

36. 09.03.2022
Ct. No.06
Tanmoy

R.V.W. 144 of 2019

India Media Services Pvt. Ltd.
-Versus-
SBPL Infrastructure Ltd. & Ors.
With
IA No: C.A.N. 2 of 2019 (Old No: C.A.N. 5778 of 2019)

Mr. Siddhartha Mitra, Ld. Sr. Adv.,
Mr. Domingo Gomes, Adv.,
Mr. Pradeep Sancheti, Adv.,
Mrs. Nairita Datta Chowdhury, Adv.,
Mr. Sumalya Chakraborty, Adv.

...for the petitioner.

Mr. Ratnanko Banerji, Ld. Sr. Adv.,
Mr. Ratul Das, Adv.,
Mr. Srinjoy Bhattacharyya, Adv.

...for the respondent no.1.

Md. T.M. Siddiqui.,
Mr. N. Chatterjee, Adv.

...for the State respondents.

By consent of the parties, the review application and the connected stay application are taken up together for hearing.

This is an application for review of a judgment and order dated September 24, 2018, passed in M.A.T. 593 of 2018.

We are not satisfied that this review application is maintainable.

In this case, the review applicant had preferred a Special Leave Petition before the Supreme Court which was dismissed by a non-speaking order dated January 18, 2019, without granting the leave.

The State had also challenged the order under review before the Supreme Court by filing another Special Leave Petition and the Supreme Court on September 2, 2019, passed the following order:

“Leave granted.

Hearing of the appeals is expedited.”

Mr. Mitra, learned senior advocate appearing in support of the review application relies on the following judgments of the Supreme Court to suggest that this application for review is maintainable.

- ***Kapoor Chand –Vs.– Ganesh Dutt***, reported at ***AIR 1993 SC 1145***;
- ***Yogendra Narayan Chowdhury –Vs.– Union of India***, reported at ***(1996) 7 SCC 1***;
- ***Kunhayammed –Vs.– State of Kerala***, reported at ***(2000) 6 SCC 359***;
- ***Khoday Distilleries Limited –Vs.– Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal***, reported at ***(2019) 4 SCC 376***.

The issue relating to the maintainability of this review application is no more *res integra* in view of the Larger Bench judgment of the Supreme Court rendered in ***Khoday Distilleries Limited (supra)***.

We feel it appropriate to quote the concluding part of the judgment at para 26.2, which reads as follows:

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

Since the Supreme Court has been pleased to grant Special Leave to file the appeal and the hearing of the appeal has also been directed to be expedited, the present review application is not maintainable in view of the ratio laid down in paragraphs 26.2(vi) and 26.2(vii) of the judgment rendered in ***Khoday Distilleries Limited*** case.

The review application being R.V.W. 144 of 2019 and the connected application being IA No: C.A.N. 2 of 2019 (Old No: C.A.N. 5778 of 2019) are, therefore, dismissed as not maintainable.

Let urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)