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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Cont.P.(MD)No.651 of 2016

in

W.P(MD)No.4559 of 2007

S.S.Muthu Chettiar Memorial High School,
Oonjampatti, Rajapalayam Range,
Virudhunagar District,
Through its Educational Agency and Secretary,
M.Sadhasivam. ... Petitioner

vs.

1)Mr.Rajaraman,
The District Collector,
Virudhunagar District,
Soolakarai, Virudhunagar.

2)Mrs.Vanmathi,
The Commissioner,
Rajapalayam Panchayat Union,
Rajapalayam,
Virudhunagar District. ... Respondents

Petition filed under Section 11 of the Contempt of Courts Act,
to award punishment to the respondent for his continuous
disobeying of the Court order passed in WP(MD)No.4559 of 2007
dated 26.02.2013.

Prayer in WP(MD). 4559/ 2007 :

Writ Petition filed under Article 226 of the Constitution of
India, for issuance of a Writ of Certiorarified Mandamus to
calling for the records in Na.Ka.R3/7174/06 dated 06/03/2007 on
the file of the first respondent, quash the same and consequently
to direct the first respondent to approve the appointment of the
third respondent as Nutritious Meal Center Cook in Hindu High
School, Unjampatti with effect from 06/12/2006.

For Petitioner : Mr.K.K.Kannan

For Respondents : Mr.M.Rajarajan
Government Advocate

O R D E R

This Contempt Petition is filed alleging willful disobedience of the order passed in WP(MD)No.4559 of 2007 dated 26.02.2013.

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2. It is represented that Writ Appeal(MD)No.1066 of 2014 has been filed against the order passed in WP(MD)No.4559 of 2007 dated 26.02.2013 and the same is dismissed by the Hon'ble Division Bench of this Court by Judgment dated 17.11.2015. Applying the principle of Doctrine of Merger, the writ petitioner can file contempt proceedings only before the Hon'ble Division Bench of this Court and the Single Judge cannot deal with the Contempt Petition now initiated by the petitioner.

3. At this juncture, it would be worth referring to the decision of the Apex Court in the case of **Kunhayammed & Others -vs- State of Kerala & Another, (2000 (6) SCC 359)**, wherein, the principle of Doctrine of Merger has been widely discussed. Relevant portions of the said decision are usefully extracted hereunder:-

"32. It may be that in spite of having granted leave to appeal, the Court may dismiss the appeal on such grounds as may have provided foundation for refusing the grant at the earlier stage. But that will be a dismissal of appeal. The decision of this Court would result in superseding the decision under appeal attracting doctrine of merger. But if the same reasons had prevailed with this Court for refusing leave to appeal, the order would not have been an appellate order but only an order refusing to grant leave to appeal.

41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though at times the



orders granting leave to appeal and dismissing the appeal are contained in the same order and at times the orders are quite brief. Nevertheless, the order shows the exercise of appellate jurisdiction and therein the merits of the order impugned having been subjected to judicial scrutiny of this Court.

42. To merge means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality. (See Corpus Juris Secundum, Vol. LVII, pp. 1067-1068) We may look at the issue from another angle. The Supreme Court cannot and does not reverse or modify the decree or order appealed against while deciding a petition for special leave to appeal. What is impugned before the Supreme Court can be reversed or modified only after granting leave to appeal and then assuming appellate jurisdiction over it. If the order impugned before the Supreme Court cannot be reversed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage.

44. To sum up, our conclusions are:

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of



merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(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 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."



4. Learned counsel for the petitioner would contend that a Single Judge is entitled to proceed with a Contempt Petition. To substantiate his case, he has referred to a decision of the Apex Court in the case of **Dineshan, K.K. vs. R.K.Singh and another, [(2014) 16 SCC 88]**, wherein, it has been held as under:

"9. We have carefully perused the decision of this Court. A reading of the judgment would certainly indicate that when the civil appeals and the special leave petitions are dismissed with reasons, the orders passed by the courts below would merge with the judgment and order passed by this Court. The said decision has been followed by this Court in a catena of subsequent judgments of this Court.

10. In view of what has been said by this Court in the aforesaid decision, we cannot hold that the judgment and order passed by the High Court has not merged with the judgment and order passed by this Court when the civil appeal filed by the petitioner complainant was dismissed."

5. With reference to the three-Judge ruling in **Kunhayammed** case, a two-Judge Bench in the above case of **K.K.Dineshan**, in exercise of the powers under Articles 129, 136 and 142 of the Constitution of India, has directed the complainant therein to approach the High Court. But, this Court is not inclined to accept the contention of the counsel for the petitioner in view of the finding of the Apex Court in the subsequent paragraphs of **K.K. Dineshan's case**, which would read thus:

"12. We requested Shri K.K. Venugopal and Dr. Rajeev Dhawan, learned senior counsel to assist us in the matter. Their view on the second question is that undoubtedly the order passed by this Court, while accepting the judgment and order passed by the Courts below, would merge with the judgment and order passed by the Courts below. However, **this Court in exercise of its powers under Articles 129, 136 and 142 of the Constitution of India could direct the complainant/petitioner to approach the High Court and bring to its notice and knowledge that their orders and directions have been disobeyed by the respondents/contemnors.**

14. We are mindful of settled law that **the orders passed by the High Court would merge with the order passed by this Court.** This Court has dismissed the appeal only and, therefore, it is the directions passed by the High Court which in fact have been allegedly disobeyed by the respondents/contemnors. In our considered view, it would be in the interest of



justice and to lessen the burden of this Court in the current scenario, it would be appropriate to request the High Court to look into the grievance of the complainant, if a petition is filed before them inter alia bringing to their notice and knowledge that their orders and directions have been disobeyed. In our opinion, firstly, this exercise would be beneficial to the parties because they were before the High Court in the writ petition wherein the directions were issued and secondly, by entertaining the petitions of this nature wherein this Court has passed an order of dismissal simplicitor and the alleged contempt arises out of the order passed by the High Court, this Court would saddle the dockets with cases which could otherwise be effectively could be disposed of by the Courts below."

6. Once the order passed in a Writ Petition gets merged with the order of the Writ Appeal, the remedy available to the petitioner is to file a Contempt in the Writ Appeal and not in the Writ Petition, unless and until the Apex Court specifically directs the High Court to decide the issue. If the order of a Single Judge is affirmed or modified, the contempt can be filed only before the Division Bench and not before the Single Judge. Once a Writ Appeal is numbered, then the Single Judge cannot take up the contempt in view of the decisions of the Apex Court. If the Writ Appeal is withdrawn, certainly contempt will lie before the Single Judge and the time limit as per Section 20 of the Contempt of Courts Act will commence only from the date of order in the Writ Appeal.

7. In this case, since Writ Appeal is is dismissed, this Contempt Petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

nbi

To

1)Mr.Rajaraman,
The District Collector,
Virudhunagar District,
Sociakalai, Virudhunagar.



2) Mrs. Vanmathi,
The Commissioner,
Rajapalayam Panchayat Union,
Rajapalayam,
Virudhunagar District.

+1cc to Spl. Government Pleader Sr.No. 8639

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15.02.2017