to execute as many as 13 sale deeds in favour of different parties and thereby, wilfully disobeyed the order dated 14.10.2015 passed by the High Court referred to above.

10. In such circumstances referred to above, the respondents herein preferred the Misc. Civil Application (Contempt) No. 121 of 2018 and initiated contempt proceedings against the appellants herein. The High Court framed the following points for its consideration:

> *"(i) Whether respondent Nos. 3.1 to 3.4 and 4th respondent have willfully and deliberately disobeyed the order dated 14.10.2015 passed in Civil Application (for direction) No.11412 of 2015 in Special Civil Application No.16266 of 2013?*
>
> *(ii) Whether the contempt proceedings are liable to be dismissed on the ground of delay as contended by the respondents or the contempt application is liable to be dismissed on the ground of limitation prescribed under Section 20 of the Contempt of Courts Act, 1971?*
>
> *(iii) What order?"*

**ADJUDICATION BY HIGH COURT:**

11. We shall give a fair idea as to how the High Court dealt with the contempt proceedings. The High Court first took notice of the various sale

deeds that came to be executed by the appellants herein between 09.11.2015 and 30.10.2018, which were in wilful disobedience of the undertaking given to the High Court. The details are as under:

| *No.* | *Index Page No.* | *Name of the Party* | *Plot No.* | *Plot area* | *Consid eration* | *Conside ration as per Index Value* | *Sale Deed date* |
|---|---|---|---|---|---|---|---|
| *1* | *157* | *Jagdish Chug* | *79* | *118.48* | *103115/-* | *568704/-* | *9-11-15* |
| *2* | *158* | *Rama Rani* | *80* | *118.48* | *103115/-* | *568704/-* | *9-11-15* |
| *3* | *159* | *Prakash Kundu* | *199A* | *118.48* | *8500/-* | *568704/-* | *19-2-16* |
| *4* | *160* | *Prakash Kundu* | *199B* | *118.48* | *8500/-* | *568704/-* | *19-2-16* |
| *5* | *161* | *Prakash Kundu* | *200* | *118.48* | *8500/-* | *568704/-* | *19-2-16* |
| *6* | *162* | *Mafatlal Kalidas HUF* | *122B (56)* | *118.48* | *8500/-* | *568704/-* | *15-3-16* |
| *7* | *163* | *Mafatlal Kalidas HUF* | *122C (55)* | *118.48* | *8500/-* | *568704/-* | *15-3-16* |
| *8* | *164* | *Sudesh Dingra* | *27* | *152* | *8500/-* | *729600/* | *17-5-17* |
| *9* | *165* | *Shilpi Ravi* | *27A* | *152* | *8500/-* | *729600/* | *17-5-17* |
| *10* | *166* | *Roshan Lal* | *28* | *152* | *8500/-* | *729600/* | *17-5-17* |
| *11* | *167* | *Sami Kumar* | *176* | *118.48* | *8500/-* | *568704/-* | *25-7-17* |
| | | | | | *282730/-* | *6738432/-* | |
| *2 Sale deeds done / added afterwards* | | | | | | | |
| *12* | *518* | *Trilokram Mali* | *Shop No. 7* | *19.26* | *49000/-* | *298530/-* | *30-10-18* |
| *13* | *555* | *Yogesh Kumar Patel* | *175* | *118.48* | *8500/-* | *568704/-* | *25-7-17* |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | | | *340230/-* | *7605666/-* | |

12. The High Court, thereafter, in para 27 of its impugned judgment took notice of the affidavit dated 23.01.2019 filed by one of the contemnors. Para 27 reads thus:

> "*27. In fact the 4th respondent in his affidavit dated 28.08.2005 filed in the present proceeding also admits this fact in paragraph 6 which is already extracted herein supra. In fact in the affidavit dated 23.01.2019 filed in the present contempt proceeding, 4th respondent has categorically deposed to the following effect:*
>
> > *"I state that I am the power of attorney holder of other respondents in Misc. Civil Application for contempt. I declare that I had authorised Senior Advocate Shri S.H.Sanjanwala to state before the Hon'ble Court that I will not transfer, sell Survey No.63 and 65 situated at Majura till final disposal of the Special Civil Application No.16266 of 2013."*
> >
> > (Emphasis supplied)

13. In para 28, the High Court observed thus:

> *"28. As to what would be the evidentiary value of the statement made by the learned Senior Advocate pressed into service at earlier point of time in this proceedings has also received the attention of this Court. It came to be observed by this Court on 29.01.2019 to the following effect:*
>
> > *"In the present proceedings, affidavits have been filed by the private respondents wherein unconditional apology is tendered and a categorical statement is made that there is no scope for justification of the action of execution of Sale Deeds after such consent was recorded; namely to maintain status-quo on the subject land. In another affidavit, it is revealed that the respondents have instructed the counsel to make statement on their behalf. Thus, there is no escapement from the action which reveals willful, deliberate breach of undertaking and statement made before the Court in the writ proceedings."*"
> >
> > (Emphasis supplied)

14. In para 31, the High Court proceeded to observe thus:

> *"31. In the instant case it can be noticed that at the behest of 4th respondent, learned Senior Counsel representing the respondent Nos.3.1 to 3.4 and 4th respondent had made a statement in Special Civil Application No.16266 of 2013 while the learned Single Judge was adjudicating Civil Application (for direction) No.11412 of 2015 filed therein and an undertaking came to be given that the property qua the subject matter of entry which was undisputedly relating to Survey Nos.63 and 65 would not be sold and yet the same has been sold by respondent Nos. 3.1 to 3.4 through their power of attorney holder 4th respondent. Had this undertaking not been given obviously respondents in Special Civil Application No.16266 of 2013 who were the appellants in Letters Patent Appeal (Stamp) No.1196 of 2015 would not have withdrawn the appeal as not pressed. It is this undertaking given to this Court on 14.10.2015 which prevented the applicants herein to withdraw the said appeal and it is this solemn assurance given to the Court which per-forced them to withdraw the appeal by recording the statement made by the learned Senior Counsel appearing on behalf of respondent Nos.3.1 to 3.4 and 4th respondent."* (Emphasis supplied)

15. In para 33, the High Court took notice of the fact that the contemnors Nos. 3.1 to 3.4 had not disputed the execution of the power of attorney in favour of the 4th contemnor; they had not denied the execution of the sale deeds; they had not even denied having received the benefit under the sale deeds; and they had also not denied that the power of attorney was not cancelled. The High Court also took notice of the fact that the explanation offered by the contemnors that the sale deeds had to be executed as the sale transactions had already been completed, was an afterthought and lacking *bona fide*.

16. In para 35 of the impugned judgment, the High Court observed that the contemnors had not only violated the undertaking given to the court but had also taken undue advantage unto themselves, namely, the sale consideration having flown from the purchasers to the contemnors. The High Court in this regard observed the following in para 35:

> *"35. In the instant case the contemnors have not only violated the undertaking given to the Court but have also taken undue advantage unto themselves namely the sale consideration has flown from the purchasers to the vendors i.e. the contemnors. Even according to the recitals found in the Sale Deeds referred to in the tabular column hereinabove, it is depicted as Rs.2,82,730/- (in respect of 11 Sale Deeds); in respect of 2 Sale Deeds executed in the year 2017-18, the consideration has been depicted as Rs.3,40,230/-. As per the index value, the consideration amount or proper market value in respect of 11 Sale Deeds would be Rs.67,38,432/-; whereas in respect of 2 Sale Deeds the consideration or proper market value as per index value would be Rs.76,05,666/-. In the reply affidavits filed by contemnors Nos.3.1 to 3.4, there is not even a whisper with regard to consideration amount. They neither contend nor plead that the consideration that has flown under the said Sale Deeds have not been received by them. On the contrary, the affidavit-in-rejoinder filed on behalf of the petitioners against the reply filed by respondent Nos.3.1 to 3.4, it has been specifically contended by the complainants that contemners in order to hoodwink and overreach the process of law, an imaginary plea has been projected by way of defense that "cash" transaction of Rs.8,500/- took place for such sale in the year 2012 wherein no date is mentioned. In fact, the defence put-forth by contemnor No.3.1 to the effect that she is a housewife, has been denied in the rejoinder affidavit filed by applicants by raising a specific plea that in Special Civil Suit No.130 of 1995 filed before the 2nd Additional Senior Civil Judge, Surat, respondent No.4 in the cross-examination has deposed that respondent No.3.1 is engaged in the textile business and she is a Director of M/s. Surat Fabric Cap Company Limited and in the same breath he has deposed that all the members of the family were aware of the order dated 14.10.2015 passed by this Court. Insofar as rejoinder affidavit to*

*the reply affidavit filed by respondent No.3.2, complainants have specifically contended that respondent No.3.2 was very well aware of the order dated 14.10.2015 and same is the statement made in the rejoinder affidavit filed against the reply filed by respondent No.3.3 and 3.4. It is also contended that sale consideration depicted in the Sale Deeds are farce and to overreach the order of the Court less consideration has been reflected as against the real value. To highlight this aspect in paragraph 6(c) the complainants have contended at the relevant point of time the Jantri value of the subject land was Rs.4,800/- per sq.mtr. and the consideration depicted in the Sale Deed is at Rs.8,500/-. It is also stated that consideration for the sale transaction for 118.80 sq. mtrs. of land and for the land sold to the extent of 152.00 sq. mtrs. are similar and hence the complainants contend that respondent No.4 maliciously sold the subject property at under value rate and has caused huge loss to the public exchequer. To highlight the fact that alleged possession certificate which has been relied upon to contend that sale transaction had already been completed way back in the year 2012 when compared to the Sale Deed dated 09.02.2016, it would clearly indicate that survey numbers depicted in both these documents are distinct and different. Hence, contending that the possession receipts executed in favour of Prakash Kundu as well as cash receipts produced on record are forged, bogus and concocted and contrary to the facts, the complainants have sought for the said documents being excluded from the purview of consideration of this Court."*

(Emphasis supplied)

17. In para 36, the High Court took notice of the fact that the contemnors in categorical terms had admitted in their affidavit filed in the proceedings, that they had sold the subject property though fully conversant and aware of the undertaking given by them before the Court that they would not sell the property till the disposal of the main petition.

18. In para 37, the High Court looked into the affidavit filed by the accused No. 4 (power of attorney holder) dated 28.08.2018. Para 37 reads thus:

> "*37. Whereas, the accused no. 4 categorically admits of execution of sale deed, however, he tries to feign ignorance by deposing in his affidavit dated 28.08.2018 to the following effect:-*
>
> > *"I say that the main allegation made against us is, that contrary to the orders of this Hon'ble Court dated 14.10.2015, we have sold the property to the persons who are mentioned in the indexed documents annexed with the contempt application. I say that I, bona fide believed that, the transactions mentioned in the indexed documents on page-157 onwards alleging contempt against us, without trying to over justify the case, it is my duty to point out the correct facts which led me to bona fide believe that sale was completed. I say that on page-158 copy of the index register is produced regarding the sale in favour of Prashantbhai Haradhanbhai Kondu, which is registered on 09.02.2016. I am producing herewith a copy of the sale deed because, the index produced by the applicant does not reflect the correct position. Hereto and marked as Annexure R1 is copy of the sale deed dated 09.02.2016. It is very clear that the sale was completed on 21.08.2012, but it was only not registered. As per the definition of sale, the transaction is complete since we have received the consideration money and we had handed over the possession. The said fact is also mentioned in the sale deed.""*
>
> (Emphasis supplied)

19. In para 40, the High Court took notice of the fact that even after notice was issued to the contemnors in the contempt proceedings, they continued to commit further acts contempt. Para 40 reads thus:

> "*40. The accused have continued to commit further contempt. We say so for the reason that additional affidavit dated 06.04.2019 filed by complainant No. 1.1 enclosing the sale deed dated 30.10.2018 would clearly disclose that accused no. 4 on behalf of himself and also on behalf of accused no. 3.1 to 3.4 had sold shop bearing No. 7 admeasuring 19.2 sq. mtrs. in the land bearing Survey No. 63 which land was also agreed not to be sold by way of undertaking given to this Court on 14.10.2015. Additional affidavit dated 18.07.2019 has been filed by complainant No. 1.1 which discloses another portion of land admeasuring 118.48 in Survey No. 63 has been disposed of vide sale deed dated 25.07.2017.*

*Respondent No. 4 who had been examined as a witness in Special Civil Suit No. 130 of 1995 in his deposition (Annexure B-2) has admitted that he was aware of the interim order in which breach is alleged. In fact he has also deposed that all the family members are well aware of the order dated 14.10.2015. His admission reads thus:*

> *"It is true that my Advocate. Mr. Shirishbhai Sanjanwala, under my instructions, gave oral undertaking that for Survey No. 63 and 65 of Majura will not be sold till the final outcome of CMA. I do not remember it orally but it might be mentioned in the Honourable High Court of Gujarat Application No. 16266/13 in reference to the undertaking given by me to my Advocate Mr. Shirishbhai Sanjanwala, after reading over the order dated 14.10.2015 that what was the reason that he gave the assurance on my behalf. I did not have the occasion of meeting advocate Mr. Shirish Sanjanwala after 14.10.2015 or having discussion with him."'*

(Emphasis supplied)

20. The High Court thereafter, considered whether the unconditional apology tendered by the contemnors deserved to be accepted and whether they should be exonerated from the contempt proceedings or not. In this regard, the High Court observed in paras 52 and 55 respectively as under:

> "*52. The accused no. 3.1 to 3.4 not having taken any steps as expected of a reasonable prudent person to cancel the power of attorney given to 4th respondent at the first available opportunity but on the other hand having sold the property even after notice of contempt being served upon them, we are of the considered view that remorse expressed or unconditional apology tendered by them cannot be accepted as genuine and/or bona fide. On the other hand, the conduct of accused and particularly accused no. 3.1 to 3.4 not even cancelling sale deeds would be sufficient to arrive at a conclusion that contrition or remorse expressed by them is not bona fide and has been made to stave off the contempt proceedings by making a show of apology having been tendered and trying to take umbrage by contending that accused no. 3.1 and 3.2 are housewives cannot be allowed to take umbrage or use the*

*protective umbrella, and extending them of such benevolence would result in pure stream of administration of justice being polluted by such persons by feigning ignorance and as such we are of the considered view that they should be dealt with iron hands.*

*Xxx xxx xxx*

*55. Applying the aforestated principle to the facts on hand as noticed by us earlier in hereinabove, that accused No. 3.1 to 3.4 are attempting to improve their case step by step and stage by stage and tendering apology without any real contrition and same not being from the heart but offered as a lip sympathy to stave off the consequences that would flow from their contemptuous act, the affidavit of apology has been filed. Had there been real remorse, they would have on notice of contempt being served, forthwith cancelled the power of attorney executed in favour of accused no. 4. However, they have not chosen to do so. On the other hand, they have allowed him to continue to perform duties as their agent and derived benefits out of it, which discloses there is no real contrition expressed by them which would satisfy the Courts' conscious."*

(Emphasis supplied)

21. The High Court thereafter, proceeded to consider whether the contempt proceedings were time barred. The High Court looked into Section 20 of the Act 1971 and took the view that the cause of action was recurring in nature and the wrong had continued. The proceedings initiated were not barred under Section 20 of the Act 1971.

22. In the last, the High Court recorded what had happened on the date when the contemnors remained present in the court to answer the charge framed against them. The High Court observed in para 61 as under:

"*As such, this Court by order dated 18.12.2018 directed the contemnors to be present personally and to answer as to why charge should not be framed against them. In reply to the same, an affidavit has been filed by the contemnors on 24.12.2018 admitting thereunder the disobedience and breach of the*

*undertaking given to the Court. In the words of fourth respondent, the admission reads to the following effect:*

> *"2. I sincerely regret that the execution of the sale deeds was in breach of the statement made by learned counsel on my behalf. I hereby sincerely tender unconditional apology with clear understanding that there is breach of the statement. I submit that there is no scope for justification of the action of execution of sale deeds which I undertook under the pressure built up by the agreement-holders. I request Your Lordships to accept my apology if deem fit and proper."*"

(Emphasis supplied)

23. The High Court ultimately held the appellants guilty of contempt for their deliberate and wilful disobedience of the undertaking and punished them accordingly.

24. In such circumstances referred to above, the appellants are herein before this Court with the present appeals.

**SUBMISSIONS ON BEHALF OF THE APPELLANTS IN CIVIL APPEAL NO. 5041 OF 2022**

25. Mr. Mukul Rohatgi, the learned Senior Counsel appeared for the appellants of Civil Appeal No. 5041 of 2022. Mr. Rohatgi submitted the following:

(a) The appellant Nos. 1 and 2 respectively had no idea or proper knowledge as to what was transpiring in the proceedings before the Revenue Authorities or the High Court for the reason that the appellants had appointed Balwantbhai Somabhai Bhandari (appellant of the

connected appeal) as their power of attorney holder. The power of attorney holder looked after the litigation relating to the subject land and the appellants were not involved in any manner in the day to day activities. The sale deeds were not signed by the appellants as they were executed by the power of attorney holder.

(b) The High Court materially erred in holding that the appellants had admitted in their affidavits that they were fully conversant and aware of the undertaking given before the High Court. This is a glaring factual error in as much as the perusal of all the three affidavits dated 07.10.2018, 28.10.2018 and 24.12.2018 respectively filed by the appellants state to the contrary that they were not aware of the order dated 14.10.2015.

(c) The High Court should have accepted the unconditional and *bona fide* apology made at the first instance. The High Court went wrong in saying that the apology was tendered at a belated stage.

(d) Section 12 of the Act 1971 stipulates the punishment for contempt of Court. The proviso to the said section states that 'accused may be discharged or punishment awarded may be remitted on apology being made to the satisfaction of the court'. Furthermore, the Explanation to the said proviso states that "*an apology shall not be*

*rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide."*

(e) The High Court committed a serious error in not accepting the explanation offered by the appellants that the sale deeds had already been completed prior to the order dated 14.10.2015 and only formal registration of the sale deeds was left.

(f) The High Court committed error in recording that the properties were sold even after the notice of contempt was issued to the appellants.

26. In support of aforesaid submissions, the learned Senior Counsel placed reliance on the following case law:

(i) ***Rama Narang v. Ramesh Narang and Another***, (2006) 11 SCC 114;

(ii) ***Anil K. Surana and Another v. State Bank of Hyderabad***, (2007) 10 SCC 257;

(iii) ***Bharat Steel Tubes Limited v. IFCI Limited***, (2010) 14 SCC 77; and

(iv) ***Abhishek Kumar Singh v. G. Pattanaik and Others***, (2021) 7 SCC 613.

27. In such circumstances referred to above, the learned Senior Counsel prayed that there being merit in his appeal, the same be allowed and the impugned judgment and order of the High Court be set aside.

28. Mr. Mihir Joshi, the learned Senior Counsel appearing on behalf of the appellants in the Civil Appeal No. 5041 of 2022 made the following submissions:

(a) The High Court has erred in not accepting the apology tendered by the appellants on the ground that it was not tendered at the first instance. Notice in Form-I was issued on 23.04.2018. After issuance of notice, the very first affidavit of the appellant dated 24.08.2018 contains an unconditional apology. A further affidavit dated 24.12.2018 also offers unconditional apology. The apology being genuine as is evident from the facts of the case and tendered at the first instance ought to have been accepted by the Court. The High Court rendered a factually incorrect finding in para 49 (iv) that there was no unconditional apology tendered at the first instance so as to construe the acts of the accused as not being deliberate or wilful. The High Court erred in holding in para 38 of its impugned order that the first affidavit dated 28.08.2018 did not contain an unconditional apology, which is factually incorrect. The said affidavit dated 28.08.2018 tendered an unconditional apology.

(b) In fact, the contempt proceedings were not maintainable at all

since the statement recorded on behalf of the appellant in the order dated 14.10.2015 is neither an order of the Court nor an undertaking given to the Court and therefore, there could be no breach thereof, amounting to civil contempt as contemplated under section 2(b) of the Act 1971. It is self-evident that the statement is an assurance to the other party and not an undertaking to the court. Breach of such statement may invite an action for restitution by the opposite party which would have to be adjudicated in duly constituted proceedings, but it would not invite proceedings for contempt since it is neither an order of the court nor an undertaking to the court. This distinction is well known and accepted by Courts and the contempt application ought to have been dismissed as not maintainable only on this ground

(c) The High Court clearly erred in holding that breach of the statement recorded in the order dated 14.10.2015 (assuming the same is considered as an undertaking contemplated under Section 2(b) of the Act 1971) was a wilful and deliberate breach, overlooking the following facts:

(i) The Court has erred in disbelieving the explanation tendered by the Appellants regarding the necessity of the sales since the subject transfers had been concluded with full payment of consideration and handing over of possession *vide* the possession receipts much prior to 14.10.2015 and therefore, the transfers were not covered

by the statement recorded on 14.10.2015. The High Court should have looked into the documents such as possession receipts, payment receipts and extracts of bank ledger statements, in respect of the subject sales produced before the High Court. The High Court erred in holding that no material had been placed to establish or demonstrate that the property had in fact been sold in the year 2012 itself. The High Court erred in holding in para 35 that an imaginary plea had been made by way of a defence that cash transaction took place for sale in the year 2012 wherein no date is mentioned.

(ii) The High Court erred in holding that the documents as above were purportedly concocted and that only the income tax returns could be the best evidence.

(iii) The High Court overlooked the fact that the impugned sale transactions were only of 1521 sq.mtrs. of survey no. 63 admeasuring 33,790 sq.mtrs. and that the survey no. 65 admeasuring 31,095 sq.mtrs. was unsold and vacant which clearly reflected adherence to the statement as understood by the Appellants and supported the explanation of the Appellants that the subject sales of small plots of 118 sq.mtrs. each had to be formally concluded since the actual transfers had taken place many years prior to 14.10.2015 and the allottees were being seriously

prejudiced in development of the plots and such transfers were never intended to be covered under the statement of 14.10.2015 which would operate only for future transfers.

(iv) The High Court erred in overlooking that the standard of proof required in a contempt proceeding, being a quasi-criminal proceeding, is that of a criminal proceeding and the breach has to be established beyond reasonable doubt. The facts of the present case do not establish beyond reasonable doubt that there was a wilful breach or disobedience of an order of the court, or statement or undertaking given to the court. The power of contempt should be exercised cautiously and only after the required standard of proof is met.

(v) The High Court erred in proceeding on the basis that the Appellants continued to commit contempt and in that regard relying on the transactions stated at Serial Nos.12 and 13 respectively of the table at para 26 of the impugned judgement. The said transaction at Serial No.12 purportedly of 30.10.2018, of a shop, is not a part of the subject lands S.No.63 and 65 with regard to which order dated 14.10.2015 was passed; and the transaction at Serial No.13 is of 25.7.2017, hence it is not of a date after the filing of the contempt petition (filed on 12.01.2018).

(d) The High Court has erred in overlooking the context and background facts in which the statement was made and what was meant and covered in the statement in light of the same.

(e) The Court has overlooked the requirement of section 13 of the Act 1971 since the conduct of the Appellant has not obstructed the cause of justice in any manner whatsoever. As held by this Court in ***Murray & Co. v. Ashok Kr. Newatia & Another,*** (2000) 2 SCC 367 (paras 19 to 22), the language of Section 13 makes it clear that it is not enough there should be some technical contempt of court, but it must be shown that the act of contempt would otherwise substantially interfere with the due course of justice which has been equated with "*due administration of justice*".

(f) The High Court erred in imposing a sentence of imprisonment for civil contempt without assigning any reasons as to why such an exception had to be made more particularly overlooking the following:

(i) A close scrutiny of Section 12(3) indicates that the legislature intended that in case of civil contempt a sentence of fine alone should be imposed except where the Court considers that the ends of justice make it necessary to pass a sentence of imprisonment also. Before passing an extreme sentence, the Court ought to assign special reasons after proper application of mind. There is

absolutely no justification or reason set out in the judgment supporting a bare conclusion that imprisonment is justified in the case.

(ii) The High Court erred in overlooking the bona fides of the Appellants which would have established that there was no wilful breach of the statement recorded in the order dated 14.10.2015 and in any case, would certainly not justify imprisonment. In particular, the Court has overlooked that the appellant tendered his unconditional apology at the first instance on 24.08.2018; explained the transaction with necessary documents immediately thereafter on 07.10.2018 without detracting from the apology; proposed remedial measures of keeping an equivalent area of land open and vacant till the filing of the petition by way of affidavit dated 04.01.2019; that additional land was offered over and above the one proposed in the earlier affidavit *vide* affidavit dated 09.01.2019 and that the Appellants had personally remained present before the court at all hearings of the contempt application without seeking any exemption despite one of the contemnors being diagnosed and treated for advanced stage of cancer.

(iii) The conduct of the Appellants subsequent to the impugned judgment also shows their due deference to the orders of the court.

Each accused has deposited costs and fine with the registry of the High Court. In compliance with the direction nos. (ii) and (iii) contained in para 63 directing the accused to restore the position prevailing prior to the statement recorded in the order dated 14.10.2015, the appellants have also returned the consideration amount and requested the purchasers for compliance with the judgment.

(g) The High Court ought to have considered the fact that the Appellants had offered to purge the alleged contempt, by offering alternative land. In the affidavit dated 04.01.2009, the Appellants had offered to deposit the sale consideration and also that since the sale is only of 1430.81 sq. meters of Survey No.63, the Appellant is willing to keep aside other lands in his possession, for the benefit of the Complainants. A further affidavit was filed on 09.01.2019, wherein the Appellants had offered valuable lands, at Khatodara, with an assurance not to transfer or alienate such lands till the writ petition is decided. It is well settled that a sale *pendente lite* or even in alleged breach of an injunction order is not *per se* void, and the Court has a liberty to balance the equities in a case. The order of the High Court is harsh. The plot owners are *bona* fide purchasers of the plots for consideration without notice. The sale in favour of the plot owners have been set aside without

any notice to them or hearing them. The High Court could have balanced the equities rather than setting aside the sale deeds already executed *bona fide* by the Appellant. This Court in ***T. Ravi and Another v. B. Chinna Narasimha and Others*** reported in (2017) 7 SCC 342, has held that the transfer of the suit property *pendente lite* is not *void ab initio* and the purchaser of any such property take the bargain, subject to the rights of the Plaintiff in the pending suit. The Court further held that the same principle would apply to a case involving a breach of an injunction issued by a competent court, and such breach would not render the transfer by way of an absolute sale void or ineffective.

29. In support of the aforesaid submissions, the learned Senior Counsel placed reliance on the following case law:

(i) ***Sevakram Prabhudas v. H.S. Patel and Others***, 2000 (1) vol. 41 GLR 715;

(ii) ***Mrityunjoy Das and Another v. Sayed Hasibur Rahaman and Others***, (2001) 3 SCC 739; and

(iii) ***Supreme Court Bar Association v. Union of India and Another***, (1998) 4 SCC 409.

30. In such circumstances referred to above, the learned counsel prayed that there being merit in his appeal, the same be allowed and the impugned judgment and order be set aside.

**SUBMISSIONS ON BEHALF OF THE RESPONDENTS**

31. On the other hand, the learned counsel appearing for the respondents herein vehemently submitted that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned judgment and order.

32. The learned counsel appearing for the respondents made the following submissions:

(a) The assurance given by the learned senior advocate to the court as recorded in order dated 14.10.2015 by the High Court is a clear undertaking as per Sections 12 and 13 respectively of the Act 1971. It should be seen as a clear-cut undertaking given to the court and it is supposed to be binding to the parties concerned. Had this undertaking not been given the respondents herein who were the appellants in LPA (Stamp) No. 1196 of 2015 would not have withdrawn the appeal as not pressed. Also, the appellants of LPA/respondents herein did not invite any further order in SCA No. 16266 of 2013 due to the said undertaking.

(b) The undertaking given by Sr. Adv. "That the property qua the subject matter of this entry and the petition shall not be sold out till the main petition is heard and decided" clearly falls within section 2(b) of Act 1971. The undertaking given by learned counsel is completely binding on the appellants.

(c) Despite such clear undertaking, the appellants sold the plots between 2015 and 2018. If the appellants wanted to sell the plots under certain compelling circumstances, they could have approached the High Court for modification or variation of the order which they did not deem fit to do. Further, as a clear continuing act of contempt, even after the execution of the sale deeds the appellants failed to bring the said aspect to the notice of the High court.

(d) The appellants continued to commit contempt even during the pendency of contempt proceedings. They sold the shop bearing no. 7 on 30.10.2018 i.e., 9 months after the notice of contempt was issued. They also sold the land bearing Survey No. 65 on 09.09.2021 with the consideration amount of Rs. 51,93,00,000/- which is also on record of the contempt proceedings of the High Court.

(e) The appellants have not produced any authenticated documents in support of their case of having put the buyers in possession in the year of 2012 (income tax return, bank statement etc.). The cash receipt which they have produced is issued by S. K. Industries Service Society and not by the present appellants and also all of those documents are unauthenticated, forged and fabricated. The High Court has duly taken notice of this fact in its impugned order (para 35 at page 38). As per law, the sale is deemed to have been completed on the date when the sale deed is registered, which in

the instant case are admittedly after the undertaking given by Sr. Advocate in the SCA No. 16266 of 2013 as recorded in the order dated 14.10.2015 of the High Court.

(f) The apology given by the appellants is a farce. Apology from the appellants did not come at the first instance. If they were really sorry, they should have cancelled the sale deeds executed during the pendency of the contempt proceedings, which they have not done. It is only in the present proceedings that they have tried to show that they attempted to cancel the sale deeds by way of sending letters to the plot holders. Thus, they have tried to show that they made an effort to comply with the order of the High court, but no proof has been produced as to when and in what manner the notices were sent or executed i.e., by way of post or email or courier etc. Such dubious conduct of the appellants goes to show that despite committing contempt and having shown no remorse, they are still trying to misguide this Court by producing such documents which from their very bare reading appear to be false, unreliable and fabricated.

(g) In the course of the hearing of the appeals, Mr. Joshi, the learned senior counsel had suggested an alternate remedy of keeping aside the land of Survey No. 65, but in reality, the appellants have sold that very land also during the pendency of contempt proceedings in the year 2021. Thus, the

contemnors have tried to misguide this court by making such false statements.

33. In support of his aforesaid submissions, the learned Senior Counsel relied on the decision of this Court in the case of ***T. Ravi*** (supra)**.**

34. In such circumstances referred to above, it was prayed on behalf of the respondents that there being no merit in both the statutory appeals those may be dismissed.

**SUBMISSIONS ON BEHALF OF THE APPELLANTS IN CIVIL APPEAL NO. 4869 OF 2023**

35. The appellants are the purchasers of the plots from the contemnors. Mr. Shyam Divan, the learned Senior Counsel appearing for the purchasers submitted that the High Court committed a serious error in declaring the sale deeds executed by the contemnors in favour of his clients as *non est* or void. According to Mr. Divan, assuming for the moment that the transfer was in wilful disobedience of the undertaking given by the contemnors, such transfers are not void transfers. In other words, the transfer of suit property *pendente* lite is not *void ab initio*. He would argue that his clients are *bona fide* purchasers of the property for value without notice. In such circumstances, the High Court ought to have balanced the equities more particularly when the contemnors had offered other alternative lands to protect the interests of the complainants.

36. It was argued that the High Court should have insisted for the presence of the purchasers in the contempt proceedings. Without giving any opportunity of hearing to the purchasers, the High Court ought not to have declared the sale transactions as void. It was also argued that the appellants have further transferred the properties and that would make them vulnerable to further civil and criminal proceedings by such subsequent purchasers.

37. In such circumstances referred to above, Mr. Divan, the learned Senior Counsel prayed that this Court may tilt the equities and protect the bona fide purchasers of the property for value without notice.

38. The aforesaid submission canvassed by Mr. Shyam Divan, the learned counsel appearing for the respondents suggests that the appellants (purchasers) have further transferred the properties and as on date they have no further interest in the subject properties.

**ANALYSIS**

39. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment and order?

**PRINCIPLES GOVERNING THE EXERCISE OF CONTEMPT JURISDICTION**

40. The object of the discipline enforced by the court in case of contempt of court is not to vindicate the dignity of the court or the person of the Judge, but to prevent undue interference with the administration of justice.

41. Any interference with the course of justice is an affront to the majesty of law and the conduct of interference is punishable as contempt of court. Public interest demands that there should be no interference with the judicial process, and the effect of the judicial decision should not be pre-empted or circumvented. (***Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd. and Others*** reported in (1988) 4 SCC 592).

42. If a party, who is fully in the know of the judgment/order of the Court, is conscious and aware of the consequences and implications of the order of the Court, acts in violation thereof, it must be held that disobedience is wilful. To establish contempt of court, it is sufficient to prove that the conduct was wilful, and that the contemnor knew of all the facts which made it a breach of the undertaking.

43. The following conditions must be satisfied before a person can be held to have committed civil contempt: (*i*) there must be a judgment, decree, direction, order, writ or other process of a court; (*ii*) there must be disobedience to such judgment, decree, direction, order, writ or other process of a court; and (*iii*) such disobedience of the judgment, decree, direction,

order, writ or other process of a court must be wilful. [***Patel Rajnikant Dhulabhai and Another v. Patel Chandrakant Dhulabhai and Others,*** reported in (2008) 14 SCC 561]

44. It behoves the court to act with as great circumspection as possible, making all allowances for errors of judgment. It is only when a clear case of contumacious conduct, not explainable otherwise, arises that the contemnor must be punished. Punishment under the law of contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. Contempt proceedings are quasi-criminal in nature, and the standard of proof is the same as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights, including benefit of doubt. [***Kanwar Singh Saini v. High Court of Delhi*** reported in (2012) 4 SCC 307].

45. The sanctity to judicial proceedings is paramount to a society governed by law. Otherwise, the very edifice of democracy breaks and anarchy reigns. The Act 1971 is intended to correct a person deviating from the norm and trying to breach the law/assuming law on to himself. It intends to secure confidence of the people in the administration of justice by disciplining those erring in disobeying the orders of the Court/undertaking given to court.

46. This Court in a plethora of cases has explained the true purport of exercise of powers under the 1971 Act. In ***Mrityunjoy Das*** (supra), it held that:

> ***"13.*** *Before however, proceeding with the matter any further, be it noted that exercise of powers under the Contempt of Courts Act shall have to be rather cautious and use of it rather sparingly after addressing itself to the true effect of the contemptuous conduct. The court must otherwise come to a conclusion that the conduct complained of tantamounts to obstruction of justice which if allowed, would even permeate in our society (vide Murray & Co. v. Ashok Kr. Newatia [(2000) 2 SCC 367 : 2000 SCC (Cri) 473] ). This is a special jurisdiction conferred on to the law courts to punish an offender for his contemptuous conduct or obstruction to the majesty of law. It is in this context that the observations of this Court in Murray case [(2000) 2 SCC 367 : 2000 SCC (Cri) 473] in which one of us (Banerjee, J.) was party needs to be noticed: (SCC p. 373, para 9)*
>
> > *"The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law since the image of such a majesty in the minds of the people cannot be led to be distorted. The respect and authority commanded by courts of law are the greatest guarantee to an ordinary citizen and the entire democratic fabric of the society will crumble down if the respect for the judiciary is undermined. It is true that the judiciary will be judged by the people for what the judiciary does, but in the event of any indulgence which can even remotely be termed to affect the majesty of law, the society is bound to lose confidence and faith in the judiciary and the law courts thus would forfeit the trust and confidence of the people in general.""*

47. The Constitutional Bench of this Court in the case of ***Supreme Court Bar Association*** (supra), while discussing the ambit of powers under the Act 1971 and the principles to be followed while punishing a party held as under:

*"28. An analysis of the above provision shows that sub-section (1) of Section 12 provides that in a case of established contempt, the contemner may be punished:*

*(a) with simple imprisonment by detention in a civil prison; or*

*(b) with fine; or*

*(c) with both.*

*A careful reading of sub-section (2) of Section 12 reveals that the Act places an embargo on the court not to impose a sentence in excess of the sentence prescribed under sub-section (1). A close scrutiny of sub-section (3) of Section 12 demonstrates that the legislature intended that in the case of civil contempt a sentence of fine alone should be imposed except where the court considers that the ends of justice make it necessary to pass a sentence of imprisonment also. Dealing with imposition of punishment under Section 12(3) of the Act, in the case of Pushpaben v. Narandas V. Badiani [(1979) 2 SCC 394 : 1979 SCC (Cri) 511] this Court opined: (SCC p. 396, para 6)*

> *"6. A close and careful interpretation of the extracted section leaves no room for doubt that the legislature intended that a sentence of fine alone should be imposed in normal circumstances. The statute, however, confers special power on the Court to pass a sentence of imprisonment if it thinks that ends of justice so require. Thus before a Court passes the extreme sentence of imprisonment, it must give special reasons after a proper application of its mind that a sentence of imprisonment alone is called for in a particular situation. Thus, the sentence of imprisonment is an exception while sentence of fine is the rule."*

*Xxx xxx xxx*

*34. The object of punishment being both curative and corrective, these coercions are meant to assist an individual complainant to enforce his remedy and there is also an element of public policy for punishing civil contempt, since the administration of justice would be undermined if the order of any court of law is to be disregarded with impunity. Under some circumstances, compliance of the order may be secured without resort to coercion, through the contempt*

*power. For example, disobedience of an order to pay a sum of money may be effectively countered by attaching the earnings of the contemner. In the same manner, committing the person of the defaulter to prison for failure to comply with an order of specific performance of conveyance of property, may be met also by the court directing that the conveyance be completed by an appointed person. Disobedience of an undertaking may in the like manner be enforced through process other than committal to prison as for example where the breach of undertaking is to deliver possession of property in a landlord-tenant dispute. Apart from punishing the contemner, the court to maintain the majesty of law may direct the police force to be utilised for recovery of possession and burden the contemner with costs, exemplary or otherwise.*

*Xxx xxx xxx*

*36. In deciding whether a contempt is serious enough to merit imprisonment, the court will take into account the likelihood of interference with the administration of justice and the culpability of the offender. The intention with which the act complained of is done is a material factor in determining what punishment, in a given case, would be appropriate.*

*Xxx xxx xxx*

*42. The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining "the jury, the judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and*

> *the contemner and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice."* (Emphasis supplied)

48. To hold a person guilty of civil contempt, "wilful disobedience" is an indispensable requirement. Whether the conduct of contemnor is deliberate and wilful can be considered by assessing the material on record and attendant circumstances.

**PIVOTAL ISSUES**

49. We would like to address ourselves broadly on four questions:

(i) Whether the wilful breach of an assurance in the form of an undertaking given by a counsel/ advocate on behalf of his client to the court would amount to "civil contempt" as defined under Section 2(b) of the Act 1971?

(ii) There exists a distinction between an undertaking given to a party to the *lis* and the undertaking given to a court. The undertaking given to a court attracts the provisions of the Act 1971 whereas an undertaking given to a party to the *lis* by way of an agreement of settlement or otherwise would not attract the provisions of the said Act. Whether in the present case an undertaking could be said to have been given to the court?

(iii) Whether the contempt court has the power to declare any contemptuous transaction *non est* or void? In other words, although the transfer of the suit property *pendente lite* is not *void ab initio* yet when the court is looking into such transfers in contempt proceedings, whether the court can declare such transactions to be void in order to maintain the majesty of law?

(iv) Whether the beneficiaries of a contemptuous transaction have a right to be heard in the contempt proceedings on the ground that they are necessary or proper parties as they are *bona fide* purchasers of the suit property for value without notice?

(v) Whether the apology tendered by the contemnors deserves to be accepted or is it a legal trick to wriggle out of responsibility?

**WHAT IS WILFUL DISOBEDIENCE?**

50. In order to decide whether the appellants are guilty of civil contempt, we would like to refer to Section 2(b) of the Contempt of Courts Act, 1971, which reads as under:—

> *"**2. Definitions.**—In this Act, unless the context otherwise requires,—*
>
> *xxx xxx xxx*
>
> *(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;"*

51. The Black's Law Dictionary, Sixth Edition, at page 1599, defines "willful" as hereunder:

> *"Proceeding from a conscious motion of the will; voluntary; knowingly; deliberate. Intending the result which actually comes to pass; designed; intentional; purposeful; not accidental or involuntary.*
>
> *Premeditated; malicious; done with evil intent, or with a bad motive or purpose, or with indifference to the natural consequences; unlawful; without legal justification.*
>
> *An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law. It is a word of many meanings, with its construction often influenced by its context. In civil actions, the word (willfully) often denotes an act which is intentional, or knowing, or voluntary, as distinguished from accidental. But when used in a criminal context it generally means an act done with a bad purpose; without justifiable excuse; stubbornly, obstinately, perversely."*

52. This Court in ***Niaz Mohammad and Others v. State of Haryana and Others*** reported in (1994) 6 SCC 332, explaining the expression "wilful disobedience" had held:—

> "***9.*** *Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as 'the Act') defines "civil contempt" to mean "wilful disobedience to any judgment, decree, direction, order, writ or other process of a court ...". Where the contempt consists in failure to comply with or carry out an order of a court made in favour of a party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the court for initiating proceeding for contempt against the alleged contemner, with a view to enforce the right flowing from the order*

*or direction in question. But such a proceeding is not like an execution proceeding under Code of Civil Procedure. The party in whose favour an order has been passed, is entitled to the benefit of such order. The court while considering the issue as to whether the alleged contemner should be punished for not having complied with and carried out the direction of the court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemner is punished for non-compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. The civil court while executing a decree against the judgment-debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequence thereof. But while examining the grievance of the person who has invoked the jurisdiction of the court to initiate the proceeding for contempt for disobedience of its order, before any such contemner is held guilty and punished, the court has to record a finding that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the court, the court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances under which it was not possible for the contemner to comply with the order, the court may not punish the alleged contemner."* (Emphasis supplied)

53. In ***Ashok Paper Kamgar Union v. Dharam Godha and Others*** reported in (2003) 11 SCC 1, the expression 'wilful disobedience' in the context of Section 2(b) of the Act was read to mean an act or omission done voluntarily and intentionally with the specific intent to do something, which the law forbids or with the specific intention to fail to do something which the law requires to be done. Wilfulness signifies deliberate action done with

evil intent and bad motive and purpose. It should not be an act, which requires and is dependent upon, either wholly or partly, any act or omission by a third party for compliance.

54. In ***Ram Kishan v. Tarun Bajaj and Others*** reported in (2014) 16 SCC 204, it was observed as under:—

> "***12.*** *Thus, in order to punish a contemnor, it has to be established that disobedience of the order is "wilful". The word "wilful" introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. "Wilful" means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful act does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct." (Vide S. Sundaram Pillai v. V.R. Pattabiraman [S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591], Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao [Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao, (1989) 4 SCC 255 : AIR 1989 SC 2185], Niaz Mohammad v. State of Haryana [Niaz Mohammad v. State of Haryana, (1994) 6 SCC 332 : AIR 1995 SC 308], Chordia Automobiles v. S. Moosa [Chordia Automobiles v. S. Moosa, (2000) 3 SCC 282], Ashok Paper Kamgar Union v. Dharam Godha [Ashok Paper Kamgar Union v. Dharam Godha, (2003) 11 SCC 1], State of Orissa v. Mohd. Illiyas [State*

*of Orissa v. Mohd. Illiyas, (2006) 1 SCC 275 : 2006 SCC (L&S) 122 : AIR 2006 SC 258] and Uniworth Textiles Ltd. v. CCE [Uniworth Textiles Ltd. v. CCE, (2013) 9 SCC 753].)"*

(Emphasis supplied)

55. The aforesaid decision also holds as under:—

*"**11.** The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities. (Vide* V.G. Nigam *v.* Kedar Nath Gupta [V.G. Nigam *v.* Kedar Nath Gupta, *(1992) 4 SCC 697 : 1993 SCC (L&S) 202 : (1993) 23 ATC 400], Chhotu Ram v. Urvashi Gulati [Chhotu Ram v. Urvashi Gulati, (2001) 7 SCC 530 : 2001 SCC (L&S) 1196], Anil Ratan Sarkar v. Hirak Ghosh [Anil Ratan Sarkar v. Hirak Ghosh, (2002) 4 SCC 21], Bank of Baroda v. Sadruddin Hasan Daya [Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360], Sahdeo v. State of U.P. [Sahdeo v. State of U.P., (2010) 3 SCC 705 : (2010) 2 SCC (Cri) 451] and National Fertilizers Ltd. v. Tuncay Alankus [National Fertilizers Ltd. v. Tuncay Alankus, (2013) 9 SCC 600 : (2013) 4 SCC (Civ) 481 : (2014) 1 SCC (Cri) 172].)"*

(Emphasis supplied)

56. Hence, the expression or word "wilful" means act or omission which is done voluntarily or intentionally and with the specific intent to do something which the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say with bad purpose either

to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose.

**THE TERM "UNDERTAKE"**

57. Black's Law Dictionary, Fifth Edition defines "undertaking" in the following words:

> *"A promise, engagement, or stipulation. An engagement by one of the parties to a contract to the other, as distinguished from the mutual engagement of the parties to each other. It does not necessarily imply a consideration. In a somewhat special sense, a promise given in the course of legal proceedings by a party or his counsel, generally as a condition to obtaining some concession from the court or the opposite party. A promise or security in any form."*

58. In ***M. v. Home Office and Another*** reported in (1992) Q.B. 270 : (1992) 2 WLR 73 : (1992) 4 All ER 97, the expression "undertaking" has been dealt with in the following manner:

> *"If a party, or solicitors or counsel on his behalf, so act as to convey to the court the firm conviction that an undertaking is being given, that party will be bound and it will be no answer that he did not think that he was giving it or that he was misunderstood."*
>
> (Emphasis supplied)

59. As the entire controversy revolves around the question whether the statement made by the learned counsel before the High Court was an undertaking on behalf of his clients and if yes then whether such undertaking

could be said to have been given to the court, we must look into two decisions on this point; one rendered by the Bombay High Court and another by the Calcutta High Court. The Bombay High Court in ***Bajranglal Gangadhar Khemka and another v. Kapurchand Ltd.*** reported in AIR 1950 Bom 336, took notice of a practice wherein the undertaking would not expressly mention that it was given to the court but the High Court took cognizance of the fact that the expression "undertake" had come to acquire through long practice, a technical meaning. The High Court speaking through M.C. Chagla, C.J., made the following observations:

> *"…. The clause does not state to whom the undertaking is given, and it may be that it would be possible to hold that, as the parties were settling the dispute between themselves, the undertaking was given by one party to the other; or, at the highest, the only thing that could be urged would be that the expression is ambiguous, and in a contempt matter, unless the Court is clearly satisfied that the undertaking was given to the Court, the Court would not proceed to commit the person in default to jail. But, in our opinion, the expression "undertake" has come to acquire, through long practice, a technical meaning. In all orders and decrees of the Court, whenever the expression "a party undertakes" has been used, it has always borne the meaning that the undertaking has been to the Court. The Advocate General has also referred us to the forms and orders that appear in "Seton on Decrees and Orders", and in those forms the expression used has always been "a party undertake" and never "a party undertakes to the Court." Therefore, in English Courts as well, the expression "a party undertakes" when used in decrees or orders has come to acquire the same technical meaning. What is more, it has been held by Bhagwati J. — an opinion with which I entirely agree—that it has been the long-standing practice on the original side that, whenever counsel wishes to give an undertaking to the Court, he never expressly uses the words "to the Court" but merely states that he undertakes on behalf of his client, and that undertaking is always*

*understood to be an undertaking to the Court which could be enforced by committal proceedings…."*

(Emphasis supplied)

60. The contrary view was taken by Harris, C.J., of the Calcutta High Court in ***Nisha Kanto Roy Chowdhuri v. Smt. Saroj Bashini Goho*** reported in AIR 1948 Cal 294. It was expressed that if the court had considered that the expression "undertaking" had come to acquire a technical meaning and if he had considered that aspect of the case, he would not have come to the conclusion that the only way to construe the expression 'undertaking' was to give it its plain natural meaning. Three judgments of the Calcutta High Court, all delivered by Single Judges, undoubtedly, were noticed which have taken the view that an "undertaking" means an "undertaking to the court." Another Division Bench of the Calcutta High Court in ***Chhaya Debi v. Lahoriram Prashar***, (1962-63) 67 CWN 819 considered the aforesaid two cases and construing the decree in that case held that the undertaking given by the opposite party was an undertaking given to court and the opposite party always understood the undertaking as one given to the court. The decree in terms of the settlement had only recorded that the opposite party "gives an undertaking to the effect that he would quit."

61. This Court in ***Rama Narang*** (supra) while referring to the Contempt of Courts Act, 1952, had noticed that it did not contain many of the provisions of the Act 1971 for the Legislature had left formulation of the law of contempt

to the Courts, which had resulted in conflicting views expressed by different High Courts. Reference was made to the conflicting view expressed by the Calcutta High Court in ***Nisha Kanto Roy*** (supra) and the Bombay High Court in ***Bajranglal Gangadhar Khemka*** (supra). In the former case, it was held that a compromise decree passed by the Court containing an undertaking was nothing more than an agreement of the parties with the sanction of the Court super-added. The order passed by the Court cannot mean anything more than an agreement and had no greater sanctity than the agreement itself. Per contra, the Bombay High Court, in ***Bajranglal Gangadhar Khemka*** (supra) had drawn a distinction between the execution proceedings and proceedings for contempt which arise from wilful default of an undertaking. The judgment referred to the long-standing practice as per which the expression "undertaking" had come to acquire a technical and legal meaning and understanding. It was observed that the expression "when a party undertakes" is used to give an undertaking to the Court as distinct from when a counsel states that he undertakes on behalf of his client. When a person gives an undertaking to the Court, it is not given to the other side but to the Court itself, and that being said must carry sanctity. Therefore, when a Court passes a decree after an undertaking was embodied in the consent terms, it would show that the Court had sanctioned the particular course and put its *imprimatur* on the consent terms. This Court agreed with the view expressed in ***Bajranglal Gangadhar Khemka*** (supra) in preference over the view expressed in by the

Calcutta High Court in ***Nisha Kanto Roy*** (supra). Thereafter, reference was made to Sanyal Committee report, which had preceded framing of the enactment of the Act 1971 and thereupon interpreting Section 2(b) of the Act 1971, this Court in ***Rama Narang*** (supra) had observed:—

> *"**18.** The Act has been duly widened. It provides inter alia for definitions of the terms and lays down firmer bases for exercise of the court's jurisdiction in contempt. Section 2(b) of the Contempt of Courts Act, 1971 defines civil contempt as meaning "wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court". (emphasis supplied) Analysed, the definition provides for two categories of cases, namely, (1) wilful disobedience to a process of court, and (2) wilful breach of an undertaking given to a court. As far as the first category is concerned, the word "any" further indicates the wide nature of the power. No distinction is statutorily drawn between an order passed after an adjudication and an order passed by consent. This first category is separate from the second and cannot be treated as forming part of or taking colour from the second category. The legislative intention clearly was to distinguish between the two and create distinct classes of contumacious behaviour. Interestingly, the courts in England have held that the breach of a consent decree of specific performance by refusal to execute the agreement is punishable by way of proceedings in contempt (see* C.H. Giles and Co. Ltd. *v.* Morris *[(1972) 1 All ER 960 : [1972] 1 WLR 307 (Ch D)]).*"*
>
> (Emphasis supplied)

62. Thus, it is evident that Section 2(b) of the Act, which defines civil contempt, consists of two different parts and categories, namely, (i) wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or (ii) wilful breach of an undertaking given to a court. The

expression "any" used with reference to the first category indicates the wide nature of power given to the Court and that the statute does not draw a difference between an order passed after adjudication or an order passed by consent. The first part or category is distinct and cannot be treated as a part or taking colour from the second category. This Court consciously observed that the Courts in England have held that the breach of consent decree of performance by refusal to execute an agreement was punishable by way of contempt proceedings. With reference to the second part, in ***Rama Narang*** (supra) it was observed that giving of an undertaking is distinct from a consent order recording compromise. In the latter case of violation of compromise, no question of contempt arises, but the party can enforce the order of compromise either by execution or injunction from a Court. However, in the former case, when there is wilful disobedience, contempt application and proceedings would be maintainable. [ See: ***Suman Chadha and Another v. Central Bank of India*** reported in 2018 SCC OnLine Del 11536]

63. As held by the Delhi High Court in ***Suman Chadha*** (supra), in case of reasonable doubt it is not fair and reasonable for the Courts to exercise jurisdiction under the Act for the proceedings are quasi-criminal in nature and the standard of proof required in these proceedings is beyond all reasonable doubt and not mere probabilities. Thus, in cases where two interpretations of

an order are possible and if the action is not contumacious, contempt proceedings are not maintainable and for this purpose the order must be read in entirety. The court noted that there is a difference between "standard of proof" and "manner of proof" in contempt proceedings. Contempt proceedings are *sui generis* in the sense that strict law of evidence and Code of Criminal Procedure, 1973 are not applicable. However, the procedure adopted in the contempt proceedings must be fair and just.

64. The Delhi High Court decision in ***Suman Chadha*** (supra) referred to above, was challenged before this Court. The decision of this Court is reported in Suman Chadha v. Central Bank of India reported in AIR 2021 SC 3709, wherein this Court made important observations in paras 25 and 26 respectively. Paras 25 and 26 read thus:

> ***"25.*** *It is true that an undertaking given by a party should be seen in the context in which it was made and* ***(i)*** *the benefits that accrued to the undertaking party; and* ***(ii)*** *the detriment/injury suffered by the counter party. It is also true that normally the question whether a party is guilty of contempt is to be seen in the specific context of the disobedience and the wilful nature of the same and not on the basis of the conduct subsequent thereto. While it is open to the court to see whether the subsequent conduct of the alleged contemnor would tantamount to an aggravation of the contempt already committed, the very determination of an act of contempt cannot simply be based upon the subsequent conduct.*
>
> ***26.*** *But the subsequent conduct of the party may throw light upon one important aspect namely whether it was just the inability of the party to honour the commitment or it was part of a larger design to hoodwink the court."*

65. In ***Rita Markandey v. Surjit Singh Arora*** reported in (1996) 6 SCC 14, it was observed that even if parties have not filed an undertaking before the court but if the court was induced to sanction a particular course of action or inaction on the representation made by a party and the court ultimately finds that the party never intended to act on the said representation or such representation was false, the party would be guilty of committing contempt. It was observed:—

> *"12. Law is well settled that if any party gives an undertaking to the court to vacate the premises from which he is liable to be evicted under the orders of the court and there is a clear and deliberate breach thereof it amounts to civil contempt but since, in the present case, the respondent did not file any undertaking as envisaged in the order of this Court the question of his being punished for breach thereof does not arise. However, in our considered view even in a case where no such undertaking is given, a party to a litigation may be held liable for such contempt if the court is induced to sanction a particular course of action or inaction on the basis of the representation of such a party and the court ultimately finds that the party never intended to act on such representation or such representation was false. In other words, if on the representation of the respondent herein the Court was persuaded to pass the order dated 5-10-1995 extending the time for vacation of the suit premises, he may be held guilty of contempt of court, notwithstanding non-furnishing of the undertaking, if it is found that the representation was false and the respondent never intended to act upon it. ..."* (Emphasis supplied)

66. Thus, even if we were to assume that the learned counsel had not given any "undertaking" to the court upon instructions from his clients, the observations made in ***Rita Markandey*** (supra), are significant and refer to

another facet when contempt jurisdiction can be invoked, different and distinct from cases where parties have given undertaking to the court and have thereafter wilfully refused to abide and comply with the same.

67. In ***Govind Kaur*** **v.** ***Hardev*** reported in 1982 (1) RCR 323 (13), a question arose before a Division Bench of the Rajasthan High Court whether the tenant was guilty of the contempt of Court. On March 13, 1980 when the judgment was pronounced the counsel for the tenant made a request to Court for grant of time to vacate shop No. 6. She was granted time of two months. She undertook to deliver vacant possession of shop No. 6 to the landlord on or before the expiry of two months from that day. It was held:—

> *"...This cannot be said to be an arrangement by way of agreement between the parties for vacating shop No. 6. It is an undertaking to the Court. An undertaking is a promise, given to the Court by a party to a proceeding, to do or not to do particular thing, which is enforceable as an injunction because when the Court accepts an undertaking given by a party, its order amounts in substance to an injunction. An undertaking given to the court by a person or a Corporation in pending proceedings on the faith of which the court sanctions a particular course of action or inaction, has the same force as an injunction made by the Court and breach of the undertaking is misconduct amounting to contempt. An 'undertaking given to the Court' should be distinguished from a consent order, or what is known as an order passed on a compromise petition filed by the parties in a civil proceedings. A consent order is a mere agreement between the parties, even though the Court might record it and append its order thereto and in case of the failure of a party to comply with the terms of a consent order, the injured party cannot apply for committing the defaulter for contempt; his remedy is by way of specific performance or injunction. However, when a party secures an*

> *order from the court on giving an undertaking to the Court that he will take a particular course of action or inaction, such undertaking itself operates as an injunction made by the Court because the Court has made its order on the faith of the undertaking, e.g., stay of execution of the decree or order.*"
>
> (Emphasis supplied)

68. The Court then expressed that they were definitely of the opinion that it was an unconditional and unqualified undertaking to the court even though the words to that effect were not used either in the statement or order of the Court.

69. Thus, the expression a party "undertakes" or "gives a solemn promise" or "it is stated at the Bar on instructions from clients that the property shall not be sold" used in the statements of the parties or their counsel or in the orders and decrees of the court, unless the context otherwise suggests, means an implied undertaking to the court. The undertaking is always understood to be an undertaking to the court, which undertaking could be enforced by committal proceedings.

70. We go back to the order passed by the learned Single Judge of the High Court dated 14.10.2015 in the Civil Application No. 11412 of 2015 in Special Civil Application No. 16266 of 2013, recording the assurance/undertaking given by the learned counsel on instructions from his clients that the property with respect to the subject matter of the disputed entry would not be sold till the disposal of the main petition. The order reads thus:

> "*It is stated at the Bar by Mr. Sanjanwala learned senior advocate, on instructions from his clients, that the property qua the subject matter of this entry and the petition, shall not be sold out till the main petition is heard and decided, which satisfies the conscious of Mr. Mihir Thakor learned senior advocate appearing with Mr. Prabhav Mehta learned advocate and he states that he may not press the Letters Patent Appeal, on instructions. Hence, this Civil Application stands disposed of accordingly. It goes without saying that the order was passed adinvitum/by consent of the learned advocates."* (Emphasis supplied)

71. Having regard to the principles of law as aforestated, it will be too much for this Court to say that the statement made by the learned Senior Counsel before the High Court was just an assurance given to a party to the *lis* and was not an undertaking given to the court so as to entail the consequences of "civil contempt".

72. It is true that every undertaking given by a party to a litigation may not be an undertaking to the court; there is a difference between an undertaking given to the other party and an undertaking given to the court. The breach of an undertaking given to the other party may not constitute the contempt of court. However, whether a particular undertaking is an undertaking to the court or to the opposite party must depend upon the facts and circumstances of each case and the language used. In the case on hand, it is not the case of the appellants that they had negotiated a settlement with the other side outside the court and reported the same to the High Court and the High Court proceeded to pass the order incorporating the undertaking given by the

learned counsel upon instructions from the clients. Even if the parties, had negotiated a settlement outside the court and reported the same to the court and the court would have passed an order, in terms of such understanding, there would be no scope to warrant that the undertaking was not given to the court.

73. An undertaking or an assurance given by a lawyer based upon which the court decides upon a particular course of action would definitely fall within the confines of "undertaking" as stipulated under Section 2(b) of the Act 1971 and the breach of which would constitute "civil contempt". As held in ***M. v. Home*** (supra) relied upon by this Court in ***Rama Narang*** (supra) that if a party or solicitor or counsel on his behalf, so as to convey to the court a firm conviction that an undertaking is being given, that party will be bound and it will be no answer that he did not think that he was giving it or that he was misunderstood. The breach of an undertaking given to a court by a person in a pending proceeding on the faith of which the court sanctions a particular course of action is misconduct amounting to contempt.

74. In our view, the High Court was justified in saying while holding the appellants guilty of civil contempt that but for the undertaking, the respondents in the Special Civil Application No. 16266 of 2013 who were the appellants in the LPA (Stamp) No.1196 of 2015 (respondents before this Court) would not have withdrawn the appeal as not pressed.

75. The High Court is right in saying that it is this undertaking given to the court on 14.10.2015 that persuaded the respondents herein to withdraw the said appeal and it is such solemn assurance given to the court which *per forced* them to withdraw the appeal by recording the statement made by the learned Senior Counsel appearing on behalf of the contemnors.

76. Thus, the wilful breach of an assurance in the form of an undertaking given by a counsel /advocate on behalf of his client to the court would amount to "civil contempt" as defined under Section 2(b) of the Act 1971.

77. We are also of the view, having regard to all the facts on record that the undertaking in the case on hand could be said to have been given to the court.

78. The first and the second question formulated by us are answered accordingly.

**ARE CONTEMPTUOUS TRANSACTIONS VOID?**

79. We now proceed to answer the third question formulated by us as regards the power of the contempt court to declare any contemptuous transaction *non est* or void.

80. A Three-Judge Bench of this Court in the case of ***State Bank of India and Others v. Dr. Vijay Mallya*** reported in 2022 SCC Online SC 826, in clear terms said that apart from punishing the contemnor for his contumacious conduct, the majesty of law may demand that appropriate directions be issued by the Court so that any advantage secured as a result of such contumacious

conduct is completely nullified. The approach may require the Court to issue directions either for reversal of the transactions in question by declaring said transactions to be void or passing appropriate directions to the concerned authorities to see that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or anyone claiming under him.

81. It would be pertinent, in this context, to refer to the decision of the Chancery Division in ***Clarke and others v. Chadburn and others*** reported in (1985) 1 All ER 211, wherein it was held that an act done in wilful disobedience of an injunction or court order is not only a contempt of court, but also an illegal and invalid act which could not, therefore, effect any change in the rights and liabilities of others. Similar view was expressed by this Court in ***Satyabrata Biswas and Others v. Kalyan Kumar Kisku and Others*** reported in (1994) 2 SCC 266, wherein the contempt jurisdiction was invoked by the respondents against the appellants, and during the contempt proceedings, it transpired that a sub tenancy was created while the status quo order was in operation. This Court held that creation of sub-tenancy was in violation of the *status quo* order and parties were relegated to the position as existed on the date of the status quo order. This Court, *inter alia*, observed thus:

> *"23. ... Such an order cannot be circumvented by parties with impunity and expect the court to confer its blessings. It does not matter that to contempt proceedings Somani Builders was not a*

> *party. It cannot gain advantage in derogation of the rights of the parties, who were litigating originally. If the right of sub-tenancy is recognised, how is status quo as of 15.9.1988 maintained? Hence, the grant of sublease is contrary to the order of status quo. Any act done in the teeth of the order of status quo is clearly illegal. All actions including the grant of sub-lease are clearly illegal."* (Emphasis supplied)

82. We are aware of the two decisions of this Court one in the case of ***Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited and Others*** reported in (2013) 5 SCC 397 and ***T. Ravi*** (supra). In both these decisions, the view taken is that Section 52 of the Transfer of Property Act, 1882 (for short, "the Act 1882") does not render transfers affected during the pendency of the suit void but only render such transfers subservient to the rights as may be eventually determined by the court.

83. In ***Thomson Press*** (supra), T.S. Thakur, J. in his separate judgment while supplementing the judgment authored by M.Y. Eqbal, J., observed as under:

> "***53.*** *There is, therefore, little room for any doubt that the transfer of the suit property pendente lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent court may issue in the suit against the vendor."*
> (Emphasis supplied)

84. ***Thomson Press*** (supra) referred to above has been relied upon in ***T. Ravi*** (supra) for the proposition that the effect of Section 52 of the Act 1882 is not to render transfers effected during the pendency of a suit by a party to the suit void; the transfer remains valid subject, of course, to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the Court.

85. This Court in ***Delhi Development Authority v. Skipper Construction Co. (P) Ltd. and Another*** reported in (1996) 4 SCC 622, held that the legal consequences of what has been done in breach of or in violation of the order of stay or injunction should be undone and the parties could be put back to the same position as they stood immediately prior to such order of stay or injunction to not let the defaulting party enjoy any undue advantage. This Court while relying upon cases decided by various High Courts held as under:

> "*The contemner should not be allowed to enjoy or retain the fruits of his contempt*
>
> *Xxx* *xxx* *xxx*
>
> ***18.*** *The above principle has been applied even in the case of violation of orders of injunction issued by civil courts. In Clarke v. Chadburn [(1985) 1 All ER 211] Sir Robert Megarry V-C observed:*

> *"I need not cite authority for the proposition that it is of high importance that orders of the court should be obeyed. Wilful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal. If by such disobedience the persons enjoined claim that they have validly effected some charge in the rights and liabilities of others, I cannot see why it should be said that although they are liable to penalties for contempt of court for doing what they did, nevertheless those acts were validly done. Of course, if an act is done, it is not undone merely by pointing out that it was done in breach of the law. If a meeting is held in breach of an injunction, it cannot be said that the meeting has not been held. But the legal consequences of what has been done in breach of the law may plainly be very much affected by the illegality. It seems to me on principle that those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them."*

***19.*** *To the same effect are the decisions of the Madras and Calcutta High Courts in Century Flour Mills Ltd. v. S. Suppiah [AIR 1975 Mad 270 : (1975) 2 MLJ 54] and Sujit Pal v. Prabir Kumar Sun [AIR 1986 Cal 220 : (1986) 90 CWN 342]. In Century Flour Mills Ltd. [AIR 1975 Mad 270 : (1975) 2 MLJ 54] it was held by a Full Bench of the Madras High Court that where an act is done in violation of an order of stay or injunction, it is the duty of the court, as a policy, to set the wrong right and not allow the perpetuation of the wrongdoing. The inherent power of the court, it was held, is not only available in such a case, but it is bound to exercise it to undo the wrong in the interest of justice. That was a case where a meeting was held contrary to an order of injunction. The Court refused to recognise that the holding of the meeting is a legal one. It put back the parties in the same position as they stood immediately prior to the service of the interim order.*

***20.*** *In Sujit Pal [AIR 1986 Cal 220 : (1986) 90 CWN 342] a Division Bench of the Calcutta High Court has taken the same view. There, the defendant forcibly dispossessed the plaintiff in violation of the order of injunction and took possession of the property. The Court directed the restoration of possession to the plaintiff with the aid of police. The Court observed that no technicality can prevent the court from doing justice in exercise of its inherent powers. It*

*held that the object of Rule 2-A of Order 39 will be fulfilled only where such mandatory direction is given for restoration of possession to the aggrieved party. This was necessary, it observed, to prevent the abuse of process of law.*

***21.*** *There is no doubt that this salutary rule has to be applied and given effect to by this Court, if necessary, by overruling any procedural or other technical objections. Article 129 is a constitutional power and when exercised in tandem with Article 142, all such objections should give way. The court must ensure full justice between the parties before it."*

(Emphasis supplied)

86. This Court in ***Vidur Impex and Traders Private Limited and Others v. Tosh Apartments Private Limited and Others*** reported in (2012) 8 SCC 384, while deciding on a similar factual scenario held that the sale transactions conducted in teeth of the injunction passed by the Delhi High Court did not have any legal basis. This Court held as under:

"*42. ... At the cost of repetition, we consider it necessary to mention that Respondent 1 had filed suit for specific performance of agreement dated 13-9-1988 executed by Respondent 2. The appellants and Bhagwati Developers are total strangers to that agreement. They came into the picture only when Respondent 2 entered into a clandestine transaction with the appellants for sale of the suit property and executed the agreements for sale, which were followed by registered sale deeds and the appellants executed agreement for sale in favour of Bhagwati Developers. These transactions were in clear violation of the order of injunction passed by the Delhi High Court which had restrained Respondent 2 from alienating the suit property or creating third-party interest. To put it differently, the agreements for sale and the sale deeds executed by Respondent 2 in favour of the appellants did not have any legal sanctity. The status of the agreement for sale executed by the appellants in favour of Bhagwati Developers was no different. These transactions did not confer any right upon the appellants or Bhagwati Developers. Therefore, their presence is not at all necessary for adjudication of the question whether Respondents 1*

*and 2 had entered into a binding agreement and whether Respondent 1 is entitled to a decree of specific performance of the said agreement. …"* (Emphasis supplied)

87. The decision of ***Vidur Impex*** (supra) was relied upon by this Court in the case of ***Jehal Tanti and Others v. Nageshwar Singh (Dead) THR. LRS.*** reported in AIR 2013 SC 2235, wherein it was held that:

> *"**13.** We may also notice Section 23 of the Contract Act, 1872, which lays down that:*
>
> *"**23. What considerations and objects are lawful, and what not**.—The consideration or object of an agreement is lawful, unless—*
>
> *it is forbidden by law; or*
> *is of such a nature that, if permitted, it would defeat the provisions of any law; or*
> *is fraudulent; or*
> *involves or implies injury to the person or property of another; or the court regards it as immoral, or opposed to public policy."*
>
> *In each of these cases, the consideration or object of an agreement is unlawful and every agreement executed with such an object or consideration which is unlawful is void. Since the sale deed was executed in favour of Respondent 1 in the teeth of the order of injunction passed by the trial court, the same appears to be unlawful."* *(Emphasis supplied)*

88. Thus, although Section 52 of the Act 1882 does not render a transfer *pendente lite* void yet the court while exercising contempt jurisdiction may be justified to pass directions either for reversal of the transactions in question by declaring the said transactions to be void or proceed to pass appropriate directions to the concerned authorities to ensure that the

contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or anyone claiming under him.

89. The High Court declared all the sale deeds executed by the contemnors in favour of the purchasers as *non est*. The High Court ordered that the sale deeds stand cancelled and set aside. The contemnors were directed to restore the position which was prevailing at the time of the order dated 14.10.2015 passed by the High Court. In our opinion, the High Court was fully justified in declaring the sale deeds as *non est* or void.

**IMPLEADMENT OF PURCHASERS AS NECESSARY PARTIES**

90. We now proceed to answer the question whether the clients of Mr. Shyam Divan i.e., purchasers should have been impleaded as party respondents in the contempt proceedings before the High Court and whether they should have been heard before passing the final order.

91. In the case of ***Satyabrata Biswas*** (supra), it was held that no person can gain an advantage in derogation of rights of the parties. In the said matter an order was passed, directing the parties to maintain status quo with respect to the disputed property. The appellant therein however, acted in contempt and created a sub-tenancy in favour of one Somani Builders, who was not made a party to the contempt proceedings before the High Court. Somani Builders contended that they should have been made a party to the

proceedings as they possessed a right in the disputed property. This Court rejected the said contention and observed as under:

> ***"23.*** *... It is no use contending as Mr. Chidambaram, learned counsel for the respondents does, that there was a bar to such a sublease under the terms of the status quo order. It has the effect of violating the preservation of status of the property. This will all the more be so when this is done without the leave of the court to disturb the state of things as they then stood. It would amount to violation of the order. The principle contained in the maxim 'actus curiae neminem gravabit' has no application at all to the facts of this case when in violation of status quo order a sub-tenancy has been created. Equally, the contention that even a trespasser cannot be evicted without recourse to law is without merit, because the state of affairs in relation to property as on September 15, 1988 is what the court is concerned with. Such an order cannot be circumvented by parties with impunity and expect the court to confer its blessings. It does not matter that to the contempt proceedings Somani Builders was not a party. It cannot gain an advantage in derogation of the rights of the parties, who were litigating originally. If the right of sub-tenancy is recognised, how is status quo as of September 15, 1988 maintained? Hence, the grant of sublease is contrary to the order of status quo. Any act done in the teeth of the order of status quo is clearly illegal. All actions including the grant of sublease are clearly illegal."*
>
> (Emphasis supplied)

92. The Division Bench of the Gujarat High Court while referring to ***Satyabrata Biswas*** *(supra) referred to above* ***In Re: Mafatlal Industries Ltd.*** Cross-Objection in O.J. Appeal No. 16 of 1994 in Company Petition No. 22 of 1994 decided on 12.07.1996, observed as under:

> "*71. It is of the essence of the rule of law that everyone within the society is governed by the rule of law and should consider himself bound by and obey the rule of law. It is fundamental to the system of polity that India has adopted and which is embodied in the Constitution that the courts of the land are vested with the powers of interpreting the law and of applying it to the facts of the cases which are properly brought before them. When once an order has*

*been passed which the court has jurisdiction to pass, it is the duty of all persons bound by it to obey the order so long as it stands, and it would tend to the subversion of orderly administration and civil government, if parties could disobey orders with impunity. If disobedience could go unchecked, it would result in orders of courts ceasing to have any meaning and judicial power itself becoming a mockery. The right cannot be doubted that the court is empowered by the statute to issue injunction against the defendant in appropriate cases in such terms as the court thinks proper. Machinery has been provided to penalise the person who disobeys the order which is binding on the person injuncted as a part of the fundamental rule of law which governs equity. The further question that is required to be considered is whether the act itself committed in breach of the order remains unscathed. In our opinion, taking the view that such a transaction in all circumstances irrespective of binding circumstance or nature of the order does not affect the transaction would be encouraging breach of the injunction order by any person venturing to suffer penalty and would result in cutting at the very roots of the effective nature of the orders and attainment of the object for which the courts exist and exercise judicial power.*

*xxx* *xxx* *xxx*

*73. From the above, it is clear that apart from countenancing the proceedings for contempt for breach of the injunction, the apex court per-mitted the action to be taken for eviction of the sub-tenant inducted in possession contrary to the injunction order by declaring the consequence of creation of sub-tenancy in breach of the injunction order itself to be illegal conferring no right on the subtenant to remain in possession. This clear pronouncement of the apex court fortifies the conclusion which we have reached and plea of the company that, in no circumstances, the transaction carried on in breach of the injunction order can be held to be void, cannot be sustained.*"

(Emphasis supplied)

93. In ***Surjit Singh and others etc. etc. v. Harbans Singh and others*** reported in AIR 1996 SC 135, this Court considered the question whether a person to whom the suit property is alienated after passing of the preliminary

decree by the trial court, which had restrained the parties from alienating or otherwise transferring the suit property, has the right to be impleaded as a party. The trial court accepted the application filed by the transferees and the order of the trial court was confirmed by the lower appellate court and the High Court. While allowing the appeal against the order of the High Court, this Court observed:

> "***4.*** *... In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes. Once that is so, Pritam Singh and his assignees, respondents herein, cannot claim to be impleaded as parties on the basis of assignment. Therefore, the assignees-respondents could not have been impleaded by the trial Court as parties to the suit, in disobedience of its orders*."
>
> (Emphasis supplied)

94. In ***Sarvinder Singh v. Dalip Singh and Others*** reported in (1996) 5 SCC 539, this Court considered the question whether the respondent therein who had purchased the property during the pendency of a suit for declaration filed by the appellant on the basis of a registered will executed by his mother was entitled to be impleaded as party and observed:

> *"**5.** ... The respondents indisputably cannot challenge the legality or the validity of the Will executed and registered by Hira Devi on 26-5-1952. Though it may be open to the legal heirs of Rajender Kaur, who was a party to the earlier suit, to resist the claim on any legally available or tenable grounds, those grounds are not*

*available to the respondents. Under those circumstances, the respondents cannot, by any stretch of imagination, be said to be either necessary or proper parties to the suit. A necessary party is one whose presence is absolutely necessary and without whose presence the issue cannot effectually and completely be adjudicated upon and decided between the parties. A proper party is one whose presence would be necessary to effectually and completely adjudicate upon the disputes. In either case the respondents cannot be said to be either necessary or proper parties to the suit in which the primary relief was found on the basis of the registered Will executed by the appellant's mother, Smt Hira Devi. Moreover, admittedly the respondents claimed right, title and interest pursuant to the registered sale deeds said to have been executed by the defendants-heirs of Rajender Kaur on 2-12-1991 and 12-12-1991, pending suit.*

***6.*** *Section 52 of the Transfer of Property Act envisages that:*

> *"During the pendency in any court having authority within the limits of India ... of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under the decree or order which may be made therein, except under the authority of the court and on such terms as it may impose."*

*It would, therefore, be clear that the defendants in the suit were prohibited by operation of Section 52 to deal with the property and could not transfer or otherwise deal with it in any way affecting the rights of the appellant except with the order or authority of the court. Admittedly, the authority or order of the court had not been obtained for alienation of those properties. Therefore, the alienation obviously would be hit by the doctrine of lis pendens by operation of Section 52. Under these circumstances, the respondents cannot be considered to be either necessary or proper parties to the suit.* (Emphasis supplied)

95. This Court in ***Bibi Zubaida Khatoon v. Nabi Hassan Saheb and Another*** reported in (2004) 1 SCC 191, was called upon to consider whether the High Court's order, which had declined to interfere with the order passed by the trial court dismissing the applications filed by the appellant for impleadment as party to the cross suits of which one was filed for redemption of mortgage and the other was filed for specific performance of the agreement for sale, was correct. While dismissing the appeal, this Court referred to the judgments in ***Sarvinder Singh*** (supra) and ***Dhurandhar Prasad Singh v. Jai Prakash University and Others*** reported in (2001) 6 SCC 534, and observed that:

> *"10. ... There is no absolute rule that the transferee pendente lite without leave of the court should in all cases be allowed to join and contest the pending suits. ..."*
>
> (Emphasis supplied)

96. We may also be pertinent to refer to and rely upon the decision in ***D.N. Taneja v. Bhajan Lal*** reported in (1988) 3 SCC 26, whereunder it was held that in contempt proceedings there are only two parties, i.e., the court and the contemnor. This Court held as under:

> *"12. ... A contempt is a matter between the court and the alleged contemnor. Any person who moves the machinery of the court for contempt only brings to the notice of the court certain facts constituting contempt of court. After furnishing such information he may still assist the court, but it must always be borne in mind that in a contempt proceeding there are only two parties, namely, the court and the contemnor. It may be one of the reasons which weighed with the legislature in not conferring any right of appeal on the petitioner for contempt. The aggrieved party under Section 19(1) can only be the contemnor who has been punished for contempt of court."*

(Emphasis supplied)

97. Thus, from the aforesaid, it is evident that it was not necessary for the High Court to implead the purchasers in the contempt proceedings. In fact, we may go to the extent of observing having regard to the facts of the case that the purchasers were quietly watching the proceedings. It is not as if they were not aware of what was happening however, when things went wrong, they now cry foul of not being impleaded as parties and heard by the High Court. We are also not prepared to believe that even while the sale transactions were being effected they were not aware of the undertaking given before the High Court that the properties would not be sold till the final disposal of the main matter.

## CONCEPT OF APOLOGY

98. We must refer to Section 12 of the Act 1971:

> *"**12. Punishment for contempt of court.—***
>
> *(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished 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:*
>
> *Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.*
>
> *Explanation.—An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.*

*(2) Notwithstanding anything contained in any other law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.*

*(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.*

*(4) 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 such person:*

*Provided 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.*

*(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also 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 such director, manager, secretary or other officer.*

*Explanation.—For the purposes of sub-sections (4) and (5),—*

*(a) "company" means any body corporate and includes a firm or other association of individuals; and*

*(b) "director", in relation to a firm, means a partner in the firm.*"

99. Section 12 of the Act 1971 provides for the punishment of contempt. Proviso to this section states that the accused may be discharged or the punishment awarded may be remitted on the apology being made to the satisfaction of the court. Explanation to this says that the apology shall not be rejected merely on the ground that it is qualified or conditional, if the accused makes it bona fide. Therefore, what is requirement of the provision is that the apology which is either qualified or conditional made by the alleged contemner shall also be not discarded if the same in the opinion of the court is made bona fide. It is the discretion of the court whether to accept the same or not and that discretion is required to be exercised judiciously and the accused can be discharged. For preventing interference in the course of justice and to upkeep the authority of law, sparingly, of course, such power contemplated under the constitution warrant its use.

100. We now proceed to consider the question as regards the acceptance of apology. It is pertinent to note at this stage that all throughout the proceedings before the High Court, the stance of the appellants was that they committed a big mistake by executing the sale deeds despite having given a clear-cut undertaking to the court that they would not do so. By and large, from the averments in the various affidavits filed by the appellants over a period of time; referred to by the High Court in its judgment, the stance had been that the appellants should not have defied the order of the High Court and are extremely sorry in that regard. In such circumstances, the appellants pleaded

before the High Court that their apology may be accepted and they may be discharged from the proceedings.

101. We may take judicial notice of the fact with all humility at our command that over a period of time, the courts have shown undue leniency and magnanimity towards the contemnors. This lenient attitude shown by the courts over a period of time has actually emboldened unscrupulous litigants to disobey or commit breach of the order passed by any court or any undertaking given to the court with impunity.

102. The litigants, proceeded for contempt of court have realised that they have a very potent weapon in their hands in the form of apology. Take for instance, the present case itself. What do the appellants want us to do? The appellants want this Court to accept their apology and set aside the order of punishment and sentence passed by the High Court. There ought not to be a tendency by courts to show compassion when disobedience of an undertaking or an order is with impunity and with total consciousness.

103. In re. ***Tapan Kumar Mukherjee v. Heromoni Mondal and Another*** reported in (1991) 1 SCC 397, this Court in a contempt matter has observed:—

> *"9.... we should like to put out a warning that where a case of wilful disobedience is made out, the courts will not hesitate and will convict delinquent officer and that no lenience in the court's attitude should be expected from the court as a matter of course merely on the ground that an order of conviction would damage the service career of the concerned officer".*

104. In re. ***Tapan Kumar*** (supra), this Court was dealing with a public servant facing an action for contempt.

105. We wonder what could be the ultimate outcome if we accept the apology and allow the appellants to go scot-free. First, they would have to face no legal consequences for the alleged act of contempt and secondly, would continue to enjoy or retain the fruits of their contempt. We say so because they have already pocketed a sizeable amount towards the sale consideration obtained from the purchasers.

106. In the case of ***Sub-Judge, First Class, Hoshangabad v. Jawahar Lal Ramchand Parwar*** reported in AIR 1940 Nagpur 407, Justice Bose (as he then was) said that an apology is not a weapon of defence forged to purge the guilty of their offences. It is not an additional insult to be hurled at the heads of those who have been wronged. It is intended to be evidence of real contriteness, the manly consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrong-doer's power. An apology, which the learned Judge says should be evidence of real contriteness and manly consciousness of the wrong done; it ceases to be so if it is belated, and it becomes instead, to borrow the language of Justice Bose, again the cringing of a coward shivering at the prospect of the stern hand of justice about to descend upon his head.

107. In the case of ***Patel Rajnikant Dhulabhai*** (supra), this Court rejected the argument that an apology can be used as a weapon of defence and while relying upon multiple decisions held as under:

> ***"62.*** *In the celebrated decision of Attorney General v. Times Newspaper Ltd. [(1974) AC 273 : (1973) 3 All ER 54 : (1973) 3 WLR 298 (HL)] Lord Diplock stated: (All ER p. 71f)*
>
> > *"There is an element of public policy in punishing civil contempt, since the administration of justice would be undermined if the order of any court of law could be disregarded with impunity;...."*
>
> *xxx* *xxx* *xxx*
>
> ***74.*** *In Hiren Bose, Re [AIR 1969 Cal 1 : 72 Cal WN 82] the High Court of Calcutta stated: (AIR p. 3, para 13)*
>
> > *"13. ... It is also not a matter of course that a Judge can be expected to accept any apology. Apology cannot be a weapon of defence forged always to purge the guilty. It is intended to be evidence of real contrition, the manly consciousness of a wrong done, of an injury inflicted and the earnest desire to make such reparation as lies in the wrong-doer's power. Only then is it of any avail in a court of justice. But before it can have that effect, it should be tendered at the earliest possible stage, not the latest. Even if wisdom dawns only at a later stage, the apology should be tendered unreservedly and unconditionally, before the Judge has indicated the trend of his mind. Unless that is done, not only is the tendered apology robbed of all grace but it ceases to be an apology. It ceases to be the full, frank and manly confession of a wrong done, which it is intended to be."*
>
> ***75.*** *It is well settled that an apology is neither a weapon of defence to purge the guilty of their offence, nor is it intended to operate as a universal panacea, it is intended to be evidence of real contriteness (vide M.Y. Shareef v. Hon'ble Judges of the High Court of Nagpur [AIR 1955 SC 19 : (1955) 1 SCR 757]; M.B.*

*Sanghi v. High Court of Punjab & Haryana [(1991) 3 SCC 600 : 1991 SCC (Cri) 897 : (1991) 3 SCR 312] ).*

***76.*** *In T.N. Godavarman Thirumulpad (102) v. Ashok Khot [(2006) 5 SCC 1], a three-Judge Bench of this Court had an occasion to consider the question in the light of an "apology" as a weapon of defence by the contemnor with a prayer to drop the proceedings. The Court took note of the following observations of this Court in L.D. Jaikwal v. State of U.P. [(1984) 3 SCC 405 : 1984 SCC (Cri) 421] : (Ashok Khot case [(2006) 5 SCC 1] , SCC p. 17, para 32)*

> *"32. ... We are sorry to say we cannot subscribe to the 'slap—say sorry—and forget' school of thought in administration of contempt jurisprudence. Saying 'sorry' does not make the slapper taken the slap smart less upon the said hypocritical word being uttered. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to 'say' sorry—it is another to 'feel' sorry."*

*The Court, therefore, rejected the prayer and stated: (SCC p. 17, para 31)*

> *"31. Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace, the apology is shorn of penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and becomes an act of a cringing coward."*

*Similar view was taken in other cases also by this Court.*

***77.*** *We are also satisfied that the so-called apology is not an act of penitence, contrition or regret. It has been tendered as a "tactful move" when the contemnors are in the tight corner and with a view to ward off the Court. Acceptance of such apology in the case on hand would be allowing the contemnors to go away with impunity after committing gross contempt of Court. In our considered opinion, on the facts and in the circumstances of the case,*

*imposition of fine in lieu of imprisonment will not meet the ends of justice."*

(Emphasis supplied)

108. This Court in ***Priya Gupta and Another v. Additional Secretary, Ministry of Health and Family Welfare and Others*** reported in (2013) 11 SCC 404, held that:

*"**7.** Tendering an apology is not a satisfactory way of resolving contempt proceedings. An apology tendered at the very initial stage of the proceedings being bona fide and preferably unconditional would normally persuade the court to accept such apology, if this would not leave a serious scar on the dignity/authority of the court and interfere with the administration of justice under the orders of the Court.*

***8.** "Bona fide" is an expression which has to be examined in the context of a given case. It cannot be understood in the abstract. The attendant circumstances, behaviour of the contemnor and the remorse or regret on his part are some of the relevant considerations which would weigh with the Court in deciding such an issue. Where, persistently, a person has attempted to overreach the process of Court and has persisted with the illegal act done in wilful violation to the orders of the Court, it will be difficult for the Court to accept unconditional apology even if it is made at the threshold of the proceedings. It is not necessary for us to examine in any greater detail the factual matrix of the case since the disobedience, manipulation of procedure and violation of the schedule prescribed under the orders of the Court is an admitted position. All that we have to examine is whether the apology tendered is bona fide when examined in the light of the attendant circumstances and whether it will be in the interest of justice to accept the same.*

***9.** The facts which will weigh with the Court while considering acceptance of an apology are the contemptuous conduct, the extent to which the order of the Court has been violated, irresponsible acts on the part of the contemnor and the degree of interference in the administration of justice, which thereby cause prejudice to other parties. An apology tendered, even at the outset, has to be bona fide*

*and should be demonstrative of repentance and sincere regret on the part of the contemnor, lest the administration of justice be crudely interfered with by a person with impunity. The basic ingredients of the rule of law have to be enforced, whatever be the consequence and all persons are under a fundamental duty to maintain the rule of law. An apology which is not bona fide and has been tendered to truncate the process of law with the ulterior motive of escaping the consequences of such flagrant violation of orders of the court and causes discernible disrespect to the course of administration of justice, cannot be permitted. The court has to draw a balance between cases where tendering of an apology is sufficient, and cases where it is necessary to inflict punishment on the contemnor. An attempt to circumvent the orders of the court is derogatory to the very dignity of the court and administration of justice. A person who attempts to salvage himself by showing ignorance of the court's order, of which he quite clearly had the knowledge, would again be an attempt on his part to circumvent the process of law. Tendering a justification would be inconsistent with the concept of an apology. An apology which is neither sincere nor satisfactory and is not made at the appropriate stage may not provide sufficient grounds to the court for the acceptance of the same. It is also an accepted principle that one who commits intentional violations must also be aware of the consequences of the same. One who tenders an unqualified apology would normally not render justification for the contemptuous conduct. In any case, tendering of an apology is a weapon of defence to purge the guilt of offence by the contemnor. It is not intended to operate as a universal panacea to frustrate the action in law, as the fundamental principle is that rule of law and dignity of the court must prevail.*

*xxx* *xxx* *xxx*

***14.** From the above principle, it is clear that consideration of an apology as contemplated under Explanation to Section 12(1) of the Act is not a panacea to avoid action in law universally. While considering the apology and its acceptance, the court inter alia considers: (a) the conduct of the contemnor prior and subsequent to the tendering of apology. If the conduct is contemptuous, prejudicial and has harmed the system and other innocent persons as a whole, it would be a factor which would weigh against the contemnors; and (b) the stage and time when such apology is tendered."* (Emphasis supplied)

109. In the case of ***Sevakram*** (supra), it was held that an apology neither purges nor washes away the act of contempt and at best it is a mitigating circumstance while considering the consequential order following finding of contempt having been committed. The relevant portion is produced hereunder:

> *"46. The various decisions referred to by both parties need not detain us for long inasmuch as there is no distinction on principle in the decided cases. An apology is not a weapon of defence. Apology neither purges nor washes away an act of contempt. It is at best a mitigating circumstance while considering the consequential orders to be made, once a person is found to have committed Contempt of Court, civil or criminal. It is a factor relevant to be considered while devising the final order to be made against the contemner. An apology can only be considered which is in real sense remorseful and to the satisfaction of the Court as a contrition by the respondents. Ordinarily, belated apologies are considered to be offered more out of fear of punishment than with a sense of contrition. But merely because the apology has been tendered, not at the first instance, but at a later stage, by itself cannot be a ground for not considering it. Had it been so, proviso to Sec. 12 which makes it possible even after sentence of punishment has been made, to remit the same on considering the apology given thereafter. In short, whether an apology tendered at any stage of the proceedings is to be considered as mitigating circumstances or not depends on facts and circumstances of that case and that principle is not inhibited by any precedent. The precedents serve as guidelines."*
>
> (Emphasis supplied)

110. The Constitution Bench of this Court in ***M.Y. Shareef and another v. Hon'ble Judges of the Nagpur High Court and others*** reported in AIR 1955 SC 19 observed thus:

> *"**10.** The proposition is well settled and self-evident that there cannot be both justification and an apology. The two things are incompatible. Again an apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness. The appellants having tendered an unqualified apology, no exception can be taken to the decision of the High Court that the application for transfer did constitute contempt because the judges were scandalized with a view to diverting the due course of justice, and that in signing this application the two advocates were guilty of contempt. That decision therefore stands."*
>
> (Emphasis supplied)

111. Thus, apology is not just a word. The court should not accept the apology when it appears that saying sorry is nothing but a legal trick to wriggle out of responsibility. A true apology must be a deep ethical act of introspection, self-introspection, atonement and self-reform. In its absence, an apology can be termed as farce.

112. It is equally well-settled that apology tendered is not to be accepted as a matter of course and the court is not bound to accept the same. Although, the apology may be unconditional, unqualified and *bona fide,* yet, if the conduct is serious which has caused damage to the dignity of the institution the same need not to be accepted.

113. In the facts of the case, we are convinced that although the appellants might have tendered the apology before the High Court in the first instance, yet such apology does not deserve to be accepted and was rightly not accepted by the High Court. It was nothing but a gamble on the part of the appellants. It is a lame excuse on their part to say that they were left with no choice but

to execute the sale deeds. They have also highlighted few circumstances in this regard. However, we are not at all convinced with any such explanations offered by the appellants. They took a calculated risk to transfer the properties and pocketed the sale consideration. If there was any impending urgency to execute the sale deeds, they could have come to the High Court and should have obtained appropriate clarification or permission in that regard. This is the reason why we say that the appellants with a view to gain wrongfully gambled in the hope that ultimately, they would get away by tendering an apology. This is the reason why such fake apologies should not be accepted by the court and allow a person who has no regard for the Majesty of law to get away from the legal consequences. There is no occasion for us to show any compassion as contempt has been committed and proved beyond reasonable doubt and the effect of this contempt has been felt on the Majesty of the High Court. The litigating public cannot be encouraged that such a situation can continue or the court will not rise to the occasion to book people violating its orders. The law is very clear that the court should not get compassionate and dilute an indictment and not follow it with conviction. The fact that the appellants have committed contempt is not in doubt. The law enjoins that a punishment must follow.

114. We take notice of the fact that the issue of limitation to initiate the contempt proceedings was also raised before the High Court. The High Court has answered the same quite elaborately. In fact, this issue was not raised

before us during the course of the hearing of these appeals. We need not go into the issue of limitation any further.

115. The learned counsel appearing for the appellants have placed reliance on few decisions of this Court. We have looked into all those decisions. None of the decisions, is of any avail to the appellants. It is not necessary for us to deal with each and every judgment relied upon on behalf of the appellants. We have extensively discussed the position of law on all the issues relating to contempt of court.

116. We may summarise our final conclusion as under:

(i) We hold that an assurance in the form of an undertaking given by a counsel / advocate on behalf of his client to the court; the wilful breach or disobedience of the same would amount to "civil contempt" as defined under Section 2(b) of the Act 1971.

(ii) There exists a distinction between an undertaking given to a party to the *lis* and the undertaking given to a court. The undertaking given to a court attracts the provisions of the Act 1971 whereas an undertaking given to a party to the *lis* by way of an agreement of settlement or otherwise would not attract the provisions of the Act 1971. In the facts of the present case, we hold that the undertaking was given to the High Court and the breach or disobedience would definitely attract the provisions of the Act 1971.

(iii) Although the transfer of the suit property pendente lite may not be termed as *void ab initio* yet when the court is looking into such transfers in contempt proceedings the court can definitely declare such transactions to be void in order to maintain the majesty of law. Apart from punishing the contemnor, for his contumacious conduct, the majesty of law may demand that appropriate directions be issued by the court so that any advantage secured as a result of such contumacious conduct is completely nullified. This may include issue of directions either for reversal of the transactions by declaring such transactions to be void or passing appropriate directions to the concerned authorities to ensure that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or any one claiming under him.

(iv) The beneficiaries of any contumacious transaction have no right or locus to be heard in the contempt proceedings on the ground that they are *bona fide* purchasers of the property for value without notice and therefore, are necessary parties. Contempt is between the court and the contemnor and no third party can involve itself into the same.

(v) The apology tendered should not be accepted as a matter of course and the court is not bound to accept the same. The apology may be unconditional, unqualified and *bona fide*, still if the conduct is serious, which has caused damage to the dignity of the institution, the

same should not be accepted. There ought not to be a tendency by courts, to show compassion when disobedience of an undertaking or an order is with impunity and with total consciousness.

117. In the result, all the three appeals fail and are hereby dismissed.

118. We grant two weeks' time to the appellants to surrender and serve out the sentence as imposed by the High Court.

119. No order as to costs.

…….J.
(J.B. PARDIWALA)

……..J.
(MANOJ MISRA)

New Delhi;
Date: September 06, 2023