IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.977 of 2021 (O&M)
Date of decision : 26.04.2022

Ram Asra (Since deceased) through LRs

.....Appellant

VERSUS

Financial Commissioner (Revenue) Punjab and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kulwant Singh, Advocate
for the appellants.

Mr. Sherry K. Singla, Advocate
for respondents No.5 and 6.

*****

AUGUSTINE GEORGE MASIH, J.

Challenge in this appeal is to the order dated 23.09.2021 passed by the learned Single Judge in RA-CW-224-2021 in CWP-4532-2021, wherein the review/recall of the order dated 03.09.2021 passed in CM-12208-CWP-2021 was prayed for.

2. Just to put the things in the right perspective, it may be pointed here that CM-12208-CWP-2021 was preferred by the appellants praying for stay of their dispossession in pursuance to the *sanad taksim* having been ordered, warrants of possession had been issued during the pendency of the writ petition. The plea which was taken by the appellants, who are petitioners before the Writ Court, was that vide order dated 30.06.2021,

HARISH KUMAR
2022.04.26 23:16
I attest to the accuracy of
this document

status quo with regard to the house shown in khasra No.448 had been granted but now, if the land is taken in possession in pursuance to the *sanad taksim*, then they would have no access to the house as the kachcha passage leading to their house would also be handed over to the private respondents, which assertion was disputed by the counsel for the private respondents. Thereafter, the learned senior counsel for the appellants had insisted upon the loss of frontage on the pakka road Noorpura to Bugga which plea was not accepted by the learned Single Judge while passing the order dated 03.09.2021 and it was recorded that in the earlier order which had been passed on 30.06.2021, possession of the house was kept intact so far as the appellants are concerned. Earlier order dated 25.02.2021, whereby notice of motion was issued, did not show that stay of *sanad*/maintenance of possession, as it was prior to partition, was insisted upon.

3. This order was challenged by the appellants by filing LPA No.791 of 2021, which was dismissed as withdrawn on a request made by the learned counsel for the appellants, to file an appropriate application before the learned Single Judge including review of the said order dated 03.09.2021. It is, in pursuance thereto, CM-13759-CWP-2021 and RA-CW-224-2021 had been preferred, where the Court passed an order dated 23.09.2021 by modifying the order dated 03.09.2021 to the extent of directing the parties to maintain status quo as it existed on the date of passing of the order till the crops of the respective parties are harvested and after harvesting of crops, there shall be no stay in operation. In CM-13759-CWP-2021, which was an application for amendment of the writ petition, notice was issued to the counsel for the State as well as counsel for

HARISH KUMAR
2022.04.26 23:16
I attest to the accuracy of
this document

respondents No.5 and 6, who sought time to file reply. The plea for amendment of the writ petition was taken on the ground that certain pleas/grounds, which were taken before the revenue authorities, had been inadvertently missed by the counsel, who had earlier drafted the writ petition, which included the aspect of the claim of the frontage of the road and various objections which have been raised to the Nakshas, which were prepared during the partition proceedings leading to the order of partition i.e. *sanad taksim*. It is, this order, which is under challenge in the present appeal i.e. order dated 23.09.2021.

4. Learned counsel for private respondents No.5 and 6 has raised a preliminary objection with regard to the maintainability of the present appeal, wherein, challenge is to the order dated 23.09.2021 passed by the learned Single Judge in RA-CW-224-2021 without there being any challenge to the order dated 03.09.2021 passed in CM-12208-CWP-2021, in which the above referred to review application has been preferred by the appellants. The contention as has been raised by the learned counsel for private respondents No.5 and 6 is that the basic order, from which the whole issue with regard to appeal in hand is concerned had arisen, which had been passed by the learned Single Judge on 03.09.2021, wherein the prayer for stay of dispossession on the issuance of *sanad* was declined, the said order having not been challenged, the present appeal would not be maintainable as in the review application, the said plea for recall of the order dated 03.09.2021 has not been accepted by the learned Single Judge and only partial order of status quo has been passed. He, on this basis, contends that the present appeal would not be maintainable.

HARISH KUMAR
2022.04.26 23:16
I attest to the accuracy of
this document

5. In support of this contention, he has placed reliance upon the judgment of the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No.15810 of 2021, titled as 'Bechai (dead) through LRs Vs. Jag Ram & others', decided on 08.10.2021, wherein the Hon'ble Supreme Court had dismissed the said Special Leave to Appeal on the ground that the substantive order being passed in the main case i.e. SLP (Civil) No.15698 of 2020, which was dismissed on 18.12.2020, had not been challenged. The Hon'ble Supreme Court had proceeded to dismiss the SLP on the ground that without there being any challenge to the substantive order, the same would not lie against the order of review alone. Reliance for coming to this conclusion was placed by the Hon'ble Supreme Court on the judgment in **Municipal Corporation of Delhi Vs. Yashwant Singh Negi** (2020) 9 SCC 815.

6. Reliance has also been placed upon the judgment of the Hon'ble Supreme Court in Special Leave petition (Civil) No.4616 of 2010, titled as 'Municipal Corporation of Delhi Vs. Yashwant Singh Negi', decided on 08.04.2013, where reference was made to the judgment of the Hon'ble Supreme Court in **DSR Steel (Private) Limited Vs. State of Rajasthan and others** (2012) 6 SCC 782 to again come to a conclusion that the said SLP would not be maintainable since the main order was not challenged but only an order passed in the review petition was challenged in the SLP. On this basis, learned counsel for private respondents No.5 and 6 contends that the present appeal deserves to be dismissed.

7. On the other hand, learned counsel for the appellants has referred to the judgment of the Hon'ble Supreme Court in *DSR Steel*

HARISH KUMAR
2022.04.26 23:16
I attest to the accuracy of
this document

(Private) Limited's case (supra) to contend that in paras 25, 25.1, 25.2 and 25.3, different situations which are likely to arise relating to the review petitions filed before the Court and the Tribunal have been highlighted. Under those circumstances, the effect of the order passed by the Court or Tribunal has been explained. On the basis of those observations and conclusions, learned senior counsel for the appellants contends that where there is an order in the review application modifying the original order passed by the Court in the original order, an appeal would be maintainable against the said order as passed in the review application. He, therefore, contends that the present appeal would be maintainable and thus, the objection as projected by the learned counsel for private respondents No.5 and 6 deserves to be rejected.

8. We have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the relevant pleadings and the orders which have been passed by the learned Single Judge as also the Division Bench of this Court as well as the judgment of the Hon'ble Supreme Court in *DSR Steel (Private) Limited*'s case (supra), on which reliance has been placed by both the counsel for the parties.

9. The facts as have been narrated above need not be reiterated as these relate to the orders which have been passed by the learned Single Judge and the Division Bench of this Court. The question now which requires to be answered is with regard to the maintainability of the present appeal. The answer to this question lies in paras 25, 25.1, 25.2 and 25.3 of the judgment of the Hon'ble Supreme Court in *DSR Steel (Private) Limited*'s

HARISH KUMAR
2022.04.26 23:16
I attest to the accuracy of
this document

case (supra), which read as follows:-

> "**25.** Different situations may arise in relation to review petitions filed before a court or tribunal.
>
> **25.1.** One of the situations could be where the review application is allowed, the decree or order passed by the court or tribunal is vacated and the appeal/proceedings in which the same is made are reheard and a fresh decree or order passed in the same. It is manifest that in such a situation the subsequent decree alone is appealable not because it is an order in review but because it is a decree that is passed in a proceeding after the earlier decree passed in the very same proceedings has been vacated by the court hearing the review petition.
>
> **25.2.** The second situation that one can conceive of is where a court or tribunal makes an order in a review petition by which the review petition is allowed and the decree/order under review is reversed or modified. Such an order shall then be a composite order whereby the court not only vacates the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier. The decree so vacated reversed or modified is then the decree that is effective for the purposes of a further appeal, if any, maintainable under law.
>
> **25.3.** The third situation with which we are concerned in the instant case is where the revision petition is filed before the Tribunal but the Tribunal refuses to interfere with the decree or order earlier made. It simply dismisses the review petition. The decree in such a case suffers neither any reversal nor an alteration or modification. It is an order by which the review petition is dismissed thereby affirming the decree or order. In such a contingency there is no question of any merger and

HARISH KUMAR
2022.04.26 23:16
I attest to the accuracy of
this document

> anyone aggrieved by the decree or order of the Tribunal or court shall have to challenge within the time stipulated by law, the original decree and not the order dismissing the review petition. Time taken by a party in diligently pursing the remedy by way of review may in appropriate cases be excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition."

10. On perusal of the above and keeping in view the facts and circumstances of the present case, we are of the view that the case in hand would fall in third situation (25.3), where the Court has refused to interfere with the final decree and order earlier made except for modifying it for a particular period of time and restoring the earlier order dated 03.09.2021 after the crop of the respective parties are harvested.

11. Thus, what is required to be seen is the ultimate effect of passing of an order in review application. If the decree in effect is neither reversed nor modified but is only modified for a particular period of time for a contingency to take place with restoration of the order as is originally stood after happening of such contingency, the said order cannot be said to be an order of reversing the said order or modifying the original order especially when in the order itself, it is mentioned that initial order passed shall be restored. The effect of this would be that the original order continues to operate except for a short period of time when it is modified and kept in abeyance for a short period of time directing the parties to maintain status quo in the peculiar facts and circumstances, which in this

HARISH KUMAR
2022.04.26 23:16
I attest to the accuracy of
this document

case was that both the parties, admittedly, had sown the crops in the land which was in their respective possession at the time when the *sanad taksim* was being sought to be executed.

12. In view of the above, we are of the considered view that since the original order dated 03.09.2021, review wherein had been preferred by the appellants and decided by the learned Single Judge, has not been challenged in the present appeal, challenge to the now passed order dated 23.09.2021 in the review application alone would not be maintainable in the light of the judgments passed by the Hon'ble Supreme Court, one of which is *DSR Steel (Private) Limited*'s case (supra).

Accordingly, the present appeal, being not maintainable, stands dismissed.

CM-2314-LPA-2021

In the light of the dismissal of main appeal, no orders are required to be passed in this application for staying the dispossession of the appellants as the same has been rendered infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

26th April, 2022 **(SANDEEP MOUDGIL)**
Harish **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*

HARISH KUMAR
2022.04.26 23:16
I attest to the accuracy of
this document