

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13th APRIL, 2023

IN THE MATTER OF:

+ **W.P.(C) 3440/2023 & CM APPLs. 13298/2023, 13299/2023**

SIDDHARTH BAJAJ & ORS. Petitioners

Through: Mr. Siddharth Bajaj - In person

versus

RAVI KUMAR BAJAJ & ORS. Respondents

Through: Mr. Vikrant N. Goyal with Ms. Tesu Gupta and Ms. Ayushi Garg, Advs.

+ **W.P.(C) 3441/2023 & CM APPLs. 13280/2023, 13281/2023**

SIDDHARTH BAJAJ & ORS. Petitioners

Through: Mr. Siddharth Bajaj - In person

versus

RAVI KUMAR BAJAJ & ORS. Respondents

Through: Mr. Vikrant N. Goyal with Ms. Tesu Gupta and Ms. Ayushi Garg, Advs

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant petitions have been filed by the Petitioners herein challenging the Order dated 07.02.2022, passed by the learned Single Judge in CM(M) No. 1168/2021 & CM(M) No. 537/2019; order dated 04.03.2022, passed by the learned Single Judge in REVIEW PET. No. 53/2022 and order dated 27.01.2023, passed by the learned Single Judge in CM Nos.

48565/2022 & 49947/2022 in CM(M) No. 1168/2021 & CM Nos. 48560/2022 & 49954/2022 in CM(M) No. 537/2019. This case has a chequered history.

2. The Respondent No.1 herein is the Plaintiff in a suit being CS No.57749/2016. The case of the Plaintiff is that he along with his deceased uncle - late Sh. Jagdish Lal Bajaj (Grand-father of Petitioners No.1 & 2 herein) purchased a plot bearing No. 1, Golf Links, New Delhi (*hereinafter referred to as 'the suit property'*) vide sale deed dated 25.04.1964. It is stated that two different houses were constructed on the said plot. It is stated that eastern side of the house is in the possession of Respondent No. 1/Plaintiff and the western side of the house is in possession of Petitioners herein/Defendants No.2 to 4. It is stated that Sh. Jagdish Lal Bajaj passed away in 1976 and he was survived by his wife, namely, Sudershan Bajaj, and two sons, namely, Ashok Bajaj & Rajiv Bajaj. It is stated that a Memorandum of Agreement was executed between Respondent No.1 herein/Plaintiff and the legal heirs of late Sh. Jagdish Lal Bajaj on 17.12.1993. It is stated that the Plaintiff and the legal heirs of late Sh. Jagdish Lal Bajaj filed a joint application for conversion of the suit property from leasehold to freehold. It is stated that Ms. Sudershan Bajaj, i.e. the wife of late Sh. Jagdish Lal Bajaj passed away in 2006 and Mr. Rajiv Bajaj, i.e. the son of late Sh. Jagdish Lal Bajaj and Father of the Petitioners herein, passed away in 2009. It is stated that after the death of Ms. Sudershan Bajaj & Mr. Rajiv Bajaj, the Petitioners herein were not co-operating with the Plaintiff/Respondent No.1 for conversion of the suit property from leasehold to freehold and the process was getting stalled. It is also stated that the Petitioners herein/Defendants No.2 to 4 were neither depositing their share

of ground rent, nor house tax towards their portion of the suit property to the Land Development Office (*hereinafter referred to as 'the L&DO'*). It is stated that in April 2013 when the Respondent No.1 herein/Plaintiff approached the L&DO for conversion of the suit property from leasehold to freehold, he was informed that conversion can only be done if all the parties jointly approach the L&DO. Thereafter, suit, being CS No.57749/2016, was filed by the Plaintiff/Respondent No.1 herein with the following reliefs:

“A. Pass a decree of declaration that the Memorandum of Agreement dated December 17, 1993 is binding upon the plaintiff and defendant nos. 1-4;

B. Pass a decree of Mandatory injunction thereby directing defendant nos. 1 - 4 to execute any/all documents in the office of defendant no. 5, jointly along with the plaintiff, for the purposes of mutation and conversion from leasehold to freehold property bearing municipal no.1, Golf Links, New Delhi;

C. Pass a decree of Mandatory Injunction thereby directing the defendant nos. 1 - 4 to pay all charges to defendant no. 5 for mutating the western portion (marked in red in the Map) in their favour;

D. Pass a decree of Mandatory Injunction thereby directing the defendant nos. 1 - 4 to pay all charges to defendant no.5, jointly along with the plaintiff, for conversion of property bearing municipal no. 1, Golf Links, New Delhi from leasehold to freehold;

E Pass a decree of Permanent Injunction thereby restraining the defendant nos. 1 - 4 from selling, alienating, transferring, creating third party rights and/ or parting with possession of the western portion (marked in red in the Map) till the western portion of the property bearing municipal no.1, Golf Links, New

Delhi is mutated in their joint names and converted into freehold;”

3. It is pertinent to mention here that the abovementioned suit was initially filed before this Court. However, due to increase in pecuniary jurisdiction, the suit was transferred to Patiala House Courts *vide* order dated 17.01.2016. Written statements were filed. An application under Order VII Rule 11 of the CPC was also filed by the Defendants No.2 to 4, i.e. the Petitioners herein, seeking dismissal of the suit. An application was also filed by the Plaintiff under Section 151 of the CPC seeking permission to pay charges of the suit property to the L&DO on behalf of all the occupants of the suit property so that the suit property can be converted to freehold from leasehold. It was stated in the said application that the payment of such charges shall be without prejudice to the rights and contentions of the Plaintiff *vis a-vis* the Defendants. The application also sought a direction to the Defendant No.5 to carry out conversion of the suit property from leasehold to freehold. It is stated that both the applications, i.e. application filed under Order VII Rule 11 of the CPC filed on behalf of the Defendants No.2 to 4 and application under Section 151 of the CPC filed on behalf of the Plaintiff, were dismissed *vide* Order dated 05.12.2018. It is stated that Defendants No.2 to 4 filed a review application against the dismissal of the application under Order VII Rule 11 of the CPC and the said review application was also dismissed by the Trial Court *vide* Order dated 02.12.2021.

4. Thereafter, the Defendants No.2 to 4 filed CM(M)1168/2021 before this Court challenging the dismissal of application under Order VII Rule 11 of the CPC as well as the dismissal of the review application on the ground

that the Suit was not maintainable because it was based on the Memorandum of Agreement dated 17.12.1993 and the said Memorandum of Agreement was disputed by Defendants No.2 to 4. It was also contended by Defendants No.2 to 4 that the suit was barred by limitation and there was no cause of action for filing the suit. CM(M)537/2019 was filed by the Plaintiff challenging the dismissal of his application under Section 151 of the CPC. During the course of hearing of CM(M)1168/2021, it was submitted by the Plaintiff that he is willing to pay the entire charges of conversion of the suit property from leasehold to freehold and he shall not be claiming any part thereof from Defendants No.2 to 4. It was also submitted by the Plaintiff that he is willing to pay all the dues of the suit property, including the property tax, and he shall not claim any part thereof from Defendants No.2 to 4. It was further submitted by the Plaintiff that he is willing to give up all other reliefs claimed in the suit if the same is decreed in terms of prayer B of the suit. It is stated that the said offer was not accepted by Defendants No.2 to 4. After considering all the facts and circumstances of the case, the learned Single Judge decreed the Suit in terms of prayer B of the suit *vide* Order dated 07.02.2022. This Court found that the application Order VII Rule 11 had been correctly dismissed by the Trial Court since all the grounds taken in the said application could not be decided in the preliminary stage itself and could be considered only after evidence was led. This Court also found that from the undisputed facts of the case it emerges that the suit property is jointly owned by the Plaintiff and the Defendants No.1 to 4 and the superstructures built over the suit property are in separate occupation of the parties and Defendants No.2 to 4 have not been paying their share towards the ground rent. This Court held that since the Defendants were not paying

the ground rent there is an imminent danger to the property inasmuch as the lease of the property may be forfeited if the Defendants No.2 to 4 do not pay their share of the ground rent or other statutory dues and it will only be in the interest of the plaintiff and the defendants if the suit property is converted from leasehold to freehold. This Court also found merit in the contention of the Plaintiff that he has every right to preserve his interest by seeking conversion of the property from leasehold to freehold. The applications were disposed of by the learned Single Judge with the following directions:

“(i) Plaintiff shall pay the entire applicable charges to the L&DO, including the share of the defendants no.2 to 4, for the mutation and conversion of property bearing No.1, Golf Links, New Delhi from leasehold to freehold, without seeking any right to claim any refund thereof from the defendants no.2 to 4.

(ii) Plaintiff shall pay up-to-date property tax and statutory dues in respect of the aforesaid property, including the share of the defendants no.2 to 4 for the portion occupied by the defendants no.2 to 4, without seeking any right to claim any refund thereof from the defendants no.2 to 4. However, the plaintiff shall not be liable to pay any future dues in respect of the share of defendants no.2 to 4 in the suit property.

(iii) In view of the refusal of the defendants no.2 to 4 to sign the relevant applications for the conversion of the aforesaid property and from complying with the necessary formalities in that regard, this Court appoints Ms. Gurmeet Bindra, Advocate (Mobile No. 9810155549) as the Local Commissioner, who shall sign the requisite forms and carry out all other formalities/acts in respect of mutation and conversion

of the suit property from leasehold to freehold in consultation with the defendants no.2 to 4.

(iv) Parties shall cooperate with the Local Commissioner in carrying out all the necessary formalities of the mutation and conversion of the suit property.

(v) The fee of the Local Commissioner is fixed at Rs.1,25,000/- plus out of pocket expenses and shall be borne by the plaintiff.

(vi) Upon payment of the requisite mutation and conversion charges by the plaintiff and the Local Commissioner signing the requisite forms and carrying out all the formalities/acts on behalf of the defendants no.2 to 4 for mutation and conversion of the suit property from leasehold to freehold, the L&DO shall carry out the conversion of the suit property from leasehold to freehold and mutation in the names of the plaintiff and the defendants respectively.”

5. This order was sought to be reviewed by Defendants No.2 to 4 by filing Review Petition No.53/2022 and CM APPLs. 11035-36/2022. The said review petition was dismissed vide order dated 04.03.2022.

6. It is pertinent to mention here that CM(M)537/2019 & CM(M) 1168/2021 were both filed under Article 227 of the Constitution of India and in view of the settled position of law that an LPA does not lie against the order passed in an application under Article 227 of the Constitution of India, the Defendants No.2 to 4 chose to assail the Order before the Apex Court by filing Special Leave Petition (Civil) Nos.11202-11203/2022 and 11196-11197/2022, against the judgment dated 07.02.2022 and order dated 04.03.2022 dismissing the review petition. The Apex Court *vide* order dated

17.10.2022 dismissed the said SLPs. Since much turns on it, the entire Order passed by the Apex Court is being quoted below and the same reads as under:

“1) SLP (C) Nos. 11202-11203/2022 and SLP(C) Nos. 11196- 11197/2022 relate to Suit CS No. 57749 of 2016 filed by the respondent.

(2) By the orders impugned, the High Court has, no doubt, in purported exercise of power under Article 227 of Constitution of India decreed the suit filed by the respondent in the following manner:

“51. Therefore, this Court deems it appropriate to call for the file of the suit itself from the Trial Court and decree the suit of the plaintiff in terms of prayer B. 52. Accordingly, the suit is decreed in respect of prayer B in the suit. 53. the petition is disposed of with the following directions:

(i) Plaintiff shall pay the entire applicable charges to the L&DO, including the share of the defendants no.2 to 4, for the mutation and conversion of property bearing No.1, Golf Links, New Delhi from leasehold to freehold, without seeking any right to claim any refund thereof from the defendants no.2 to 4.

(ii) Plaintiff shall pay up-to-date property tax and statutory dues in respect of the aforesaid property, including the share of the defendants no.2 to 4 for the portion occupied by the defendants no.2 to 4, without seeking any right to claim any refund thereof from the defendants no.2 to 4. However, the plaintiff shall not be liable to pay any future

dues in respect of the share of defendants no.2 to 4 in the suit property.

(iii) In view of the refusal of the defendants no.2 to 4 to sign the relevant applications for the conversion of the aforesaid property and from complying with the necessary formalities in that regard, this Court appoints Ms. Gurmeet Bindra, Advocate (Mobile No. 9810155549) as the Local Commissioner, who shall sign the requisite forms and carry out all other formalities/acts in respect of mutation and conversion of the suit property from leasehold to freehold in consultation with the defendants no.2 to 4.

(iv) Parties shall cooperate with the Local Commissioner in carrying out all the necessary formalities of the mutation and conversion of the suit property.

(v) The fee of the Local Commissioner is fixed at Rs.1,25,000/- plus out of pocket expenses and shall be borne by the plaintiff.

(vi) Upon payment of the requisite mutation and conversion charges by the plaintiff and the Local Commissioner signing the requisite forms and carrying out all the formalities/acts on behalf of the defendants no.2 to 4 for mutation and conversion of the suit property from leasehold to freehold, the L&DO shall carry out the conversion of the suit property from leasehold to freehold and mutation in the names of the plaintiff and the defendants respectively.”

(3) The High Court also has rejected the application filed by the petitioner under Order VII Rule 11. In the

review petition filed, the petitioner was not successful in modifying the order passed insofar as it related to decreeing of the suit.

(4) The gist of the matter appears to be that the property in question came to be conveyed jointly in favour of Ravi Kumar Bajaj, son of Girdhari Lal Bajaj and Jagdish Lal Bajaj, son of Radha Kishan Bajaj.

The petitioner before us is the grandson of Jagdish Lal Bajaj. Respondent is Ravi Kumar Bajaj himself.

We need further notice only that the suit has been decreed only to the extent of directing what was conveyed under the sale deed dated 25.04.1964. It is only a lease hold right. Under the impugned order, the suit has been decreed in terms of prayer B, as per which, the lease hold right would be transformed into a free hold right.

“B. Pass a decree of Mandatory Injunction thereby directing defendant nos.1-4 to execute any/all documents in the office of defendant no. 5, jointly along with the plaintiff, for the purposes of mutation and conversion from leasehold to freehold property bearing municipal no. 1, Golf Links, New Delhi;”

(5) We need not further dilate as we have set out the relief which is already granted by the High Court hereinbefore. We have noticed how the respondent has been directed to pay certain sums. As far as the grant of this relief is concerned, no doubt, Shri Siddharth Bajaj, party in person, would submit that there were several grounds raised. It is pointed out that the conduct of the respondent-plaintiff was in the region of fraud and the judgments of this Court were not appropriately appreciated and most importantly, it is submitted that there was no need to exercise power

under Article 227 to decree the suit. It is also pointed out that the decree was based on wrong premises.

(6) When the matter came up, one of the contentions which was raised by the party in person was that the respondent may have mortgaged the property and it will affect the petitioner. The respondent has filed an affidavit in this Court:

“2. I submit that vide order dated 22.08.2022 this Hon’ble Court directed me to file an Affidavit to address the concern/apprehension of the Petitioners, regarding creating a mortgage over the entire property bearing 1, Golf Links, New Delhi, including the lease hold share of the property to the Petitioners.

3. I submit that there is no mortgage whatsoever over the entire property, much less, upon the share of the property of the Petitioners.

4. I submit that the second concern raised by the Petitioners, as recorded in the said order is, that the Petitioners have been visited with costs of Rs.25,000 imposed upon them, by the learned Trial Court.”

Besides his statement, we record the submission of the learned senior counsel appearing on behalf of the respondent. He would submit that the respondent shall not create any mortgage on the entire property. He shall not create mortgage affecting the share of the petitioner and if at all, any mortgage is created, it will be qua his rights under the sale deed as per law.

(7) It is pointed out by the learned senior counsel for the respondent that the first defendant-Ashok Bajaj has filed an application under Order I Rule 10 praying that his name may be deleted. Both the party-in-person and the learned senior counsel for the respondent-plaintiff

agree that Shri Ashok Bajaj would not have any share in the property.

We further take note of the contents of the impugned order also to proceed on the basis that the High Court has accepted the position that Ashok Bajaj (defendant No.1) would have no share as the steps for obtaining free hold right has to be taken by the plaintiff and defendants Nos. 2 to 4.

(8) Having noticed these aspects and recording the contents of the affidavit filed by the respondents as we have done hereinbefore and also the statement of the learned senior counsel for the respondent in regard to any mortgage, we would think that there is no ground for the petitioner to take exception to the impugned order.

(9) We may also notice one more aspect.

Learned senior counsel for the respondent on being queried as to what is the nature of the right which must form the subject matter of the document viz., as to whether it will be the joint right of the parties that would have to be the subject matter of the request for conversion into free hold, learned senior counsel for the respondent would submit that what would form the subject matter would be the joint right.

In such circumstances, we see no reason to interfere with the impugned orders. The special leave petitions will stand dismissed subject to the observations which we have made in the order.

As far as the costs of Rs.25,000/- is concerned which has been imposed on the petitioner, it will stand set aside. “

7. After the dismissal of the SLP by a speaking order, the Petitioners filed CM APPL.48560/2022 in CM(M) 537/2019 and CM APPL.48565/2022 in CM(M) 1168/2021 under Section 151 of the CPC for recall of Order dated 07.02.2022 and CM APPL. 49954/2022 in CM(M) 537/2019 and CM APPL.49947/2022 in CM(M) 1168/2021 were filed by the Defendants No.2 to 4 under Section 151 of the CPC seeking modification of the order dated 14.11.2022. The abovementioned applications were dismissed by the learned Single Judge with a cost of Rs.25,000/- *vide* order dated 27.01.2023. The learned Single Judge has held that Order dated 07.02.2022 has already been reviewed and the review petition has been dismissed *vide* order dated 04.03.2022 and the challenge to both the orders have been repealed by the Apex Court *vide* order dated 17.10.2022. The learned Single Judge held that Defendants No.2 to 4 are filing frivolous application only to protract the matter in order to delay the compliance of directions passed by this Court *vide* its judgment dated 07.02.2022.

8. Defendants No.2 to 4/ Petitioners herein have now chosen to assail the three orders, i.e. Order dated 07.02.2022, passed in CM(M) No. 1168/2021 & CM(M) NO. 537/2019; Order dated 04.03.2022, passed in REVIEW PET. No. 53/2022 and Order dated 27.01.2023, passed in CM Nos. 48565/2022 & 49947/2022 in CM(M) No. 1168/2021 & CM Nos. 48560/2022 & 49954/2022 in CM(M) No. 537/2019, by filing the instant Writ Petitions.

9. Petitioner No.1, who appears in person, contends that the orders are vitiated by fraud. When pointedly asked as to how the Petitioners can challenge the Orders dated 07.02.2022, 04.03.2022 & 27.01.2023 by filing the instant Writ Petitions when the Special Leave Petition (SLP) has been

dismissed by a speaking Order passed by the Apex Court and in any event the writ petitions are not maintainable against the Order of the Court, Petitioner No.1 vehemently contends that doctrine of merger would not apply to the facts of this case. The Petitioners herein have challenged Orders dated 07.02.2022 & 04.03.2022 directly before the Apex Court and after being unsuccessful in their endeavour they have filed applications before this Court and when those applications have also been dismissed, the Petitioners have chosen to challenge all three orders by filing the instant Writ Petitions.

10. It is now well settled that a Writ Petition is not maintainable against the order of a Court. The Apex Court in Rupa Ashok Hurra v. Ashok Hurra, (2002) 4 SCC 388, has held as under:

“14. On the analysis of the ratio laid down in the aforementioned cases, we reaffirm our considered view that a final judgment/order passed by this Court cannot be assailed in an application under Article 32 of the Constitution of India by an aggrieved person, whether he was a party to the case or not.”

11. A writ petition, therefore, will not be maintainable against the Order dated 07.02.2022, passed by the learned Single Judge in CM(M) No. 1168/2021 & CM(M) No. 537/2019; order dated 04.03.2022, passed by the learned Single Judge in REVIEW PET. No. 53/2022 and order dated 27.01.2023, passed by the learned Single Judge in CM Nos. 48565/2022 & 49947/2022 in CM(M) No. 1168/2021 & CM Nos. 48560/2022 & 49954/2022 in CM(M) No. 537/2019.

12. The issue whether the doctrine of merger will apply or not when the Apex Court refuses to grant leave to appeal by a speaking Order has now

been crystallized by a Judgment of three Bench Judges of the Apex Court in Khoday Distilleries Ltd. Vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd, (2019) 4 SCC 376 wherein the Apex Court has upheld the Judgment rendered by a Division Bench of the Apex Court. The Apex Court has observed as under:

"23. After elaborate discourse on almost all the aspects, the Court gave its conclusions and also summed up the legal position from paragraphs 39 to 44. We reproduce the same hereunder:

"39. We have catalogued and dealt with all the available decisions of this Court brought to our notice on the point at issue. It is clear that as amongst the several two-Judge Bench decisions there is a conflict of opinion and needs to be set at rest. The source of power conferring binding efficacy on decisions of this Court is not uniform in all such decisions. Reference is found having been made to (i) Article 141 of the Constitution, (ii) doctrine of merger, (iii) res judicata, and (iv) rule of discipline flowing from this Court being the highest court of the land.

40. A petition seeking grant of special leave to appeal may be rejected for several reasons. For example, it may be rejected (i) as barred by time, or (ii) being a defective presentation, (iii) the petitioner having no locus standi to file the petition, (iv) the conduct of the petitioner disentitling him to any indulgence by the court, (iv) the question raised by the petitioner for consideration by this Court being not fit for consideration or deserving being dealt with by the Apex Court of the country and so on. The expression often employed by this Court while disposing of such petitions are — “heard and dismissed”, “dismissed”, “dismissed as barred by

time” and so on. May be that at the admission stage itself the opposite party appears on caveat or on notice and offers contest to the maintainability of the petition. The Court may apply its mind to the meritworthiness of the petitioner's prayer seeking leave to file an appeal and having formed an opinion may say “dismissed on merits”. Such an order may be passed even ex parte, that is, in the absence of the opposite party. In any case, the dismissal would remain a dismissal by a non-speaking order where no reasons have been assigned and no law has been declared by the Supreme Court. The dismissal is not of the appeal but of the special leave petition. Even if the merits have been gone into, they are the merits of the special leave petition only. In our opinion neither doctrine of merger nor Article 141 of the Constitution is attracted to such an order. Grounds entitling exercise of review jurisdiction conferred by Order 47 Rule 1 CPC or any other statutory provision or allowing review of an order passed in exercise of writ or supervisory jurisdiction of the High Court (where also the principles underlying or emerging from Order 47 Rule 1 CPC act as guidelines) are not necessarily the same on which this Court exercises discretion to grant or not to grant special leave to appeal while disposing of a petition for the purpose. Mere rejection of a special leave petition does not take away the jurisdiction of the court, tribunal or forum whose order forms the subject-matter of petition for special leave to review its own order if grounds for exercise of review jurisdiction are shown to exist. Where the order rejecting an SLP is a speaking order, that is, where reasons have been assigned by this Court for rejecting the petition for special leave and are stated in the order still the order remains the one rejecting prayer for the grant of leave to appeal. The petitioner has been turned away at the threshold without having been allowed to enter in the

appellate jurisdiction of this Court. Here also the doctrine of merger would not apply. But the law stated or declared by this Court in its order shall attract applicability of Article 141 of the Constitution. The reasons assigned by this Court in its order expressing its adjudication (expressly or by necessary implication) on point of fact or law shall take away the jurisdiction of any other court, tribunal or authority to express any opinion in conflict with or in departure from the view taken by this Court because permitting to do so would be subversive of judicial discipline and an affront to the order of this Court. However this would be so not by reference to the doctrine of merger.

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. 1067-68.)*

43. *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.”

13. The Order of the Apex Court which has been quoted above shows that the SLP has been rejected by a very detailed Order and, therefore, it is not open for the learned Single Judge to reopen the very same issue.

14. In view of the fact that the Order passed by the learned Single Judge in CM(M) 537/2019 and CM(M) 1168/2021 has been affirmed by the Apex Court, while dismissing the SLP, by passing a speaking Order, the instant writ petitions which endeavour to reopen issues which stand settled are not maintainable.

15. The present writ petitions are, therefore, nothing but the gross abuse of the process of law and the same are deserved to be dismissed with costs of Rs.50,000/-. The fact that the Petitioner has been appearing in - person is not a ground to not impose costs upon the Petitioner. Petitioner is directed to deposit a sum of Rs.50,000/-(Rupees Fifty Thousand Only) with the '*Armed Forces Battle Casualties Welfare Fund*' within four weeks from today. Let a copy of the receipt be filed with the Registry to show compliance of the order. In case the Petitioners are not able to submit the proof of payment within the stipulated time, the amount be recovered by the Respondent No.3 herein as arrears of land revenue.

16. With these observations, the present petitions are dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

APRIL 13, 2023

Rahul