

SUPREME COURT OF INDIA

L.K.Trust

Vs.

Edc Ltd. & Ors.

C.A.No.4214-4215 of 2011

(J.M. Panchal and Cyriac Joseph,JJ.,)

10.05.2011

JUDGMENT

J.M. Panchal,J.,

SLP.(Civil)No.10334-10335 of 2008

1. Leave is granted in each Special Leave Petition.

2. The appeal arising from Special Leave Petition (C) No. 10334 of 2008 is directed against order dated April 07, 2008 passed by the High Court of Bombay at Goa in Misc. Civil Application No. 165 of 2008 which was filed in Writ Petition No. 601 of 2006 by which it is clarified that the order of status quo passed by the High Court vide order dated December 18, 2006 shall not come in the way of EDC Ltd., i.e., the respondent no. 1 Company herein and the State Bank of India, i.e., the respondent No. 2 herein in considering the proposal of the respondent no. 3 Company who is mortgagor and the petitioner in Writ Petition No. 601 of 2006. The appeal arising from SLP (C) No. 10335 of 2008 is directed against order dated April 9, 2008 passed by the Division Bench of the High Court of Bombay at Goa in Writ Petition No. 601 of 2006 by which the resolution passed by the respondent no. 1 EDC Ltd. on April 8, 2008 had resolved to accept the proposal of respondent no. 3 the Falcon Retreat Pvt. Ltd. for redemption of mortgage and affidavit tendered by the State Bank of India, i.e., the respondent No. 2, stating that the State Bank of India has accepted the proposal of M/s. Falcon Retreat Pvt. Ltd. for redemption of mortgage on payment of Rs.12.87 crores to EDC Ltd. and Rs.9.18 Crores to the State Bank of India, are noticed and in view of the said resolution as well as the affidavit of the State Bank of India, the respondent no. 3, who was the original petitioner, is granted leave to withdraw the petition.

3. This Court proposes to refer to certain relevant facts, which are as under:

“The respondent no. 1, i.e., EDC Ltd. is a Company registered under the Indian Companies Act, 1956. Earlier it was known as the Economic Development

Corporation of Goa. It is an investment company in which the State of Goa holds majority shares. The main objects of the respondent no. 1 Company, as per its Memorandum of Association, amongst others, are providing financial assistance to the industrial enterprises and enterprises carrying on other economic activities whether for starting, running, expanding, modernizing etc. and to aid, assist, initiate, promote, expedite and accelerate the economic development of the State in various spheres. The respondent no. 3 is a Private Limited Company. It is also incorporated under the provisions of the Companies Act, 1956. The respondent No. 3 company is engaged inter alia in the business of development/operation of hotel and tourism. During the years 1994 to 1999, the respondent no. 3 proposed to develop and to start hotel project in the property admeasuring approximately 28000 sq. mtrs. of Survey Nos. 142/1 and 142/1 of Revenue Village Arpora, in Taluka Bardez. For the purpose of implementing the said hotel project, the respondent no. 1 company i.e. EDC Ltd. granted term loan of Rs.7.00 crores to respondent No. 3 against mortgage of aforesaid hotel property vide agreement dated February 8, 1999. Respondent No. 2 has also granted a loan of Rs. 5 crores to the respondent No. 3 against pari pasu charge of the hotel property.”

4. The record indicates that about 80 per cent of the project was completed by the middle of the year 2001 but subsequently because of global recession in the tourism and real estate business, the development of the project was severely affected and project implementation was halted. In view of this hurdle, the repayment of the loan amount became difficult resulting in arrears of installments of loan with mounting interest liability.

5. When the respondent no. 3 was not able to repay the loan amount, the respondent no. 1 company initiated coercive action for the recovery of loan amount and attached the property of respondent no. 3 company on July 15, 2003 under Section 29 of State Finance Corporation Act, 1951. On the request of the respondent No. 3 that it would be able to sustain the adverse market conditions and convert the project into profitable venture provided some time was granted, the property attached was released and, therefore, the respondent no. 1 handed over the possession of the property to the respondent no.3 on certain conditions stipulated in agreement dated August 19, 2003, but subsequently in the month of October, 2003 the respondent No. 1 again attached the property. The respondent no. 3 challenged the action of the respondent no. 1 in attaching the property by way of filing Writ Petition No. 608 of 2003 before the High Court.

The said petition was, however, withdrawn subsequently.

6. The offer made by the respondent No. 3 for financial restructuring and/or one time settlement by payment of Rs.12.00 crores was rejected by the respondent No. 1 and the respondent No. 2. Pursuant thereto, the respondent no. 1 made several attempts between 2004 to 2005 to sell the attached property, which was mortgaged by way of public auction, but in none of the public auctions, it received offers equivalent to market value of the

property. Thereafter, by private negotiation the respondent No. 1 had accepted the proposal of appellant trust to sell the property in question for a sum of Rs.12.99 crores.

7. The respondent no. 3 thereafter received a letter dated December 5, 2005 on December 13, 2005 from the respondent no. 1 whereby the respondent no. 1 notified that it had received an offer of Rs.12.99 crores from the appellant and was inclined to accept the said offer and in case the respondent no. 3 had any party with better offer, the same should be sent to respondent no. 1 within 3 days from the date of the letter, failing which the respondent no. 1 would proceed further in the matter without prejudice to the rights of the respondent no. 1 company to recover the balance outstanding dues from the respondent no. 3. On the same date i.e. on December 5, 2005 EDC Board while accepting the offer of the present appellant trust, the respondent No. 1 had also passed a resolution that only 3 days notice be given in future to borrowers to bring in matching offers in case of private auctions. The offer received by the respondent no. 1 from the appellant was subject matter of Writ Petition No. 19 of 2006 filed by the respondent no. 3 before the High Court. The ground raised in the petition was that the offer made by the respondent no. 3 through third party i.e. Condor Polymeric for Rs. 14 crores made on January 18, 2006 was not being considered by the respondent no. 1 despite the said offer being the higher offer than made by the appellant trust. The respondent no. 3 had prayed for a writ of mandamus directing the respondent no. 1 to consider and accept the proposal of the respondent no. 3 communicated vide a letter dated 18.01.2006 and restrain the respondent no. 1 from proceeding to sell the property attached to the appellant.

8. While the said petition was pending before the High Court, the appellant had filed an application for intervention and impleadment in the petition on the ground that the property in issue was already agreed to be sold to the appellant trust by the respondent no. 1 and part payment towards it was already made. Upon hearing the parties the High Court had directed the impleadment of appellant, i.e., L.K. Trust as the respondent no. 3 in the Writ Petition pending before it. At the hearing of the said petition, the High Court questioned respondent no. 1 as to whether there was an agreement to sell the property to the appellant. The stand taken by the respondent no. 1 was that there was a concluded contract with the appellant. In support of the said stand, the respondent no. 1 had relied upon the resolution dated December 5, 2005 of the Board of Directors indicating that the Board of Directors had accepted the offer of the appellant and acceptance was communicated to the appellant on December 12, 2005. However, the respondent no. 1 did not bring to the notice of the Court the fact that 3 days time was granted to the respondent no. 3 to bring better offer and before expiry of the said period resolution was passed by the Board of Directors of respondent no. 1 company. The respondent no. 1 company also concealed the fact that on January 18, 2006 Condor Polymeric has made offer of Rs. 14 crores to the Board of Directors of respondent no. 1 company. The High Court, therefore, relying upon the stand taken by the respondent No. 1, held that there was a concluded contract between the respondent no. 1 and the appellant and in view of the said conclusion dismissed the petition filed by the respondent no. 3 vide judgment and order dated February 22, 2006. Feeling aggrieved, the respondent no. 3 approached this Court by filing Special Leave Petition on March 27, 2006 which was ultimately dismissed on August 24, 2006. Thus the higher offer made by the respondent no. 3 through third party which was subject matter of Writ Petition No. 19 of 2006 was not

accepted when petition for special leave to appeal was dismissed on August 24, 2006. During the pendency of Writ Petition No. 19 of 2006, filed by the respondent No. 3 herein, the appellant trust, on February 13, 2006 issued cheques to the respondent No. 1, purporting to be in full payment of Rs.12,99,00,000/- as per the terms and conditions of sale. After the High Court dismissed Writ Petition No. 19 of 2006 on February 22, 2006, R.C. Mirchandani and others, who are unit holders in the hotel project of the respondent No. 3, filed Writ Petition No. 124 of 2006 challenging the action of the respondent No. 1 in selling the property to the appellant-trust. Those petitioners (Mirchandani and others) offered to pay higher amount than offered by the appellant-trust in Writ Petition No. 19 of 2006, i.e., Rs.. 15 crores, which was conveyed to the respondent No. 1 by letter dated January 3, 2006. The respondent Nos. 3 and 4 herein were impleaded as the respondent Nos. 4 and 5 in Writ Petition No. 124 of 2006.

9. The Board of Directors of the respondent No. 1 was informed that offer of Rs. 14 crores was made by Condor Polymeric to sabotage the offer made by the appellant- trust. The record indicates that the Board of Directors was not informed that the appellant-trust had defaulted in making the balance payment as per the terms of acceptance dated December 12, 2005 by January 12, 2006. Because of this concealment and wrong representation regarding Condor Polymeric, the Board of Directors of the respondent No. 1 in its meeting held on January 18, 2006 rejected the offer of Rs. 14 crores made by the respondent No. 3 through Condor Polymeric. In the meeting held on April 10, 2006, the Board of Directors of the respondent No. 1 was informed that the cheques issued by the appellant-trust, which were delivered during the pendency of the Writ Petition No. 19 of 2006, were subsequently deposited by the respondent No. 1 for realization but the same were dishonoured. The Board of Directors noted this default and resolved to accept the higher bid of Rs. 14 crores offered by Condor Polymeric, brought by the respondent No. 3. This decision of Board of Directors of the respondent No. 1 was not brought to the notice of this Court during the course of hearing of Special Leave Petition on April 12, 2006, but an affidavit was filed stating as to why the offer of the respondent No. 3 was not acceptable. The respondent no. 3 was of the view that its right of redemption of the mortgaged property under Section 60 of the Transfer of Property Act ('T.P. Act' for short) was not defeated by mere agreement to sell the property between the respondent no. 1 and the appellant nor by the Judgment of the High Court which was confirmed by the Supreme Court because the said question was never raised before the Court and was, therefore, not considered. According to the respondent no. 3 such a right in law was recognized in Clause 16 of terms and conditions of tender document entered into between the appellant and the respondent no. 1. Thereafter, by addressing a letter dated August 25, 2006 to the respondent No. 1, the respondent no. 3 exercised its right of redemption and requested the respondent no. 1 to confirm the exact amount due from the respondent no. 3 payable to the respondent Nos. 1 and 2. Meanwhile, the respondent No. 3 enclosed banker's cheque of Rs. 25 lakhs stating that the balance amount which was due on the date of attachment of the mortgaged assets would be paid in full on settlement of the amount. The respondent no. 3 addressed another letter dated September 27, 2006 requesting the respondent no. 1 to issue the letter of acceptance as it had received information that the Board of Directors of the respondent no. 1 company had acknowledged the equity of redemption. The respondent no. 3, by subsequent letter dated September 29, 2006, made a

fair estimate of outstandings, on the basis of outstanding amount quoted by respondent no. 1 before the Supreme Court on April 12, 2006 in Special Leave Petition No. 4957 of 2006 read with resolution passed by the Board of Directors in its meeting held on August 27, 2004 wherein it was recorded that the interest would not be levied on the dues if the property was attached or taken possession of, from the date of taking such possession read with Loan Settlement Scheme approved by Government of Goa as proposed by the respondent no. 1 company in line with RBI Guidelines, and sent to the respondent no. 1 an amount of Rs.9,25,00,000/- by cheque, in addition to earlier payment of Rs.25,00,000/- which was made on August 25, 2006. The respondent no. 3 also sent an amount of Rs.5,90,00,000/- to the respondent no. 2 by a cheque. The respondent no. 1 vide its letter dated September 27, 2006 purportedly, in response to the letter dated August 25, 2006 of the respondent no. 3, informed the respondent no. 3 that, for the purpose of redemption of the mortgaged property, the outstanding dues were Rs.19,22,922.12. It was mentioned in letter dated September 27, 2006 by the respondent No. 1 that it was in the process of proceeding further with the transaction entered into with the appellant-trust as the appellant-trust had forwarded balance consideration to the respondent no. 1 subject to the decision of the Supreme Court dated August 24, 2006. By subsequent letter dated 09.10.2006 the respondent no. 1 company had acknowledged the right of the respondent no. 3 of redemption of mortgage but had stated that it was in the process of implementing the Supreme Court order and therefore no further concession for extension of time to exercise the right of redemption could be considered in the case of the respondent no. 3. As mentioned above, the respondent no. 3 had sent an amount of Rs.9,72,00,690/- to the respondent no. 1 on August 24, 2006 and vide letters dated September 27, 2006 and October 9, 2006 the respondent No. 1 had clearly accepted and acknowledged the right of the respondent no. 3 to redeem the mortgaged property on the payment of liabilities due. Meanwhile, the appellant trust received a letter from the President of Goa Chamber of Commerce, who was also Vice Chairman of respondent no. 1 company stating that the respondent no. 1 at its Board Meeting held on October 19, 2006 had acknowledged legal and inherent right of respondent no. 3 to redeem the mortgaged property and that in light of one time settlement policy of the Government of Goa, which also had the effect of redemption of the mortgage, the case of the respondent no. 3 was referred to the Office of Advocate General whose opinion would be tabled before Board of Directors of respondent no. 1 company again for a decision. The record further indicates that the respondent no. 3 had, for exercising the right of redemption, shown willingness to pay an amount of Rs. 18.40 crores to the respondent nos. 1 and 2 and also agreed to pay Rs. 11.50 crores towards the liabilities of unit holders and Court creditors etc. Meanwhile, SBI filed an affidavit on November 21, 2006 in Writ Petition No. 124 of 2006 that they were willing to accept offer of Rs.18.40 crores offered to EDC Ltd. and State Bank of India by the respondent no. 3. By its letter dated November 23, 2006, the respondent no. 3 again asserted its right of redemption and informed that its financial supporters i.e. M/s. R N R Hotels Pvt. Ltd. had already deposited Rs.25 lakhs with the respondent no.1. The respondent no. 3 to show its bonafide, offered to deposit Rs.18.15 crores on or before December 8, 2006 in the Commercial Branch of the State Bank of India which was permitted by the High Court on November 28, 2006 in Writ Petition No. 124 of 2006.

10. The opinion of Advocate General of Goa dated 22.11.2006 mentioned that there was a concluded contract between the respondent no. 1 and the appellant- trust and the right of the respondent no. 3 of redemption stood extinguished by its conduct as envisaged under Section 60 of the Transfer of Property Act, 1882. Acting upon the said opinion Board of Directors of respondent no.1 passed a resolution dated November 24, 2006 deciding that the respondent no. 1 would conclude the sale transaction with the appellant-trust and go ahead with the conveyance and delivery of possession in favour of the appellant-trust. Thereupon, the respondent no. 3 filed W.P. No. 601 of 2006 before the High Court of Bombay at Goa praying for writ of mandamus against the respondent nos. 1 and 2 inter alia directing them to permit the respondent No. 3 to exercise the rights of redemption of mortgaged property by accepting the offer of Rs.18.40 crores towards full and final settlement of the liability of the respondent No. 3 towards the respondent Nos. 1 and 2 to exercise the reconveyance and release the documents of title deposited with the respondent No. 1 and further prayed that pending hearing and final disposal of the petition the respondent No. 1 to be restrained from proceeding to finalize the sale of the mortgaged property in favour of the appellant-trust. Vide order dated December 18, 2006, High Court of Bombay at Goa, while tagging Writ Petition (C) No. 601 of 2006 with Writ Petition (C) No. 124 of 2006, directed the parties to maintain status quo and to list the matter in the second week after vacation, for final disposal at the stage of admission. Thereafter, on February 19, 2008, the respondent no. 3 made representation to respondent no. 1 to permit it to exercise its right of redemption of mortgage on payment of Rs.12.99 crores to the respondent no. 1 and Rs. 9 crores to respondent no. 2, i.e., the State Bank of India. The respondent no. 1 considered the representation of respondent no. 3 in its 309th Board Meeting and passed a resolution dated February 20, 2008 to the effect that the offer of the respondent no. 3 to redeem the mortgage was favourably accepted provisionally, subject to the approval of the High Court in Writ Petitions No. 601 of 2006 and 124 of 2006 pending before the High Court.

11. Thereafter, respondent no. 1 preferred Misc. Civil Application No. 165 of 2008 in Writ Petition No. 601 of 2006 on February 22, 2008 inter alia praying therein for appropriate orders directing approval of the Board resolution dated February 20, 2008 which in turn resolved to accept the offer of the respondent no. 3 seeking redemption of mortgage in terms mentioned therein. The appellant-trust filed its reply to the said application on March 8, 2008 and opposed the grant of prayers made therein. The High Court by the impugned order dated April 7, 2008 held that the order of status quo passed by the High Court shall not come in the way of respondent nos. 1 and 2 in considering the proposal of respondent no. 3. Thereafter, the respondent no. 1 passed a resolution on April 8, 2008, accepting the offer of the respondent no. 3 to redeem the mortgage. On April 9, 2008, the High Court took the resolution dated 08.04.2008 passed by the respondent no. 1 as well as the affidavit tendered by the State Bank of India, i.e., the respondent No. 2, stating that the State Bank of India has accepted the proposal of M/s. Falcon Retreat Pvt. Ltd. (the respondent No. 3) for redemption of mortgage on payment of Rs.12.87 crores to EDC Ltd. and Rs.9.18 crores to the State Bank of India, on the record of the Writ Petition No. 601 of 2006 and permitted the respondent No. 3 to withdraw the Writ Petition. The High Court by an order dated April 9, 2008, also dismissed the Writ Petition No. 124 of 2006 preferred by Mirchandani as

infructuous. The above two orders dated April 7, 2008 passed in Misc. Civil Application No. 165 of 2008 in Writ Petition No. 601 of 2006 and April 9, 2008 in Writ Petition No. 601 of 2006 have given rise to the instant appeals.

12. The learned counsel for the respondent Nos. 3 and 4 had spelt out a preliminary objection as to the maintainability of the Special Leave Petition against the order dated April 7, 2008 passed in M.C.A. No.165 of 2008 which was filed in Writ Petition (C) No. 601 of 2006 by which the status-quo order granted earlier was modified as well as special leave petition filed against the order dated April 9, 2008 passed in Writ Petition (C) No. 601 of 2006 permitting the Respondent No. 3 who was original Petitioner therein to withdraw the Writ Petition.

According to the learned counsel for the respondent Nos.3 and 4, those two orders could not have been made subject matter of challenge in petitions filed under Article 136 of the Constitution and, therefore, the same should be dismissed. Elaborating the said preliminary objection, it was argued that the impugned order permitting respondent No. 3 to withdraw the Writ Petition cannot be construed as giving rise to any grievance to any person as it has not decided or adjudicated any lis or right and has not granted any relief whatsoever, much less, the reliefs prayed for by the respondent No.3 in the writ petition and, therefore, the Special Leave Petition should not be entertained at all. What was claimed was that the learned counsel for the appellant could not point out that any of the rights of the appellant were infringed or sought to be affected when permission to withdraw the petition was granted to the respondent No. 3 nor could cite any case law to demonstrate that order permitting withdrawal of Writ Petition can be challenged under Article 136 of the Constitution and, therefore, the special leave petition should be dismissed at the threshold.

13. As against this the learned counsel for the appellant submitted that the circumstances, namely, (a) the facts leading to judgment dated August 24, 2006 rendered by this Court in Special Leave Petition (C) No. 4957 of 2006, (b) the action of statutory corporation, i.e., EDC Limited (the respondent No. 1), in first seeking clarification of the order granting status quo dated December 18, 2006 pursuant to its Resolution dated February 20, 2008, (c) passing the Resolution on April 8, 2008 for accepting the proposal of the respondent No. 3 for redemption of mortgage, (d) producing the said resolution before the Court on April 9, 2008 and (e) helping the respondent No. 3 to withdraw the Writ Petition, indicate acts which are palpably and manifestly contrary to judgment of this Court reflecting grossest abuse of the process of law and, therefore, petitions filed by the appellant under Article 136 of the Constitution are maintainable. According to the learned counsel for the appellant, the impugned orders passed by the High Court though appear to be innocuous, have the propensity to cause grave and irreparable injury to the appellant and as the orders impugned are a direct affront to the directions of this Court which were binding upon the High Court as also upon the respondent No. 1 and the Respondent No. 3 by virtue of Article 141 read with Article 144 of the Constitution, the petitions filed by the appellant should be entertained. The learned counsel for the appellant asserted that by allowing its process to be abused in the manner that has been done by the respondent No. 3 in connivance with the respondent No. 1 and the respondent No. 2, the High Court has lent its hands to such unscrupulous parties to defeat and destroy the efficacy of the judgment of this Court. Therefore, although the appellant may have an alternative remedy to assail those actions by a separate writ petition,

the filing of the petitions under Article 136 of the Constitution was the first and proper remedy, because the question involved is about the binding nature of judgment of this Court and, therefore, it would be wrong to non-suit the appellant at the threshold. The learned counsel for the appellant emphasized that the nationalized bank like the State Bank of India to help an unscrupulous defaulter like the respondent No. 3 and to defeat the crystallized rights of the appellant which were accepted and judicially acknowledged by this Court has caused injury to the appellant and in order to avoid multiplicity of proceedings, also the present petitions should be entertained. In support of these submissions the learned counsel for the appellant placed reliance on Executive Officer, Arthanareswarar Temple Vs. R. Sathyamoorthy, (1999) 3 SCC 115 and R. Rathinavel Chettiar Vs. V. Sivaraman, (1999) 4 SCC 89.

14. After taking into consideration the facts of the case and the points raised at the Bar by the learned counsel for the parties, this Court is of the opinion that the petitions filed under Article 136 of the Constitution should not be rejected on the ground of availability of alternative remedy nor it should be rejected on the ground that the special leave petition is filed against order permitting withdrawal of writ petition. Right from the beginning, the case of the appellant is that there was a concluded contract between the appellant and the respondent No. 1 and, therefore, the respondent No. 1 could not have accepted proposal of the respondent No. 3 to redeem the mortgage executed by the respondent No. 3. This was the issue which was raised by the appellant in Writ Petition No. 601 of 2006. Without adjudicating the said claim the High Court has permitted the respondent no. 3 to withdraw the petition filed by the respondent No. 3. Further it is also the case of the appellant that in view of decision of this Court dated August 24, 2006 rendered in Special Leave Petition (Civil) No.4957 of 2006, the rights of the parties were crystallized and, therefore, permission to withdraw the petition unconditionally should not have been granted to respondent No. 3. In Writ Petition No. 601 of 2006 filed by the respondent No. 3 and another against EDC Limited, i.e., respondent No. 1 herein and others, the prayer was to issue a Writ of Mandamus directing respondent No.1 to permit the respondent Nos. 3 and 4 herein to exercise the right of redemption of mortgaged property by accepting the offer of Rs. 18.40 crores towards the full and final settlement of the liability of the respondent No.3 towards the respondent Nos. 1 and 2 and to direct the respondent Nos. 1 and 2 to execute the reconveyance and release the documents of title deposited with the respondent No.1. The interim relief which was claimed by the said respondent No. 3 in the writ petition was to restrain the respondent No.1 herein from proceeding to finalize the sale of the mortgaged property in favour of the present appellant. The record shows that by an order dated December 18, 2006 the High Court had directed the parties to maintain status-quo. By the impugned order dated April 7, 2008 passed in M.C.A. No. 165 of 2008 filed in Writ Petition No. 601 of 2006, the High Court has modified the same. There is no manner of doubt that this modification of interim relief would have certainly adversely affected the claim of the appellant that in view of concluded contract between the appellant and the respondent No. 1, the respondent No. 1 could not have been permitted to consider the claim of the respondent No. 3 for redemption of the mortgaged property and, therefore, Special Leave Petition under Article 136 of the Constitution would certainly be maintainable against that order. Having regard to the facts and circumstances of the case this Court is of the opinion that it would not

serve purpose of any party to dismiss the petitions on the basis preliminary objections raised on behalf of the respondent Nos. 3 and 4 and, therefore, this Court has decided to entertain the Special Leave Petitions and to adjudicate the claims raised therein on merits.

15. The first contention advanced on behalf of the appellant that Falcon Retreat Pvt. Ltd., i.e., respondent No.3, EDC Ltd., i.e., respondent No.1 and the State Bank of India, i.e., respondent No. 2, are all precluded by principles of res judicata and principles of constructive res judicata, from re-opening the matter to overcome the sale of the mortgaged property in favour of the appellant-trust under a concluded contract, as affirmed by this Court vide Judgment dated August 24, 2006 rendered in Special Leave Petition (Civil) No. 4957 of 2006 and, therefore, the impugned orders are liable to be set aside has no substance. It may be mentioned that in Special Leave Petition (Civil) No. 4957 of 2006 what was impugned by the respondent No.3 and another was judgment and order dated February 2, 2006 rendered by the High Court of Bombay at Goa in Civil Writ Petition No.19 of 2006, whereby the writ filed by respondent No.3 praying that its proposal contained in letter dated January 18, 2006 be considered and the respondent No.1, herein, be restrained from selling the assets in question to the appellant was dismissed. It was not disputed that respondent No.3 had committed defaults in payment of dues of the respondent No.1 and therefore an action was taken under Section 29 of the State Financial Corporation Act, 1951. The property in question was attached and possession was taken over by respondent No.1. The Judgment rendered in the said case further makes it evident that the respondent No.1 had made efforts to put the property to sale by auction, but seven such attempts had failed either on account of non-availability of purchaser or on account of postponement of the auction on the request of the respondent No.3 and, thereafter, on November 23, 2005 the appellant, i.e., L.K. Trust had made an offer of Rs. 12.99 crores for the property in question, which offer was considered by the Board of Directors of the respondent No.1 Company on December 5, 2005 and the Board had resolved to accept the offer on certain conditions. The judgment in the said case further shows that the respondent No.3 herein was informed of the private offer made by the appellant and was called upon to get a better offer, if possible, within three days, but the letter of the respondent No.1 dated December 5, 2005 to this effect was perhaps received late by the respondent No.3, i.e., on December 13, 2005 and, therefore, the prayer made by the respondent No.3 seeking twelve months time to arrange a better buyer was not accepted by the respondent No.1. It is evident from the judgment that on December 12, 2005 the offer of the appellant was accepted by respondent No.1 and the same was communicated to the appellant incorporating the relevant conditions for the sale and on December 29, 2005 the respondent No.1 had informed the respondent No.3 about the same to which the respondent No.3 had objected by saying that the price was ridiculously low. On January 23, 2006, the respondent No.3 herein had filed Civil Writ Petition No. 19 of 2006 before the High Court claiming the relief which is referred to earlier. The High Court had dismissed the Writ Petition holding that the respondent No.1 had already entered into an agreement with the appellant for the sale of the assets for a sum of Rs. 12.99 crores and, therefore, there was no question of the same being cancelled or set aside since it represented a concluded contract between the parties. This Court after hearing the learned counsel for the parties expressed the view that at the instance of the respondent No.3 herein the court should not interfere in the exercise of its discretion under Article 136 of the Constitution because an offer had been

made by the appellant herein and accepted by the respondent No.1. Though it was pointed out on behalf of the respondent No.3 to the Court that the cheques which had been issued by the appellant to the respondent No.1 had not been honoured by the Bank, but this Court had expressed the view that even if that be so, it was for respondent No.1 to consider what action it should take in such an event, and ultimately if the respondent No.1 finds that the appellant is not in a position to fulfill its commitment and pay the price offered within the time granted by the respondent No.1, it was open to the respondent No. 1 to proceed to consider other options. In the said matter, this Court expressed an opinion that it was expected of the respondent No.1 to act fairly and in accordance with law but as long as it acts within the parameters of law and its actions were not found to be arbitrary or unreasonable, it was entitled to take a decision which was in its interest. While disposing of the Special Leave Petition, it was observed in the judgment that if the appellant made the payment as promised within such time as might be granted by respondent No.1 and fulfilled the conditions of sale, that might be the end of the matter, but if it failed to do so it was always open to the respondent No.1 to take necessary steps to safeguard its interests, which included inter alia the consideration of other offers made by the other parties. After making above stated observations, this Court had dismissed the special leave petition. If this Court had intended that on mere payment by the appellant of the amounts, the first respondent had nothing further to do except to convey the property to the appellant, it would have so directed. However, this Court had carefully avoided passing any such mandatory order and used the word 'may' and left the matter to the discretion of the respondent No. 1 to take a decision in what it considered to be in its best interest as a public corporation. Further, while deciding the said Special Leave Petition, this Court was never called upon to consider and in fact did not consider the effect of Clause 16 of the General Terms and Conditions, which were expressly accepted by the appellant. This becomes evident if one looks at the resolution dated December 5, 2005 passed by the respondent No. 1 read with the Agenda Note. As per Clause 16 of General Terms and Conditions the respondent No. 1 was to execute transfer documents only after entire offered amount was received. Further the transfer documents were only to be as per the draft to be prepared by the respondent No. 1 and the appellant was required to execute transfer documents within thirty days of communication from the respondent No. 1 asking for such execution. By the said Clause, the appellant was informed that the equity of redemption was existing in favour of the respondent No. 3 and the same would be extinguished only on execution of Deed of Conveyance. The appellant having accepted Clause 16 of the General Terms and Conditions is not justified at all to contend that the sale of mortgaged property had concluded in its favour and that the respondent No. 3 had lost its right to redeem the mortgaged property.

16. A fair and reasonable reading of the judgment delivered by this Court on August 24, 2006 in Special Leave Petition (Civil) No.4957 of 2006 makes it evident that in fact this Court did not record any finding that a concluded contract had come into existence between the present appellant and the respondent No. 1 herein. This Court noticed that on December 12, 2005 the offer made by the appellant was accepted by the respondent No.1 herein and the same was communicated to the appellant incorporating the relevant conditions for the sale. It is nobody's case that those conditions, which were stipulated, were complied with by the appellant nor any such finding was recorded by this Court. What is relevant to notice is that

in the operative part of the judgment, this Court observed that if the respondent No.3 herein, i.e., the appellant makes the payment as promised within such time as might be granted by respondent No.1 and fulfills the conditions of sale, that might be the end of the matter which means that at the time when the judgment was delivered, this Court proceeded on the footing that there was no concluded contract between the appellant and the respondent No. 1. Further what is relevant to notice is that it was stipulated by this Court that if the appellant failed to do so it was always open to the Respondent No.1 to take necessary steps to safeguard the interests which included inter alia the consideration of other offers made by the other parties. Such weighty observations would not have been made by this Court if this Court, in the said matter, had come to the conclusion that there was a concluded contract of sale between the appellant and the respondent No. 1.

17. A reasonable reading of the judgment delivered by this Court mentioned above, makes it more than clear that this Court had never recorded any finding to the effect that sale of the property mortgaged by respondent No.3 herein was concluded between the appellant and the respondent No.1 herein and the Court was essentially concerned with exercise of discretion under Article 136 of the Constitution. Further the question whether the respondent No.3 herein had subsisting right to redeem the property was never gone into by the Court in the said special leave petition because it was never raised either before the High Court or before this Court in the said matter. Thus this Court does not find any merits in the first contention and, therefore, the same is hereby rejected.

18. As this Court has come to the conclusion that there was no concluded contract of sale of the mortgaged property in favour the appellant of by the respondent No.1, the question arises as to whether the right to redeem the mortgaged property conferred by Section 60 of the Transfer of Property Act upon the mortgager, i.e., respondent No.3 can be exercised or not. It is argued on behalf of the appellant that both the High Court of Bombay as well as this Court in the previous round of litigation had found that upon continued default on the part of respondent No.3 in making payment of amount of loan, its properties mortgaged with respondent No.1, were attached and possession thereof was taken over legally in an action under Section 29 of the State Financial Corporation Act, 1951, and, therefore, the right to redeem the mortgaged property available to the respondent No.3 was clearly lost. The learned counsel for the appellant contended that the respondent No.3 had never sought to exercise its right to redeem the mortgaged property before action under Section 29 of the State Financial Corporation Act, 1951 was taken or even thereafter till it lost upto this Court on August 24, 2006 when Special Leave Petition (Civil) No.4957 of 2006 was dismissed and, therefore the exercise of right to redeem, which stood extinguished, was not only malafide but also to defeat the judgment of this Court. According to the learned counsel for the appellant, the first proviso to Section 60 of the Transfer of Property Act 1882 applies with great vigour to the facts of the case, clearly disentitling the respondent No.1 to apply for redemption of mortgaged properties on August 25, 2006 or thereafter and said right of redemption stood foreclosed, both by the acts of the parties and by a decree of the Court. What was stressed was that non-execution of Conveyance Deed by the respondent No.1 in favour of the appellant was illegal and thus, the respondent No.1 was estopped from taking

advantage of its own wrong. It was stressed that, in fact, no right to redeem the property was available to the Respondent No.3.

19. As against this it was argued by the learned counsel for the other side that in Writ Petition No.19 of 2006 from which Special Leave Petition (Civil) No.4957 of 2006 arose, the issue of right of redemption was never raised nor discussed nor gone into and, therefore, it is wrong to contend that the right of the respondent No. 3 to redeem the disputed properties stood extinguished. According to the learned counsel for the respondent Nos.3 and 4 the Special Leave Petition (Civil) No. 4957 of 2006 filed by the Respondent No.3 against the order of High Court dated February 22, 2006 was dismissed with observation :-

"leaving the decision to the discretion of EDC to act within parameters of law in the best interest of EDC, in a non-arbitrary and fair manner".

There was not even a whisper in the said order prohibiting either exercise of Right of Redemption by Respondent No.3 or consideration thereof by Respondent No.1 in terms of Section 60 of the Transfer of Property Act and therefore the superior right to redeem the mortgaged property recognized in catena of the reported decisions of this Court was rightly considered by the respondent No.1. The learned counsel for the appellant had placed reliance on decision in Mohanlal Goenka vs. Benoy Krishna Mukherjee and others (1953) SCR 377, to contend that right not agitated despite being available in earlier proceedings cannot be permitted to be raised in subsequent proceedings. In reply to this, it was argued on behalf of Respondent Nos.3 and 4 that the ratio laid down in the said judgment would not apply to the facts of present case in as much as in the earlier Writ Petition No.19 of 2006, the issue of Right of Redemption could not have been agitated because it was neither available nor raised nor adjudicated and hence the said right was not extinguished. The learned counsel for the Respondent Nos. 3 and 4 had explained that the principle of law stated in Mohanlal Goenka's case (supra) would apply only if issue in both the proceedings were the same and adjudicated in both the proceedings giving rise to the grievance of res judicata.

20. On behalf of the respondent No.1, its learned counsel had placed reliance on Narandas Karsandas Vs. S.A. Kamtam, (1977) 3 SCC 247 to plead that in India it is only on execution of the conveyance and registration of transfer of the mortgagor's interest by registered instrument that the mortgagor's right of redemption will be extinguished and an agreement to sell, does not, of itself, create any interest in, or charge on the property, as a result of which there is no equity or right in property created in favour of the purchaser by the contract between the mortgagee and the proposed purchaser. What was asserted on behalf of the respondent No.1 was that the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed and until the sale is complete by registration, the mortgagor does not lose his right of redemption just because the property was put to auction or proposed sale by private negotiation was in pipe line.

21. On analysis of arguments advanced at the Bar, this Court finds that the proposition that in India it is only on execution of conveyance and the registration of transfer of the mortgagor's interest by registered instrument that the mortgagor's right of redemption stands extinguished

is well settled. Further it is not the case of the appellant that a registered Sale Deed had been executed between the appellant-trust and the respondent No. 1 pursuant to the Resolution passed by the respondent No. 1 and, therefore, in terms of Section 54 of the Transfer of Property Act 1882 no title relating to the disputed property had passed to the appellant at all.

22. What is ruled in *Narandas Karsandas (Supra)* is that in India, there is no equity or right in property created in favour of the purchaser by the contract between the mortgagee and the proposed purchaser and in view of the fact that only on execution of conveyance, ownership passes from one party to another, it cannot be held that the mortgagor lost the right of redemption just because the property was put to auction. In this case, the respondent Housing Society, the mortgagor, had taken loan from the co-respondent Finance Society and mortgaged the property to it under an English mortgage. On default, the mortgagee exercised its right under the mortgage to sell the property without intervention of Court and after notice, put the property to sale by public auction. The appellant auction purchaser paid the sums due. Before the sale was completed by registration etc. the mortgagor sought to exercise his right of redemption by tendering the amount due. The appellant had based his case on the plea that in such a situation the mortgagee acts as agent of the mortgagor and hence binds him. Rejecting the appeal, this Court has held that the right of redemption which is embodied in Section 60 of the Transfer of Property Act is available to the mortgagor unless it has been extinguished by the act of parties or by decree of a court. What is held by this Court is that, in India it is only on execution of the conveyance and registration of transfer of the mortgagor's interest by registered instrument that the mortgagor's right of redemption will be extinguished but the conferment of power to sell the mortgaged property without intervention of the Court, in a mortgage deed, in itself, will not deprive the mortgagor of his right of redemption. This Court in the said case further explained that the extinction of the right of redemption has to be subsequent to the deed conferring such power and the right to redemption is not extinguished at the expiry of the period. This Court emphasized in the said decision that the equity of redemption is not extinguished by mere contract for sale. The decision rendered by Three Judge Bench has been followed in case of *Gajraj Jain vs. State of Bihar and others (2004) 7 SCC 151*. Dealing with a case of sale under Section 29 of the State Financial Corporation Act, it is held therein that the action of the State Financial Corporation in handing over the estates to the respondent No. 4 therein under down payment of Rs.28.85 lakhs, did not prevent the appellant from exercising the right of redemption. The pertinent observations made by this Court in para 15 of the reported decision are as follows: -

"Under Section 60 of the T.P. Act, equity of redemption existed in favour of the Company. A mere agreement of sale of assets cannot extinguish the equity of redemption, it is only on execution of conveyance that the mortgagor's right of redemption will be extinguished."

Applying the principles of law laid down by this Court in the abovementioned two decisions, to the facts of the present case it will have to be held that no transfer of mortgaged property had taken place in favour of the appellant and, therefore, the statutory right of redemption available to the respondent No. 3 was never lost. The

record of the case indicates that the matter had rested at the level of passing some resolution by the respondent No. 1 Company in favour of the appellant and nothing more than that. If the appellant was keen to complete its title over the suit properties, nothing prevented it from instituting appropriate proceedings to compel the respondent No. 1 to execute a sale deed in its favour and getting it registered, but admittedly no such step was taken by the appellant. The decision cited at the Bar by the learned counsel for the appellant to contend that the respondent No. 3 is precluded from asserting its rights of redemption as it was not claimed in the earlier proceedings, would not apply to the facts of this case for the relevant reasons pointed out by the learned counsel for the respondent Nos. 3 and 4 and also because vide letters dated October 9, 2006 and September 27, 2006, the respondent No. 1 had already accepted and acknowledged the right of the respondent No. 3 to redeem the mortgaged property on the payment of amount due. Further by filing affidavit, the respondent No. 2, i.e., the State Bank of India, had declared that it had accepted the proposal of the respondent No. 3 for redemption of mortgage on payment of Rs.12.87 crores to the respondent No. 1 and Rs.9.18 crores to the State Bank of India. However, after receipt of the opinion of the learned Advocate General, the respondent No. 1 had drastically changed its stand without considering the subsisting right of the respondent No. 3 to redeem the mortgaged property and was inclined to proceed with completion of sale transaction in favour of the appellant. It was at that stage that the respondent No. 3 had to file Writ Petition No. 601 of 2006 asserting its right to redeem the mortgaged property. The issues in the earlier proceedings were quite different from those raised in Writ Petition No. 601 of 2006. In fact, no relief is granted to the respondent No. 3 in Writ Petition No. 601 of 2006 and, therefore, the ratio laid down in Mohanlal Goenka's case (supra) would not apply to the facts of the instant case.

23. The mortgagor under Indian law is the owner who had parted with some rights of ownership and the right of redemption is the right which he exercises by virtue of his residuary ownership to resume what he has parted with. In India this right of redemption, however, is statutory one. A right of redemption is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists. The judicial trend indicates that dismissal of an earlier suit for redemption whether as abated or as withdrawn or in default would not debar the mortgagor from filing a second suit for redemption so long as the mortgage subsists. This right cannot be extinguished except by the act of parties or by decree of a court. As explained by this Court in *Jaya Singh D. Mhoplekar and another vs. Krishna Balaji Patil and another* (1985) 4 SCC 162, the right of redemption under a mortgage deed can come to an end only in a manner known to law. Such extinguishment of the right can take place by contract between the parties, by a merger or by statutory provision which debars the mortgagor from redeeming the mortgage. The mortgagor's right of redemption is exercised by the payment or tender to the mortgagee at the proper time and at the proper place of the mortgage money. When it is extinguished by the act of parties, the act must take the shape and observe the formalities which the law prescribes. A mortgage being a security for the debt, the right of redemption continues although the mortgagor fails to pay the debt at the due date. Any provision inserted to prevent, evade or hamper redemption is void. Having

regard to the facts of the instant case, it is difficult to hold that the respondent No. 3 had lost its right to redeem the mortgaged property or that by the acts of the appellant and the respondent No. 1, the right of the respondent No. 3 to redeem the property was extinguished.

24. Applying the principles of law laid down by this Court in the above quoted decisions this Court is of the opinion that no sale worth the name of the mortgaged property had taken place in favour of the appellant because there is no agreement of sale on the record of the case nor the facts indicate that the same was registered. Having regard to the decision of this Court mentioned above, it will have to be held that right to redeem the mortgage property which was available to the respondent No.3 had never extinguished at all and, therefore, the acceptance of proposal of the respondent No. 3 by the respondent No. 1 to permit it to redeem the property dated April 8, 2008 cannot be said to be illegal in any manner.

25. Further the contention raised by the appellant that reliance placed on Clause 16 of the General Terms and Conditions by the learned counsel for the Respondent No.1 is misconceived and untenable in view of decision of this Court in earlier round of litigation, has no substance. This Court while delivering judgment dated August 24, 2006 in Special Leave Petition (Civil) No. 4957 of 2006 was not called upon and in fact did not consider the effect of Clause 16 of the General Terms and Conditions. The record shows that Clause 16 of the General Terms and Conditions was expressly accepted by the appellant. The Resolution dated December 5, 2005 read with the Agenda Note records that the Appellant had agreed to follow the General Terms of Auction. The General Terms of Auction as contained in para 16 are as follows:-

"16. The EDC Ltd. will execute transfer documents only after entire accepted offer amount is received. The transfer documents will be only as per the draft prepared by EDC Ltd. The successful tenderers shall necessarily execute transfer documents within 30 days from the date of communication from the EDC Ltd. requesting for such execution. It is brought to the notice of the Successful tenderer that in case of failure to execute the Deed of Assignment and Sale, the Equity of redemption exists in favour of the original mortgagor, and the same will be extinguished only on execution of Deed of Conveyance, which the successful tenderer may please take note of."

26. The record of the case shows that the actions of the Corporation that is respondent No.1 have been entirely in accordance and consistent with the provisions of Clause 16 of the General Terms and Conditions. It is important to remember that when the appellant-trust wrote a letter dated August 24, 2006 to the respondent No.1 and asked for possession of the property and to complete other legal formalities, the Corporation had informed the appellant by its letter dated September 27, 2006 making it clear that the Corporation was in the process of proceeding further with the sale transaction. The record would indicate that the respondent No.1 had always acted consistently with Clause 16. On September 28, 2006 the respondent No.1 had informed the appellant that the borrower company had approached it for redemption of the mortgage. This was the information supplied by the respondent No.1 in terms of Clause 16 of the Terms and Conditions. On October 9, 2006 the Corporation that is

respondent No.1 had informed the respondent No. 3 that they were in the process of implementing the judgment of this Court in Special Leave Petition (Civil) No.4957 of 2006 dated August 24, 2006 and, therefore, all legal formalities were required to be completed with respect to the transfer of the property in its name in accordance with the law. The resolution dated November 24, 2006 on which the learned counsel for the appellant had placed reliance makes it clear that the transactions would have to be concluded by execution of the conveyance and delivery of possession in favour of the appellant. It is not in dispute that this had never happened. The record does not indicate that the appellant had filed any proceedings either to obtain specific performance of the agreement to sell entered into between it and the respondent No. 1 nor the appellant had initiated any proceedings for obtaining possession of the property in question. If in fact the contract had been concluded between the parties as is claimed by the appellant the appellant would not have failed to obtain possession of the property after execution of registered deed in its favour. These facts, thus, indicate that there was no concluded contract between the appellant and the Respondent No.1.

27. This Court cannot ignore the fact that on September 27, 2006 the respondent No. 3 had deposited cheques of Rs.9.25 crores in favour of the first respondent and Rs.5.90 crores in favour of the respondent No. 2. The bonafide of the first respondent can be seen from the fact that these cheques were not immediately encashed, and as on January 2007, the total amount lying with the first respondent and the respondent No. 2 paid by the respondent No.3 was Rs.24.15 crores as against the redemption amount of Rs.18.40 crores. As the respondent No.3 had made payment to redeem the property which was accepted by respondent No.1 and as respondent No.1 had agreed to permit the respondent No.3 to redeem the property in question, a prayer was made to permit respondent No.3 to withdraw Writ Petition No. 601 of 2006 which can neither be regarded as arbitrary nor as illegal nor contrary to the decision of this Court dated August 24, 2006 rendered in Special Leave Petition (Civil) 4957 of 2006. Similarly, as the grievance of the respondent No.3 did not survive, the modification of the order of status quo granted earlier at the instance of the respondent No. 3 who was petitioner in the writ petition, also cannot be held to be bad in law because if the status quo order had not been modified the respondent No.1 would not have been in a position to accept the offer of respondent No.3 to permit it to redeem the property which would have been in derogation of right of the respondent No. 3 to redeem the property as recognized by Section 60 of the Transfer Property Act.

28. On over all view of the matter, this Court finds that there is no substance in the challenge to the two orders dated April 7, 2008 modifying the order of status quo and order dated April 9, 2008 permitting the Respondent No.3 to withdraw Writ Petition No. 601 of 2006 warranting inference of this Court in appeals arising by grant of special leave filed under Article 136 of the Constitution. Therefore, the two appeals which are directed against orders dated April 7, 2008 and April 9, 2008 respectively have no substance and are liable to be dismissed.

29. The Court, further, finds that the appellant-trust has filed Contempt Petition under Article 129 of the Constitution read with Order XLVII of Supreme Court Rules 1966 and Rule-3(C) and Section 2(b) read with Section 12 of the Contempt of Courts Act, 1971 against the respondents for willfully disobeying and acting against the order passed by this Court on August 24, 2006 in Special Leave Petition (Civil) No.4957 of 2006. The contention raised by the appellant is that the respondents have deliberately and willfully violated the order passed by this Court on August 24, 2006 by passing resolutions dated February 20, 2008 and April 8, 2008 passed by the Board of Directors of the respondent No.1 and, therefore, appropriate action should be initiated against the respondents. On behalf of the respondent Nos. 3 and 4 it was contended that the Contempt Petition is not maintainable in as much as this Court had not passed any direction or order that was needed to be carried out by the respondents and, therefore, the question of violation of order of this Court does not arise at all. It was pointed out by the learned counsel for the respondent Nos. 3 and 4 that some observations made by this court here and there while dismissing the Special Leave Petition cannot be construed as direction of the Court at all. It was explained by the learned counsel for the respondent Nos. 3 and 4 that this Court had neither modified the order of the High Court dated February 22, 2006 nor had given any direction to any of the parties to carry out its order or the order of the High Court but the Court had simply upheld the dismissal order passed by the High Court by dismissing Special Leave Petition. What was pointed out by the learned counsel for the respondent Nos. 3 and 4 was that contempt under the Contempt of Courts Act necessarily presupposes a clear and willful violation of a direction or order of the court or an undertaking given to a court and as those elements are missing so far as the facts of the present case are concerned the Contempt Petition filed by the Petitioner should be dismissed.

30. On consideration of rival submissions advanced at the Bar this Court is of the view that as was rightly pointed out by the learned counsel for the respondents the exercise of right of redemption in accordance with Section 60 of the Transfer of Property Act was neither a subject matter of Writ Petition No. 19 of 2006 nor it was subject matter of Special Leave Petition (Civil) No.4957 of 2006 which is clear from the enumeration of the main points by the High Court in Writ Petition No. 19 of 2006, which was whether there was a concluded contract. This Court had never prohibited the respondent Nos. 3 and 4 from exercising right of redemption nor restrained the respondent No.1 from considering the proposal of the Respondent No.3 to permit it to redeem the disputed property and had in fact expressed strongly that the respondent No. 1 should take that action which is in its best interest.

31. Under the circumstances the passing of resolutions by the respondent No.1 company can hardly be regarded as breach of direction given by this Court. No case is made out by the petitioner either to exercise powers under Section 12 of the Contempt of Courts Act 1971 nor any case is made out to set aside the resolutions passed by the Board of Directors of the respondent No.1 company. The prayers made in the Contempt Petition therefore, cannot be granted.

32. For the foregoing reasons the appeals as well as the Contempt Petition fail and are dismissed. Having regard to the peculiar facts of the case the parties are ordered to bear their own costs.