

Subrata Roy Sahara v. Union of India, (2014) 8 SCC 470

Courts, Tribunals and Judiciary

Judicial Process

Demand for on baseless and unfounded insinuations - Calculated psychological offensives and mind games adopted to seek recusal of Judges, held, need to be strongly repulsed (as done herein) - Such tactics deprecated and similar approach commended to other courts when they experience such behaviour - Held, any act of bench-hunting or bench-hopping or bench-avoiding cannot be allowed - Judge not to recuse himself from the matter unless he/she should not be hearing it for reasons of direct or indirect involvement - Further held, benchmark that justice must not only be done but should also appear to be done, has to be preserved at all costs - Hence, even in the face of calculated psychological offensives and mind games as adopted in the present case, oath of office of Judge, to decide every case without fear or favour, requires the Judge concerned to press on with the hearing of the matter and bear the brunt of rhetoric of the counsel or party seeking to dissuade him/her from hearing the matter, (2014) 8 SCC 470-A

Advocates

Duties of

Senior Counsel - Duties of - Duty to make submissions that reflect the true factual position known to the counsel - Making of baseless allegations/insinuations of violations of principles of natural justice and fundamental rights by Senior Counsel against court - Attempts to overawe the court with psychological offensives and mind games, with ferocity and grandiloquence, without any factual basis - Strongly repulsed and stringently deprecated - Submissions of Senior Counsel for petitioner that Supreme Court had directed detention of petitioner herein for non-compliance with court orders without any notice or opportunity to explain himself or show cause - Held, the Senior Counsel who represented the petitioner were surely insincere to the cause of justice when they drummed their assertions without blinking an eye: since they were aware that the factual position was otherwise - For the Senior Counsel for the petitioner to advance such submissions, to state the least, was unimaginable - They surely ought to have known better because they had appeared in the contempt proceedings in defence of the contemnors, (2014) 8 SCC 470-B

Constitution of India

Arts. 137, 129, 136 and 32 - Order passed by Supreme Court - Legitimacy or otherwise of order - Supreme Court cannot be called upon to explain legitimacy of procedure adopted by Court while passing any order - Held, it is not for a court to tender any explanation to any litigant or his counsel - Hence, it should never be considered as obligatory on the part of any court to tender any such explanation - If a party feels that serious mistake has been committed, party can seek review of the order under Art. 137 or file a curative petition after its rejection - Impugned order dt. 4-3-2014 of detention of petitioner for non-compliance with orders passed in Sahara India Real Estate Corpn. Ltd., (2013) 1 SCC 1, dt. 31-8-2012 and Sahara India Real Estate Corpn. Ltd., (2013) 2 SCC 733, dt. 5-12-2012 - In writ petition impugning the detention order, petitioner or his counsel cannot require Supreme Court to explain to them legitimacy of the procedure adopted, (2014) 8 SCC 470-C

Courts, Tribunals and Judiciary

Judicial Process

Grounds for plea of bias/prejudice to party - When maintainable - Need for plea of bias to be a genuine one - Need for there to be some lis or dispute on merits remaining to be adjudged, for there to even be occasion for bias - Held, in absence of a genuine plea of bias, Judge recusing himself from the matter would constitute an act in breach of oath of office of the Judge which mandates the Judge to perform duties of his office, to best of his ability, without fear or favour, affection or ill will - In any case, merits of claims/counterclaims of rival parties being already settled by order dt. 31-8-2012, there was no room for further adjudication on merits by present Bench - Therefore, there cannot be a prejudged mind: all that has to be decided, had already been adjudged, (2014) 8 SCC 470-D

Courts, Tribunals and Judiciary

Judicial Process

Plea of embarrassment to court - No embarrassment/humiliation is occasioned to court or to a Judge in rectifying its/his own incorrect order - Sahara Companies case - Writ petition against impugned order of detention of petitioner placed for hearing before same Bench of Supreme Court which had passed that order - Prayer for recusal from matter on ground of possible embarrassment/discomfort to hearing Bench, rejected - Held, correction of wrong order would never put anyone to shame - Recognition of mistake, and its rectification, would certainly not put the present Bench of Supreme Court to shame - Embarrassment could only arise when order assailed is actuated by personal and/or extraneous considerations, and pleadings record such accusation - No such allegation was made in present writ petition, (2014) 8 SCC 470-E

Courts, Tribunals and Judiciary

Judicial Process

Refusal to recuse when such recusal would unnecessarily prolong the matter - Evident that petitioner's plea for recusal of present Bench was consciously calculated to prolong proceedings by recusal of present Bench which was well-versed with the entire facts of the case - Deprecated stringently and plea for recusal, rejected, (2014) 8 SCC 470-F

Contempt of Court

Nature and Scope

Interference with final and binding order of court - Held, courts including Supreme Court (smaller Bench) does not have jurisdiction or authority to interfere or relax the terms/conditions of final and binding orders of Supreme Court (larger Bench) - Interference with such final and binding orders would amount to contempt of court - Sahara Companies case - Orders/directions of Supreme Court passed by Division Bench in Sahara India Real Estate Corpn. Ltd., (2013) 1 SCC 1, dt. 31-8-2012 and by three-Judge Bench in Sahara India Real Estate Corpn. Ltd., (2013) 2 SCC 733, dt. 5-12-2012, in absence of any pending proceedings against them, are final and binding - Any interference with above orders would be contempt of Supreme Court on part of present two-Judge Bench of Supreme Court, (2014) 8 SCC 470-G

Courts, Tribunals and Judiciary

Judiciary

Oath of office - Duty to decide all cases without fear or favour - Duty to repulse calculated psychological offensives and mind games to intimidate Judges to seek their recusal, (2014) 8 SCC 470-H

Constitution of India

Arts. 129, 142 and 144 - Contempt jurisdiction of Supreme Court - Scope - Orders/directions of Supreme Court - Compliance with - Effect of non-compliance - Powers of Supreme Court to compel compliance, including by ordering detention to ensure compliance - Plenary nature of - Obeying/complying/ implementing orders of Supreme Court is mandatory - Held, there is no escape from acceptance, obedience or compliance with orders passed by Supreme Court, which is the final and highest court of India - Non-compliance/disobedience of orders of Supreme Court would dislodge the cornerstone maintaining equilibrium and equanimity in India's governance - There would be a breakdown of constitutional functioning - Hence, Supreme Court has unlimited power, in fact sacred obligation to compel obedience and observance of its orders, and may thus direct detention of contemnor to ensure compliance, (2014) 8 SCC 470-I

Constitution of India

Arts. 129, 142 and 144 - Power/jurisdiction of Supreme Court to punish for its contempt - Scope - What orders can be passed while exercising such power/jurisdiction - Order of detention to ensure compliance - Held, power of Supreme Court to punish for contempt includes power to persuade, and if necessary, compel obedience and observance of judicial orders - Hence, order of detention of contemnor to enforce compliance with Supreme Court's directions can be passed by Supreme Court in legitimate exercise of its contempt jurisdiction under Art. 129 - On facts, impugned order of detention of petitioner promoter contemnor of Sahara Companies to enforce compliance with Supreme Court's directions passed in Sahara India Real Estate Corpn. Ltd., (2013) 1 SCC 1, dt. 31-8-2012 and Sahara India Real Estate Corpn.

Ltd., (2013) 2 SCC 733, dt. 5-12-2012, held, does not suffer from any jurisdictional error, (2014) 8 SCC 470-J

Contempt of Court

Contempt of Courts Act, 1971

S. 12 - Detention to ensure compliance with court orders - Power of court - Held, disobedience of orders of a court strikes at the very root of the rule of law on which the judicial system rests - Judicial orders are bound to be obeyed at all costs - Howsoever grave the effect may be, is no answer for non-compliance of a judicial order - Judicial orders cannot be permitted to be circumvented - In exercise of the contempt jurisdiction, courts have the power to enforce compliance of judicial orders, and also, the power to punish for contempt, (2014) 8 SCC 470-K

Courts, Tribunals and Judiciary

Judiciary

Powers and authority of a Judge - Scope - Judiciary, held, as an institution has extremely sacrosanct duties, obligations and responsibilities - A Judge must decide every dispute in consonance with law and not according to his will, (2014) 8 SCC 470-L

Courts, Tribunals and Judiciary

Supreme Court, Federal Court and Privy Council

Generally - Different kinds of jurisdictions exercised by Supreme Court, discussed, (2014) 8 SCC 470-M

Courts, Tribunals and Judiciary

Supreme Court, Federal Court and Privy Council

Generally - Supreme Court Judge - Maturity of a Supreme Court Judge, (2014) 8 SCC 470-N

Constitution of India

Arts. 13, 32, 129, 136, 226, 144, 245 and 246 - Laws declared illegal/void/ultra vires by Court - Respect and obedience shown by legislative bodies to every such order by Court, highlighted as part of the cornerstone of rule of law, (2014) 8 SCC 470-O

Constitution of India

Arts. 131 and 144 - Verdict of Supreme Court on disputes between States or between Union and States - Respect and obedience shown by Governments concerned, highlighted as part of the cornerstone of rule of law, (2014) 8 SCC 470-P

Constitution of India

Arts. 32, 226, 136, 129, 144 and Arts. 73, 74, 162 and 163 - Breach of fundamental rights and/or other legal rights by State/Instrumentalities of State - Exercise of power of judicial review - Verdict of Supreme Court/High Courts directing Government concerned or instrumentality/institution concerned to restore to individual what is due to him or effectuate the right concerned - Respect and obedience shown by Governments concerned, highlighted as part of the cornerstone of rule of law, (2014) 8 SCC 470-Q

Rule of Law

Conduct of litigant not amenable to rule of law - Defiant demeanour and rebellious behaviour of litigant to defeat the cause of justice - Instead of complying, petitioner only engaging Senior Counsel to avoid or defer compliance - Patently false defences, non-cooperative attitude, withholding of relevant materials/information, not honouring assurances/commitments given to court, continuing defiance of court's orders, etc. - Such conduct of Sahara Companies, their promoter (petitioner) and Directors, strongly deprecated - Fictitious deposit schemes (OFCDs) involving thousands of crores of rupees floated by two Sahara Companies - Order of refund of money to investors passed by SEBI, as confirmed by SAT, further confirmed by Supreme Court via order dt. 31-8-2012 passed in Sahara India Real Estate Corpn. Ltd., (2013) 1 SCC 1, and order dt. 5-12-2012, Sahara India Real Estate Corpn. Ltd., (2013) 2 SCC 733, not complied with by said companies - Exercising contempt jurisdiction, Supreme Court ordering detention of petitioner and other Directors of the two Sahara companies to enforce compliance with refund orders - In writ petition challenging this detention order, Supreme Court dwelled upon some facts reflecting demeanour of two Sahara Companies, petitioner, and other Directors in process of litigation, leading up to passing of order dt. 31-8-2012 - Trenchantly observed, in the process to cajole the contemnors (including the petitioner Subrata Roy Sahara) into compliance with the Supreme Court's orders dt. 31-8-2012 and 5-12-2012, the Court examined each and every defence raised on behalf of the two Companies - The Court also examined alternative avenues by which the compliance with the orders dt. 31-8-2012 and 5-12-2012, could be ensured - However, the petitioner only engaged eminent Senior Counsel to avoid or defer compliance, (2014) 8 SCC 470-R

Courts, Tribunals and Judiciary

Judicial Process

Frivolous litigation - Abuse of process - Willingness of counsel to be engaged if litigant for willing to pay their fee - Ways and means to curb the same and consequent saving of court's precious time - Introduction of Code of Compulsory Costs - Suggestion to Parliament to formulate some mechanism so that anyone who initiates and continues a litigation with senseless, ill-considered and illegitimate claims pays for the same - Held, when litigating party would understand that it would have to compensate the party which would succeed, unnecessary litigation will be substantially reduced - However, it is not suggested that court fee or other litigation related costs should be raised as access to justice and related costs should be as free and as low as possible - Sahara Group litigation, held, is a classic illustration of such frivolous litigation in which hundreds of precious Judge hours wasted - Regulating authority i.e. SEBI had to suffer litigation from court to court incurring public expense in its defence against this frivolous litigation - Every order was consistently and systematically disobeyed - Every order passed by SEBI was assailed before next higher authority, and then before Supreme Court - Even though High Courts have no jurisdiction in respect of issues regulated by SEBI Act, some matters were taken to High Court - Every such endeavour resulted in failure and was also sometimes accompanied with strictures - Even after the matter had concluded after the controversy had attained finality, judicial process still being abused for close to two years - Such abuse of judicial process needs to be remedied - Hence, appropriate action on part of Parliament called for to deter litigants like Sahara Companies and its promoter, Subrata Roy Sahara, (2014) 8 SCC 470-S

Courts, Tribunals and Judiciary

Judiciary

Emerging pressures on judicial system - Hope expressed for support for officers presiding over courts from the legal fraternity, as also, from superior judiciary up to the highest level - With such support, it will be possible to maintain equanimity and equilibrium essential to deal with complicated disputations and also to deal with unscrupulous litigants like the petitioner and the two Sahara Companies, (2014) 8 SCC 470-T

Practice and Procedure

State as a litigant/party

Frivolous litigation by State - Refusal to take any responsibility - Held, abuse of the judicial process is not limited to any particular class of litigants - The State and its agencies litigate endlessly up to the highest Court just because of the lack of responsibility to take decisions - So much so that the courts have started to entertain the impression that all administrative and executive decision-making are being left to courts just for that reason, (2014) 8 SCC 470-U

Civil Procedure Code, 1908

S. 51 - Arrest and detention to enforce compliance with court order imposing financial liability - Objective and effect of - Re-arrest and repeated detention to enforce - Permissibility - Held, purpose of sending a person to jail to ensure compliance with a financial liability must be understood as being a manner, procedure or device, for the satisfaction of the liability - Arrest and detention is only to coerce compliance - The liability to pay would stand discharged only by actual payment of the amount due - Remaining in jail would not discharge the liability to pay - Thus, held, in the present case, till the orders dt. 31-8-2012 and 5-12-2012 imposing a liability of almost Rs 37,000 crores on the Sahara Companies are given effect to in letter and spirit, the process of enforcing compliance shall have to go on - The petitioner may be released from judicial custody if he complies with the bail order dt. 26-3-2014 which required deposit of Rs 5000 crores in cash and Rs 5000 crores' bank guarantee - That would however not excuse the petitioner from making the balance payment of about Rs 27,000 crores (with the mounting interest) in terms of the orders dt. 31-8-2012 and 5-12-2012, even if it means the re-arrest of the petitioner again and again, for the purpose of compliance with the Supreme Court's orders, (2014) 8 SCC 470-V

Practice and Procedure

Enforcement/Execution of court orders

Enforcement/execution of financial liability/money decree - Mode/method - Arrest and detention, held, is one of the permissible means by which financial liability imposed/decreed/ordered by court can be enforced - Submission that there is no provision of law whereunder such arrest and detention can be made, rejected - Held, there are large number of stand-alone statutory enactments whereunder arrest and detention may be ordered for execution of financial liability - Provisions contained in CPC and CrPC whereunder court can order arrest and detention of person for execution of money decree or for enforcement of financial liability, discussed, (2014) 8 SCC 470-W

Securities, Markets and Exchanges

Securities and Exchange Board of India Act, 1992

Ss. 15-Y, 11(3) and 15-U - Applicability of provisions of CPC - Limited applicability - Held, provisions of CPC are per se not applicable to proceedings under SEBI Act except when expressly provided for under SEBI Act - Provisions in CPC relating to execution have not been made applicable for enforcement of orders passed under SEBI Act - Hence, S. 51 and Or. 21 Rr. 37 & 40 CPC found inapplicable on facts, where matter related to execution of orders emanating from provisions of SEBI Act and consequent order of detention of petitioner passed by Supreme Court in execution of such orders - In any case, found on facts that three different pre-conditions contemplated in proviso to S. 51 CPC for ordering arrest and detention of judgment-debtor for execution of financial liability were satisfied before impugned order of detention of petitioner was passed for enforcement of refund orders passed by Supreme Court, and so also the requirements of Or. 21 Rr. 37 and 40 CPC - Hence, detention order of petitioner held valid, (2014) 8 SCC 470-X

Securities, Markets and Exchanges

Securities and Exchange Board of India Act, 1992

S. 15-Z - Appellate order passed by Supreme Court under - Execution of - Appropriate authority/Executing Court - Held, is Supreme Court only - SEBI Act does not provide either to SEBI or SAT power for execution of orders passed by either of them - Therefore, no such power of execution can be exercised by these authorities for executing appellate order passed by Supreme Court under S. 15-Z - On facts, held, orders of Supreme Court passed in Sahara India Real Estate Corpn. Ltd., (2013) 1 SCC 1, dt. 31-8-2012 and Sahara India Real Estate Corpn. Ltd., (2013) 2 SCC 733, dt. 5-12-2012, could have only been executed by Supreme Court in exercise of power conferred on it under Arts. 129 and 142 of Constitution, (2014) 8 SCC 470-Y

Courts, Tribunals and Judiciary

Supreme Court, Federal Court and Privy Council

Implementation/execution of orders of Supreme Court - Mode/method - Arrest and detention - When should be resorted to - Held, power of directing arrest and detention can be exercised by Supreme Court, as and when Supreme Court is satisfied, in the facts and circumstances of given case, that the above means should be adopted for execution of its

orders - In instant case of Sahara Companies, petitioner contemnors had miserably failed i.e. petitioner promoter of Sahara Companies and its Directors, to comply with orders of Supreme Court passed in Sahara India Real Estate Corpn. Ltd., (2013) 1 SCC 1, dt. 31-8-2012 and Sahara India Real Estate Corpn. Ltd., (2013) 2 SCC 733, dt. 5-12-2012 - Accordingly, in exercise of powers under Arts. 142 and 129 of Constitution, Supreme Court had rightly ordered arrest and detention of contemnors vide order dated 4-3-2014 to enforce compliance of its orders - Such detention order, held, valid, (2014) 8 SCC 470-Z

Courts, Tribunals and Judiciary

Courts, Tribunals and Special Courts

Procedure to be followed by - Compliance with principles of natural justice required though compliance with CPC not required - Testing validity of procedure followed by tribunal - Held, if an order is passed keeping in mind the parameters laid down in CPC, it would be sufficient to conclude that the rules of natural justice have been fully complied with, (2014) 8 SCC 470-ZA

Civil Procedure Code, 1908

S. 51 provisos (a)(i) & (b) and Or. 21 Rr. 30 & 37 - Arrest and detention to enforce compliance with court order imposing financial liability - Preconditions for imposition of such order as laid down in S. 51 proviso - If satisfied - Determination of - Materials that may be relied on - Previous court orders directing party concerned not to jump jurisdiction/abscond - Balance sheet of party concerned - Information available on official website of party concerned, (2014) 8 SCC 470-ZB

Civil Procedure Code, 1908

S. 51 proviso (a)(ii) - Dishonest transfer, concealment or removal of property or any other act of bad faith in relation to property - Inference of - Basis for - Held, since a farcical explanation was tendered by the two Sahara companies in respect of receipt, payment and transfer of thousands of crores of rupees by way of cash, without reference to any banking transactions whatsoever, it was legitimate to infer dishonest transfers, as well as bad faith, on behalf of the contemnors, (2014) 8 SCC 470-ZC

Civil Procedure Code, 1908

S. 51 - Arrest and detention to enforce compliance with court order imposing financial liability - Preconditions for imposition of such order as laid down in S. 51 proviso - If all preconditions need to be satisfied for order of arrest and detention - Held, satisfaction of any one on the preconditions is enough to order arrest and detention, (2014) 8 SCC 470-ZD

Civil Procedure Code, 1908

Or. 21 R. 40 - Compliance with - Order of detention imposed after adequate opportunity given to person concerned to explain himself personally in court, till he had nothing further to state - Held, valid, (2014) 8 SCC 470-ZE

Civil Procedure Code, 1908

Generally - Historical background of - Provisions of CPC have evolved as a matter of long years of experience emanating out of the common law of England, (2014) 8 SCC 470-ZF

Courts, Tribunals and Judiciary

Judicial Process

Relaxation of order of Supreme Court - Seeking relaxation from lower authorities - Impermissibility - Sahara Companies case - Order of Supreme Court passed in Sahara India Real Estate Corpn. Ltd., (2013) 1 SCC 1, dt. 31-8-2012, directing two Sahara Companies to refund investors' money illegally collected by them within 3 months of the order - By further order dt. 5-12-2012 passed in Sahara India Real Estate Corpn. Ltd., (2013) 2 SCC 733, time for deposit of money was extended by Supreme Court - Extension of time to comply with orders of Supreme Court dt. 31-8-2012 and 5-12-2012, sought by Sahara Companies, first from SEBI, then SAT and then High Court, amounted to abuse of process, (2014) 8 SCC 470-ZG

Natural Justice

Audi Alteram Partem -- Right to Hearing

Notice of proceedings in court - Plea of absence of such notice - On facts, found baseless - Sahara Companies case - Fictitious investment/deposit scheme - Supreme Court via order dt. 31-8-2012 passed in Sahara India Real Estate Corpn. Ltd., (2013) 1 SCC 1, directed two Sahara Companies to refund investor's money illegally collected by them - By further order dt. 5-12-2012 passed in Sahara India Real Estate Corpn. Ltd., (2013) 2 SCC 733, time for deposit of money was extended by Supreme Court - On failure of companies to comply with above orders, contempt proceedings were initiated by SEBI - Matter was heard at least on 40 occasions when Supreme Court considered various proposals of contemnors for compliance - While disposing of these proceedings, Supreme Court finally, having failed to secure compliance with its orders in every other way, passed impugned order of detention of petitioner promoter of Sahara Companies dt. 4-3-2014 to enforce compliance of orders dt. 31-8-2012 and 5-12-2012 - Plea that detention order was not valid as petitioner had no notice of proceedings before Supreme Court, rejected - Notices in contempt petitions were issued by Supreme Court and their receipt should have been the first information to petitioner of Supreme Court's concern about non-compliance of order dt. 31-8-2012 - Petitioner was duly represented in contempt proceedings - Later, list of unencumbered immovable properties was furnished to secure amount payable to investors by Sahara Companies - This list could not have been furnished without petitioner's express approval, being promoter of the companies - In fact, after rejection of this list of properties by SEBI being insufficient to secure amount of refund, offer was made that other companies of Sahara Group would also make available their unencumbered properties - Hence, petitioner was in absolute charge of all affairs of companies - Further, stance adopted by petitioner promoter that only after his release from judicial custody further deposits will be possible, showed that in affairs of Sahara Group, he was the only person who mattered - Even restraint order was passed against petitioner and other contemnors not to leave India without Court's permission till compliance of Court's orders - Business obligations of petitioner were bound to have been seriously affected when order restraining Sahara Group of Companies to deal with its movable or immovable properties was passed - Held, in view of above facts, it was not open to petitioner to assert that he had no notice and was unaware of proceedings being conducted in Supreme Court or their gravity - Detention order of petitioner, held, valid, (2014) 8 SCC 470-ZH

Corporate Laws

Company Law

Liability of arrest and detention of Promoter and other Directors in case of non-compliance with court order imposing financial liability on the company - Promoter/Directors concerned fully in charge of affairs of the company - Held, Promoter/Directors concerned rightly detained in prison to enforce compliance with the court order against the company, (2014) 8 SCC 470-ZI

Practice and Procedure

Enforcement/Execution of court orders

Enforcement/execution of financial liability/money decree - Mode/ method - Arrest and detention to enforce compliance - Adherence to principles of natural justice - On facts, held, there was no violation of principles of natural justice while ordering detention of petitioner promoter and other Directors of Sahara Companies - Supreme Court in its earlier orders passed in Sahara India Real Estate Corpn. Ltd., (2013) 1 SCC 1, dt. 31-8-2012 and Sahara India Real Estate Corpn. Ltd., (2013) 2 SCC 733, dt. 5-12-2012 had directed two Sahara Companies to refund investors money illegally collected by the companies - However, the companies failed to comply with these refund orders - SEBI via interlocutory applications (IAs) requested for arrest and detention of petitioner along with two other Directors of companies - Notice of these IAs was duly given to petitioner who had also filed his written response thereto by way of personal counter-affidavit

- Several hearings (on more than 40 occasions) and opportunities were afforded to contemnors including petitioner to comply with Supreme Court's orders before passing of impugned order of detention - Every response made by alleged contemnors was taken into consideration on each occasion, (2014) 8 SCC 470-ZJ

Courts, Tribunals and Judiciary

Judicial Process

Natural Justice/Reasons/Application of mind - Duty to consider submissions/contentions/arguments of parties - Scope - Held, it is the onerous duty of courts to deal with submissions/contentions/arguments of parties, however brazen they may be, (2014) 8 SCC 470-ZK

Debt, Financial and Monetary Laws

Non-Scheduled Banks/ NBFCs/Chit Funds/Saving Schemes/Financial leasing

Repayment/refund orders by statutory authority - Compliance with - Manner - Refunds have to be made only as directed by said authority - Refunds made in manner other than prescribed would be in violation of order of authority and per se illegal and invite contempt proceedings if the same also amount to violation of court orders prescribing a particular manner of repayment or endorsing mode of repayment prescribed by authority concerned, as in present case, (2014) 8 SCC 470-ZL

Securities, Markets and Exchanges

Securities

Debentures - Redemption - Premature redemption - Impermissibility - Held, neither company concerned can grant nor debenture-holder can seek premature redemption of debentures i.e. redemption before prescribed period - Sahara Companies case - On facts, theory of redemption of debentures (OFCDs) put forward by Sahara Companies is unacceptable and in clear violation of law - Six different types of bonds (OFCDs) were issued by two Sahara Companies - Except for one bond, no other bond could be redeemed before the year 2013 - Total amount which could be redeemed towards end of financial year 2012-2013 was only Rs 351 crores - Therefore, it is impossible to accept that the two companies redeemed thousands of crores of rupees of deposits made towards OFCDs in 2012 itself - Submission that premature redemptions were due to mounting pressure from investors, was not supported by any material, hence not accepted, (2014) 8 SCC 470-ZM

Debt, Financial and Monetary Laws

Non-Scheduled Banks/ NBFCs/Chit Funds/Saving Schemes/Financial leasing

Redemption - Cash redemptions - Proof - Sole reliance on general ledger entries without any other authentication - Chartered Accountant only authenticating cheque payment entries in ledger and not the cash payment entries - Held, insufficient proof of cash refunds/redemption, (2014) 8 SCC 470-ZN

Evidence Act, 1872

S. 34 - General ledger entries - Evidentiary value - General ledger entries as proof of authenticity of cash transactions mentioned therein - Held, general ledger entries cannot be the basis for accepting that cash transactions mentioned therein are correct unless there is authentic supporting material, (2014) 8 SCC 470-ZO

Practice and Procedure

Res judicata

Defence raised and rejected in one proceeding - Raising of same defence in subsequent proceedings (for the fourth time) - Impermissibility - Held, party cannot raise same defence again - However, on facts, in interest of justice, Supreme Court not only permitted raising of same defence again but even examined such defence - Sahara Companies case -

Order of Supreme Court passed in Sahara India Real Estate Corpn. Ltd., (2013) 1 SCC 1, dt. 31-8-2012, directing two Sahara Companies to refund investors' money illegally collected by them - In another appeal and writ petition filed by these Sahara Companies before Supreme Court, defence was raised that they should be exempted from depositing amounts which were already redeemed/refunded by them - Not accepting this theory of redemption and disposing of said appeal and writ petition, Supreme Court by order dt. 5-12-2012 passed in Sahara India Real Estate Corpn. Ltd., (2013) 2 SCC 733, had extended time for deposit of investors' money - In contempt proceedings for non-compliance with both orders dt. 31-8-2012 and 5-12-2012, same defence of having already redeemed most of OFCDs was again raised by companies and was also examined by Supreme Court - In present writ petition challenging detention order of petitioner promoter of Sahara Companies imposed for non-compliance with orders dt. 31-8-2012 and 5-12-2012, Supreme Court again examined issue of redemption for petitioner's satisfaction though such plea was no longer available as same was concluded by order of Supreme Court dt. 5-12-2012 - Having so examined, theory of redemption of OFCDs found unacceptable yet for the fourth time on merits: see Shortnotes ZH to ZK , (2014) 8 SCC 470-ZP

Constitution of India

Arts. 32, 21, 14, 136, 137, 129, 142 and 145(1)(e) - Writ petition under powers of Supreme Court to act ex debito justitiae or relying on maxim actus curiae neminem gravabit - Maintainability - Writ petition filed challenging detention order of petitioner passed by Supreme Court on grounds of the same being unjust, without jurisdiction and without any hearing - Both grounds of challenge viz. jurisdictional error and non-compliance with principles of natural justice could not be made out in facts of the case (see Shortnotes I, J, V, X to ZE, ZH and ZJ, above) - Hence, writ petition held, not maintainable, (2014) 8 SCC 470-ZQ

Constitution of India

Art. 32 r/w Arts. 21, 129 and 142 - Writ petition - Maintainability - Writ petition against order passed by Supreme Court in valid exercise of its jurisdiction - Reiterated, not maintainable - Sahara Companies case - Impugned order of detention of petitioner promoter of Sahara Companies passed by Supreme Court in valid exercise of its jurisdiction under Arts. 129 and 142 (see Shortnotes G and H) - Plea that criminal writ petition against detention order was maintainable under Art. 32 on account of violation of fundamental right of petitioner detenu under Art. 21, rejected - Further plea that instant petition was maintainable under Arts. 129 and 142 whereunder Supreme Court has unlimited jurisdiction to correct all mistakes committed by it and to do complete justice, also rejected, (2014) 8 SCC 470-ZR

Constitution of India

Arts. 129, 142, 32 and 136 - Compromise before Supreme Court - Stage of compromise - Stage at which compromise not permissible - Held, when merits of claims of rival parties are already settled by adjudication by court and even contempt by party by way of breach of court's order is admitted, there is no question of any compromise - Compromise is permissible while merits of rival claims are still pending - Sahara Companies case - Claims of rival parties already settled by Supreme Court in Sahara India Real Estate Corpn. Ltd., (2013) 1 SCC 1, via order dt. 31-8-2012 - In present writ petition challenging detention order of petitioner promoter of Sahara Companies which was passed on account of failure of companies to comply with Supreme Court's directions, held, there is no question of any compromise, (2014) 8 SCC 470-ZS