



IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Civil Appellate Jurisdiction)

Thursday, the Thirtieth day of January Two Thousand Twenty

PRESENT

THE HON`BLE MR JUSTICE T. S. SIVAGNANAM

AND

THE HON`BLE MRS JUSTICE V.BHAVANI SUBBAROYAN

Review Application Nos.293 to 296 of 2015

1 THE PRINCIPAL CHIEF CONSERVATOR [APPELLANTS REV.APLW No.293/2015]
OF FORESTS
TAMILNADU FOREST DEPARTMENTS
PANAGAL MAALIGAI, SAIDAPET,
CHENNAI-15.

2. THE DISTRICT FOREST OFFICER,
TIRUPATTUR DIVISION,
TIRUPATTUR.

1 THE STATE OF TAMIL NADU [APPELLANTS REV.APLW.NOs.294/2015]
REP.BY ITS SECRETARY
TO GOVERNMENT OF TAMILNADU
ENVIRONMENT & FOREST DEPARTMENTS
FORT.ST.GEORGE, CHENNAI-9

2. THE DISTRICT FOREST OFFICER,
SALEM DIVISION, SALEM.

1 THE STATE OF TAMIL NADU [APPELLANTS REV.APLW No.295/2015]
REP.BY ITS SECRETARY
TO GOVERNMENT OF TAMILNADU
ENVIRONMENT & FOREST DEPARTMENTS
FORT.ST.GEORGE, CHENNAI-9.

2. THE DISTRICT FOREST OFFICER,
TIRUPATTUR DIVISION,
TIRUPATTUR.

1 THE STATE OF TAMIL NADU [APPELLANTS REV.APLW.NOs.296/2015]
REP.BY ITS SECRETARY
TO GOVERNMENT OF TAMILNADU
ENVIRONMENT & FOREST DEPARTMENTS
FORT.ST.GEORGE, CHENNAI-9



2. THE DISTRICT FOREST OFFICER,
TIRUPATTUR DIVISION,
TIRUPATTUR.

Vs

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M/S. GUPTA EXPORTS ..RESPONDENTS IN REV.APLW.NOs.293,294,296/2015
REP BY ITS PARTNER,
MR.M.M.GUPTA
P.B.NO.44, EASTERN STREET,
ELURU, ANDRA PRADESH-534 001.

M/S. LAVANYA ENTERPRISE [RESPONDENTS IN REV.APLW.NO.295/2015
REP BY ITS PARTNER,
M.KRISHNA KISHORE,GUPTA BUILDINGS, EASTERN STREET,
ELURU, ANDRA PRADESH.

The Review Application to the Order 47 Rule 1 C.P.C. Read With Under Section 114 C.P.C. the Order dated 25.10.2007 passed by this Hon'ble Court by THE HON'BLE MR.JUSTICE K.RAVIRAJA PANDIAN AND MRS.JUSTICE CHITRA VENKATRAMAN IN WA.NO.405/2003 (in REV.APLW.293/2015) AND;

(II) The Review Application to the Order 47 Rule 1 C.P.C. Read With Under Section 114 C.P.C. the Order dated 25.10.2007 passed by this Hon'ble Court by THE HON'BLE MR.JUSTICE K.RAVIRAJA PANDIAN AND MRS.JUSTICE CHITRA VENKATRAMAN IN WA.NO.3513/2004 (in REV.APLW.294/2015) AND;

(III) The Review Application to the Order 47 Rule 1 C.P.C. Read With Under Section 114 C.P.C. the Order dated 25.10.2007 passed by this Hon'ble Court by THE HON'BLE MR.JUSTICE K.RAVIRAJA PANDIAN AND MRS.JUSTICE CHITRA VENKATRAMAN IN WA.NO.413/2003 (in REV.APLW.295/2015) AND;

(IV)The Review Application to the Order 47 Rule 1 C.P.C. Read With Under Section 114 C.P.C. the Order dated 25.10.2007 passed by this Hon'ble Court by THE HON'BLE MR.JUSTICE K.RAVIRAJA PANDIAN AND MRS.JUSTICE CHITRA VENKATRAMAN IN WA.NO.412/2003 (in REV.APLW.296/2015)RESPECTIVELY.

Order : These appeals coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.K.T.S.Tulsi, Senior Counsel assisted by Mr.Gaurave Bhargava AND Mr.S.R.Raja Gopal, Additional Advocate General assisted by Mr.S.V.Vijay Prashanth, Special Govt. Pleader (Forests) & Mr.S.Prabhu, Additional Government Pleader FOR THE APPELLANTS AND OF Mr.V.Giri, Senior Counsel AND Mr.Nikhil Nayyar, Senior Counsel assisted by Mr.Raghavendra Sreyas & Mr.Muthuchharan (IN REV.APPLW.NO. 293, 294, 296 OF 2015) For Respondent AND OF Mr.ARL.Sundaresan,Senior Counsel assisted byMr.K.S.Natarajan (In Rew.Appl.No.295 of 2015)) the court made the following order:-



These review applications, by the State, have been filed to review the common judgment and order in W.A.Nos.405 of 2013, 3513 of 2004, 413 and 412 of 2003 respectively, dated 25.10.2007.

2.The writ appeals were filed by the State and the Forest Department challenging the orders in W.P.Nos.14418, 7499, 7500 of 2000, dated 25.10.2002 and W.P.No.7073 of 1997 dated 06.08.2004, by which, the writ petitions were disposed of by issuing several directions of which, there was a direction to the respondents/writ petitioners to furnish a bank guarantee and if the same is complied with, the State/Forest Department should deliver the sandalwood to the respondents/writ petitioners within a period of one month from the date of furnishing the bank guarantee. Further, the respondents were required to establish before the concerned authority that they are not liable to pay sales tax under the provisions of the Central Sales Tax Act, 1956.

3.The Division Bench, by judgment dated 25.10.2007, dismissed the appeals filed by the State/Forest Department. Aggrieved by the same, the State preferred Special Leave Petitions before the Hon'ble Supreme Court in S.L.P.(C) Nos.25133 of 2007 etc., batch, which were entertained by the Hon'ble Supreme Court. Ultimately, the Hon'ble Supreme Court, by order dated 24.11.2014, while condoning the delay in filing the special leave petitions, dismissed the same. The respondents filed contempt petitions before this Court in Contempt Petition Nos.266 to 269 of 2015 to punish the State for disobeying the directions issued by the Division Bench in its judgment dated 25.10.2007. The contempt petitions were heard on 14.07.2015, and during the hearing, the learned Additional Advocate General appearing for the State submitted that the State has preferred review petitions before the Hon'ble Supreme Court to review the order dated 24.11.2014 by which, the special leave petitions were dismissed and accordingly, sought for time. At the request made by the learned Additional Advocate General, two weeks time was granted as a last opportunity and the matter was adjourned. The review petitions filed by the State were numbered as Review Petition (C) Nos.1553 of 2015 etc. batch. The State filed applications to hear the review petitions in open Court, which were rejected and the Hon'ble Supreme Court by order dated 23.07.2015, dismissed the review petitions. It is thereafter the present review applications were filed by the State before this Court with delay.

4.The matter was heard by the First Bench to which, one of us (TSSJ), was a party. Two issues came up for consideration before the First Bench, viz., whether the State has shown sufficient cause for condonation of delay in filing the review applications and secondly, whether the review applications were maintainable, as objections were raised by the respondents with regard to its maintainability. By order dated 13.10.2015, the Division Bench condoned the delay in filing the review applications subject to payment of Rs.5000/- as costs per application totalling to Rs.20,000/- and accordingly, the review applications were directed to be numbered. On the question of maintainability of review



applications, the Court noted that the respondents filed Transfer Petition (Civil) Nos.1222 to 1225 of 2015 to transfer the petitions to the Hon'ble Supreme Court and in the said petitions, preliminary objection was raised with regard to the maintainability, as the Hon'ble Supreme Court by order dated 21.08.2015, directed the preliminary objection with regard to the maintainability and the delay in filing the review applications to be decided at the first instance.

5.As mentioned earlier, the delay in filing the review applications was considered and the delay was condoned subject to payment of costs. With regard to the question of maintainability, the Court opined that there are two lines of thought as to whether the order of the Division Bench of this Court can be stated to have merged with the order of dismissal of the special leave petitions and noting that the matter is now pending for reference in **Khoday Distilleries Limited & Ors. vs. Sri Mahadeshwaa Sahakara Sakkare Karkhane Ltd.**, reported in (2019) 4 SCC 376, considered it appropriate to await the result of the reference made in the said case. Accordingly, the final adjudication on the maintainability issue of these review applications were directed to await the decision of **Khoday Distilleries Limited** case (supra) and the matter be listed after the opinion is available by the Hon'ble Supreme Court in the reference.

6.The respondents preferred appeals against the said order before the Hon'ble Supreme Court, which were entertained as Civil Appeal Nos.8223-8226 of 2019. After noting the facts of the case, the Hon'ble Supreme Court dismissed the appeals by order dated 22.10.2019 with certain directions. So far as the exercise of the power of the Division Bench in condoning the delay is concerned, the Hon'ble Supreme Court affirmed the same on seeing no reason to take a different view. With regard to the maintainability of the review applications, the issue was directed to be considered by the Division Bench and such other contentions as are open to the parties in law and dispose of the review applications as early as possible preferably within a period of three months from the date of the order, i.e., 22.10.2019. The parties were directed to appear before the Division Bench on 04.11.2019.

7.The learned Additional Advocate General had mentioned the matter before the Hon'ble First Bench on 04.11.2019 by placing the order passed by the Hon'ble Supreme Court dated 22.10.2019 and requested the matter be listed before the appropriate Bench. On the same day, a letter was circulated to the Registry with the similar prayer. Pursuant to the directions issued by the Hon'ble Chief Justice, the matter has been placed before us for being heard and accordingly, the cases were listed on 09.01.2020. The matter could not be heard earlier because, one of us (TSSJ) was holding Court in Madurai for three months since September, 2019 and commenced the sitting in the Principal Bench on 02.12.2019. On 09.01.2020, the learned Additional Advocate General requested that the matter may be adjourned to enable the learned Senior Counsel for the State to appear. Similar request was made by the learned



counsel appearing for the respondents. Accordingly, we adjourned the matter to 23.01.2020.

8.Mr.K.T.S.Tulsi, learned Senior Counsel appearing for the applicants would contend that the Hon'ble Supreme Court in **Khoday Distilleries Limited** (supra), has clearly set out the legal position, which has clearly held that when an order refusing special leave to appeal be it a non-speaking order or a speaking order, the question of merger does not arise and such order cannot be treated as a precedent and there can be no *res judicata*. Further, it has been held that once leave is granted and an order is passed by the Hon'ble Supreme Court, the order of the High Court would stand merged and it will be a precedent, and principles of *res judicata* will be attracted.

9.The learned Senior Counsel referred to the order passed by the Hon'ble Supreme Court in S.L.P. (C) No.25133 of 2007 etc., batch, dated 24.11.2014, and submitted that it is an order of dismissal without reasons. The learned Senior Counsel further submitted that the Division Bench took into consideration the public interest involved in the matter and condoned the delay and the reasons, which found favour while passing such an order, can equally be made applicable for entertaining the review applications, since several hundreds and crores of public revenue is involved. Further, it is submitted that the writ petition itself was not maintainable, as the contract is a non-statutory contract and a direction could not have been issued to return the sandalwood, when the challenge was only to a forfeiture order with no consequential reliefs. Therefore, it is submitted that the review applications should be held to be maintainable and the same to be decided on merits. In fact, the learned Senior commenced his arguments on the merits of the matter.

10.Mr.V.Giri, learned Senior Counsel for the respondents submitted that the Court may decide the maintainability of the review applications as directed by the Hon'ble Supreme Court, and the question of canvassing the merits of the matter, at this juncture, would not arise. In this regard, the learned Senior Counsel referred to paragraphs 8, 9 and 10 of the order passed by the Hon'ble Supreme Court dated 22.10.2019 in Civil Appeal Nos.8223-8226 of 2019. Further, the learned counsel has also drawn the attention of this Court to paragraphs 34 and 35 of the order of the Division Bench dated 13.10.2015 in M.P.Nos.1, 1, 2 & 2 of 2015 in Rev.Appl.Nos.293 of 2015 etc., batch.

11.Further, it is submitted that after the special leave petitions were dismissed by the Hon'ble Supreme Court, the State filed review petitions and the review petitions were dismissed, by order dated 23.07.2015 and the Hon'ble Supreme Court did not consider the matter to be a fit case to be heard in open Court. Further, the Hon'ble Supreme Court observed that it has gone through the review petitions and the connected papers and they see no reason to interfere with the order impugned. Therefore, it is submitted that the present attempt of the State is to dislodge the



finality to a proceeding. In fact, it has become a never-ending process, which cannot be permitted, as there has to be finality at some point of time. Further, it is submitted that if the review applications are entertained, then the sanctity of the finality of the proceedings before the Hon'ble Supreme Court would be lost.

12. Further, it is submitted that both the decisions in **Kunhyammed vs. State of Kerala** reported in (2000) 6 SCC 359 and **Abbai Maligai Partnership Firm vs. K.Santhakumaran** reported in (1998) 7 SCC 386 are all cases where the special leave petitions were dismissed by non-speaking order and in **Abbai Maligai Partnership Firm** (supra), the Court had observed that the High Court by entertaining the review applications after the dismissal of the special leave petitions was an act subversive of judicial discipline.

13. Further, it is submitted that in the instant case, the special leave petitions filed by the State as against the judgment of the Division Bench in S.L.P. (C) Nos.25133 of 2007 etc., batch were entertained, notice was ordered, pleadings were complete and were pending before the Hon'ble Supreme Court for nearly seven years and were dismissed by order dated 24.11.2014. The order passed by the Hon'ble Supreme Court does not contain any reasons and the State while filing the review petitions before the Hon'ble Supreme Court has raised grounds questioning the correctness of the judgment of the Division Bench dated 25.10.2007 in W.A.Nos.405 of 2003 etc., batch.

14. It is further submitted that the grounds raised by the State in these review applications are the very same grounds which were urged before the Hon'ble Supreme Court in the review petitions, which were dismissed by order dated 23.07.2015 in Review Petition (C) Nos.1553 of 2015 etc., batch. Therefore, it is the submission of Mr.V.Giri, learned Senior Counsel that there cannot be fresh round of litigation allowed to be commenced merely because the petitioner is the State.

15. Mr.ARL.Sundresan, learned Senior Counsel appearing for the respondents while supplementing the arguments of Mr.V.Giri, learned Senior Counsel submitted that the special leave petitions filed by the State were entertained, notice was issued and an interim order was granted and were dismissed after several years. The review petitions filed by the State against the said order were dismissed on the ground that it is not a fit case to be heard in open Court, nor there are any grounds to review. Though it may be argued that the doctrine of merger will not be applicable, a situation cannot be created wherein, all orders passed by the Hon'ble Supreme Court are washed away and such a situation cannot be allowed to prevail. Further, the Division Bench while dealing with the contempt petitions had pointed out that the review applications are only counter-blast to the contempt petitions which have been filed. Therefore, it would be too much for the State to now contend and argue that the review applications are maintainable.



16.Mr.K.T.S.Tulsi, learned Senior Counsel, in reply, would submit that the respondents are trying to carve out another exception than what was held in **Khoday Distilleries Limited** (supra) and as per the directions of the Hon'ble Supreme Court, the maintainability of the review applications has to be decided based on the judgment in **Khoday Distilleries Limited** (supra). Further, it is submitted that the law laid down in **Khoday Distilleries Limited** (supra) needs no further interpretation, nor can it enlarge the decision of the Hon'ble Supreme Court.

17.Further, it is submitted that the case of the applicants/State will squarely fall under paragraph 26 of the judgment in **Khoday Distilleries Limited** (supra) and the respondents cannot now refer to the decision in **Abbai Maligai Partnership Firm** (supra) and try to carve out a different category of cases. Further, it is submitted that the order passed in the review petitions by the Hon'ble Supreme Court can make no difference to the legal position. Further, the endeavour of the State is to establish before this Court that fraud has been committed on the Court and the Court has taken for a ride and the Court may entertain the review applications and the reasons, which weighed in the minds of the Court while condoning the delay in filing the review applications may be taken into consideration. On the above grounds, the learned Senior Counsel prayed for entertaining the review applications and holding the same to be maintainable.

18.Heard the learned counsels for the parties and perused the materials placed on record.

19.The Division Bench, by its order dated 13.10.2015, had condoned the delay in filing the review applications by imposing costs. This portion of the order has been affirmed by the Hon'ble Supreme Court in its order dated 22.10.2019. The fact that cost has been paid by the State and received by the respondents is not denied. The review applications were filed by the State before the Division Bench seeking to review the judgment of the Division Bench dated 25.10.2007 was after the special leave petitions filed by the State against the said judgment were dismissed on 24.11.2014, and the review petitions to review the said judgment were also dismissed on 23.07.2015. The respondents filed Transfer Petition (Civil) Nos.1222 to 1225 of 2015 to transfer those petitions to the Hon'ble Supreme Court. The transfer petitions were dismissed by order dated 21.08.2015 with a request to the High Court to decide the preliminary objection with regard to the maintainability and also the delay in filing the review applications at the first instance. Pursuant to such direction, the Division Bench decided the question of whether the delay in filing the review applications needs to be condoned or not as well as the maintainability of the review applications.



20. As mentioned earlier, the Division Bench after assigning reasons to condone the delay in filing the revision applications, ordered payment of cost of Rs.5000/- per application totalling to Rs.20,000/- and this order was affirmed by the Hon'ble Supreme Court. With regard to the maintainability of the review applications, the Court took into consideration the elaborate submissions made on either side and the various decisions cited. After taking note of the decisions, it was pointed out that the view taken in **Kunhyammed** (supra) had not been doubted or diluted or whittled down, as it has been observed that the doctrine of merger and the right of review are concepts, which are closely inter-linked. It was further observed that no merger of decree takes place where a review application is simply dismissed and in this regard, reference was made to the decision in **DSR Steel Private Limited vs. State of Rajasthan** reported in (2012) 6 SCC 782. The Court found that there are two lines of thought and both emerging from the Hon'ble Supreme Court and therefore, opined that the review applications should await the result of **Khoday Distilleries Limited** (supra). The respondents had filed appeals before the Hon'ble Supreme Court as against the order passed by the Division Bench, which were dismissed by order dated 22.10.2019. The operative portion of the order reads as follows:-

"7) We have heard Mr.V.Giri, learned senior advocate in support of the appellant and Mr.Raju Ramachandran, learned senior advocate for the State.

8) Considering the entirety of the matter, we see no reason to take a different view in so far as the exercise of power by the Division Bench in condoning the delay is concerned. We affirm the view taken by the Division Bench and dismiss the contentions of the appellant as regards the first issue.

9) Since the issue concerning maintainability of the Review Applications was deferred by the Division Bench which is clear from the observations quoted hereinabove, in our view, there is no occasion for this Court to consider the issue of maintainability at this stage. We leave the issue to be considered by the Division Bench in accordance with law.

10) In the circumstances, we dismiss the instant appeals. We, however, request the Division Bench to consider the issue of maintainability and such other contentions as are open to the parties in law and dispose of the review applications as early as possible and preferably within three months from today.

11) The parties shall appear before the Division Bench on 4.11.2019 to facilitate further directions."



affirmed the order passed by the Division Bench condoning the delay in filing the review applications. With regard to the maintainability, the Court was directed to consider the issue of maintainability and such other contentions as are open to the parties in law and dispose of the review applications as early as possible and preferably within three months from the date of receipt of a copy of the order.

22.The argument of Mr.K.T.S.Tulsi, learned Senior Counsel is that in the light of the directions issued by the Hon'ble Supreme Court, the State should be permitted to canvass all grounds to substantiate that the review applications are maintainable. On that ground, Mr.V.Giri, learned Senior Counsel submitted that the question of maintainability, that has to be decided by this Court, is not on the maintainability of the review applications on merits, but only with regard to whether the doctrine of merger would apply and whether the review applications are maintainable or not.

23.After hearing the learned counsels for the parties on this issue for a considerable length of time, we would point out that the present decision should be confined with regard to the maintainability of the review applications qua the effect of the decision of the Hon'ble Supreme Court in **Khoday Distilleries Limited** (supra). This is so because when the Division Bench passed the order dated 13.10.2015, in paragraph 34 of the order, the Court pointed out two broad aspects which arise with regard to the question of maintainability in the following terms:-

"34. The question of maintainability really arises from the following two broad aspects :-

(i) The effect of dismissal of the Special Leave Petition on 24.11.2014 against the Division Bench order sought to be reviewed dated 25.10.2007.

(ii) The consequence of having filed a review application before the Honourable Supreme Court in respect of its order dated 24.11.2014 and its dismissal on 23.07.2015."

24.In terms of the above order, to decide maintainability, the effect of dismissal of the special leave petition should be considered and the consequence that would arise out of the dismissal of the review application by the Hon'ble Supreme Court, filed by the State on 23.07.2015. Thus, the Division Bench while considering the question of maintainability of the review applications, did not endeavour to go into the merits of the order. Therefore, when we are directed to decide the question of maintainability by the Hon'ble Supreme Court, it would mean maintainability vis-a-vis the above two broad aspects, which had been pointed out by the Division Bench. Therefore, we have heard the learned counsels for the parties only with regard to the aforementioned aspect and the learned counsels were also agreeable to the same and requested the Court to rule on the said issue at the first instance.



25. In **Khoday Distilleries Limited** (supra), the question of law, which was to be determined, is as to whether the review petition is maintainable before the High Court seeking review of the judgment against which the special leave petition has already been dismissed by the Hon'ble Supreme Court. The Court took into consideration the two judgments both of which are Three-Judge-Bench decisions, viz., **Abbai Maligai Partnership Firm** (supra) and **Kunhyammed** (supra). After taking note of the other decisions as well, the legal position was summarised in paragraph 26 of the judgment as follows:-

"26) From a cumulative reading of the various judgments, we sum up the legal position as under:

26.1. The conclusions rendered by the three Judge Bench of this Court in Kunhayammed and summed up in paragraph 44 are affirmed and reiterated.

26.2. We reiterate the conclusions relevant for these cases as under:

"(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of [Article 141](#) of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the



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jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC."

26.3. Once we hold that law laid down in **Kunhyammed** is to be followed, it will not make any difference whether the review petition was filed before the filing of special leave petition or was filed after the dismissal of special leave petition. Such a situation is covered in para 37 of **Kunhayammed case**."

26. As could be seen from the above, the conclusion rendered by the Hon'ble Supreme Court in **Kunhyammed** (supra) has been affirmed and reiterated. In paragraph 26.2 (supra), the relevant portion of the decision in **Kunhyammed** (supra) has been referred to of which, paragraph 26.2(iv) would be of much relevance. In terms of the said judgment, an order refusing special leave to appeal may be a non speaking order or a speaking order and in either case, would not attract the doctrine of merger.

27. With regard to cases where the special leave petition is dismissed by a speaking order, it was held that the statement of law contained in the order is a declaration of law by the Hon'ble Supreme Court within the meaning of Article 141 of the Constitution. That apart, whatever is stated in the order are the findings recorded by the Hon'ble Supreme Court which would bind the parties thereto and also the Court, Tribunal or authority in any proceedings subsequent thereto by way of judicial discipline. It was further pointed out that but, this does not amount to saying that the order of the Court, Tribunal, authority below has stood merged in the order of the Hon'ble Supreme Court rejecting the special leave petition or that the order of the Hon'ble Supreme Court is the only order binding as *res judicata* in subsequent proceedings between the parties. Furthermore, it was held that it will not make any difference whether the review petition was filed before filing of the special leave petition or was filed after dismissal of the special leave petition.

28. In our considered view, paragraph 44(iv) of the judgment of **Kunhyammed** case (supra) would be a clear answer to the contentions advanced before us. In the cases on hand, the special leave petitions were dismissed by order dated 24.11.2014 by the following order:-

"Delay condoned.
Dismissed"

This order is a non-speaking order. This order, dismissing the special leave petitions, does not attract the doctrine of merger. Therefore, the State was entitled to file a review application before this Court even after having been unsuccessful before the Hon'ble Supreme Court by order dated 24.11.2014.



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29. The distinction which is now sought to be carved out and argued by Mr.V.Giri, learned Senior Counsel is that the State did not stop with filing the special leave petitions, but filed review petitions to review the said order in Review Petition Nos.1553-1556 of 2015 in which, a prayer was made to hear the review petitions in open court, which was rejected and the review petitions were also dismissed and permitting the State to file the present review applications would be subversive of judicial discipline. It is further argued that there should be finality to a litigation and the State cannot be permitted to once over again commence fresh litigation after having lost before the Hon'ble Supreme Court. This argument is based on the observations made before the Hon'ble Supreme Court in **Abbai Maligai Partnership Firm** (supra).

30. As rightly pointed out by Mr.K.T.S.Tulsi, learned Senior Counsel, we need not travel thus far to examine as to whether these review applications are maintainable in the light of the decision of the Hon'ble Supreme Court in **Khoday Distilleries Limited** (supra). In fact, the reason for referring the matter to a Large Bench itself was on account of certain conflicting decisions and the Court took note of the decisions in **Abbai Maligai Partnership Firm** (supra) and **Kunhyammed** (supra) and summarised the legal position. In fact, in **Kunhyammed** (supra), the Hon'ble Supreme Court affirmed and reiterated the legal position. Therefore, the respondents cannot be heard to argue that the State cannot maintain the review applications because there should be finality attached to all orders and decisions. This is more so because, in the instant case, we are deciding the legal issue as regards the maintainability and we are called upon to answer the same.

31. It was further argued by Mr.V.Giri, learned Senior Counsel, that the cases which were dealt with by the Hon'ble Supreme Court were all cases where the special leave petitions were dismissed by a non-speaking order and in the light of the same, the question was decided whether the doctrine of merger would apply or not whereas, in the instant case, the review petitions filed against the dismissal of special leave petitions were also dismissed.

32. In our considered view, the legal position cannot be different owing to the fact that review petitions were dismissed by the Hon'ble Supreme Court, which were filed against the order dismissing the special leave petitions. The issue would be whether the doctrine of merger would apply. In no uncertain terms, the legal position has been set out to state an order refusing special leave to appeal be it as a non-speaking order or a speaking order does not attract the doctrine of merger. It is, this non speaking order, which was subject matter of review petitions, which were rejected. Therefore, the legal position can be no different and the law laid down in **Khoday Distilleries Limited** (supra) would apply with full force to the cases on hand to hold that the review applications are maintainable.

33. Mr.K.T.S.Tulsi, learned Senior Counsel submitted that the



Court should hear the State on the factual issues because, there is public interest involved in this litigation and several thousands and crores of public revenue is involved and in the light of the observations made by the Hon'ble Supreme Court, the Court should also take the matter on the merits of the case.

34.As pointed out by us earlier, the issue of maintainability of these review applications which travelled up to the Hon'ble Supreme Court was with regard to the effect of the dismissal of the special leave petitions on 24.11.2014 against the judgment of the Division Bench sought to be reviewed dated 25.10.2007 and the consequence of the State having filed a review application before the Hon'ble Supreme Court in respect of its order dated 24.11.2014 and its dismissal on 23.07.2015. Therefore, the arguments relating maintainability have to be considered with regard to the aforementioned aspects and not on merits, which were never adjudicated at an earlier point of time.

35.Mr.K.T.S.Tulsi, learned Senior Counsel is right in his submission that the Division Bench while condoning the delay found that there is reasonable and sufficient cause shown, insofar as the delay in filing of the review applications is concerned. However, that may not be a very necessary ingredient for us to decide the maintainability of these review applications, though the learned Senior Counsel is emphatic in his submission that the interest of the State needs to be protected and public interest should reign supreme. With regard to the decision in **Khoday Distilleries Limited** (supra), the Hon'ble Supreme Court noted the facts of the said case and held that the review petitions were maintainable. Paragraph 28 and 29 of the judgment would be relevant, which read thus:-

**"Civil Appeal arising out of
Special Leave Petition (Civil) No. 490 of 2012:**

28.In the instant case, since special leave petition was dismissed in limine without giving any reasons, the review petition filed by the appellant in the High Court would be maintainable and should have been decided on merits. Order dated November 12, 2008 passed by the High Court is accordingly set aside and matter is remanded back to the High Court for deciding the review petition on merits. Civil Appeal disposed of accordingly.

**Civil Appeal arising out of
Special Leave Petition (Civil) No. 13792 of 2013:**

29.In this case, we find that the special leave petition was dismissed with the following order passed on January 05, 2012:

"We find no ground to interfere with the impugned order. The special leave petition is dismissed."

Here also, special leave petition was dismissed in limine and without any speaking order. After the dismissal of the special leave petition, the



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respondent in this appeal had approached the High Court with review petition. Said review petition is allowed by passing order dated December 12, 2012 on the ground of suppression of material facts by the appellant herein and commission of fraud on the Court. Such a review petition was maintainable. Therefore, the High Court was empowered to entertain the same on merits. Insofar as appeal of the appellant challenging the order dated December 12, 2012 on merits is concerned, the matter shall be placed before the regular Board to decide the same."

36. In **Khoday Distilleries Limited (supra)**, the special leave petitions were dismissed in limine without giving any reasons and the review petition filed in the High Court was held to be maintainable and accordingly, the order passed by the High Court rejecting the same was set aside and the matter was remanded back to the High Court for deciding the review petition on merits. In the other special leave petition, which was dismissed by observing that there is no ground to interfere with the impugned order, it was held that in the said case also, the special leave petition was dismissed in limine without any speaking order and after the dismissal of the special leave petition, the respondent had approached the High Court with review petition and the review petition was allowed on the ground of suppression of material facts by the appellant therein and commission of fraud on the Court. The Hon'ble Supreme Court held that such review petition was maintainable and the High Court was empowered to entertain the same on merits. Before us, it has been argued on behalf of the State that fraud has been committed on the Court and the Court has taken for a ride. All these arguments will be considered when the review applications will be heard on merits. In fact, the order rejecting the review petitions filed by the State dated 23.07.2015 is more or less identical to that of the order passed in the aforementioned decision, more particularly, in paragraph 29 of **Khoday Distilleries Limited (supra)**. Thus, the filing of the review petitions as against the dismissal of the special leave petitions and dismissal thereof cannot be taken to be a bar for the State to pursue these review applications in the light of the law laid down by the Hon'ble Supreme Court in **Khoday Distilleries Limited (supra)**.

37. It was argued by Mr.V.Giri as well as Mr.ARL.Sundaresan, learned Senior Counsels that the special leave petitions filed by the State were not dismissed at the admission stage; the special leave petitions were filed in the year 2007, the same were entertained and certain interim orders were granted, thereafter, on notice, the respondents appeared and filed their counter affidavit, reply affidavit was filed by the State and the matter was heard elaborately and dismissed by the Hon'ble Supreme Court. Therefore, it is submitted that to permit the State to maintain these review applications would affect the sanctity of the finality of the proceedings before the Court of law.



38.The fact that the special leave petitions were pending for a considerable length of time is not in dispute.

39.Nevertheless, as we have been called upon to decide the question of maintainability, the legal issue *vis-a-vis* the decision in **Khoday Distilleries Limited** (supra), we are obliged to go by the orders passed by the Hon'ble Supreme Court dated 24.11.2014, which order cannot be taken to be an order, which has merged as a non-speaking order, which is an order refusing special leave to appeal and it cannot stand substituted in the place of the order under challenge, that is, judgment of the Division Bench in W.A.Nos.405 of 2003 etc., dated 25.10.2007.

40.For all the above reasons, the preliminary objection raised by the respondents with regard to the maintainability of these review applications is rejected and we hold that the review applications are maintainable and to be heard and decided on merits.

List the review applications for hearing on 06.02.2020.

-sd/-
30/01/2020
/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS
TAMILNADU FOREST DEPARTMENTS
PANAGAL MAALIGAI, SAIDAPET,
CHENNAI-15.

2. THE DISTRICT FOREST OFFICER,
TIRUPATTUR DIVISION,
TIRUPATTUR.

3 THE SECRETARY TO GOVERNMENT OF TAMILNADU
STATE OF TAMIL NADU
ENVIRONMENT & FOREST DEPARTMENTS
FORT.ST.GEORGE, CHENNAI-9

4. THE DISTRICT FOREST OFFICER,
SALEM DIVISION,SALEM.

5.MR. S.R.RAJAGOPAL,
ADDITIONAL ADVOCATE GENERAL,
HIGH COURT, MADRAS.



C.C.MR.V.S.SETHURAMAN, Advocate on payment of necessary charges

C.C. M/S. M.K.SUBRAMANIAN, ADVCOATE on payment of necessary charges

C.C.K.S NATARAJAN ADVOCATE

Order
in
Review Application Nos.293 to 296 of 2015

Date :30/01/2020

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