

IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARHVARINDER SINGH
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Reserved on : 09.02.2024

Date of Decision : 15.02.2024

LPA No. 384 of 2019 (O&M)

Shashi Verma and others

... Appellants

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMAPresent: Mr. Gaurav Chopra, Senior Advocate assisted by
Mr. M. M. Pandey, Mr. Umesh Pandey, Mr. Himani Jamwal and
Mr. Vikram Singh Punia, Advocates, for the appellants.

Mr. Hitesh Pandit, Additional Advocate General, Haryana.

Mr. R. K. Malik, Senior Advocate assisted by
Mr. Sachmeet Singh Randhawa, Advocate, for respondent nos. 4 & 5.**SANJEEV PRAKASH SHARMA, J.**

By way of this Letters Patent Appeal, the appellants seek to assail the order dated 10.03.2015 passed in RA No. 492 of 2014 by the learned Single Judge whereby he has reviewed the order passed in CWP No. 5859 of 2010 decided on 17.11.2012. The order was passed while deciding bunch of review petitions filed by the State of Haryana against the order dated 16.01.2013 passed in a bunch of writ petitions wherein the petitioners' writ petition was also included.

2. For adjudication of this case, it would be apposite to note certain dates and facts which have come on record.

The appellants herein had filed a writ petition before this Court bearing CWP No. 5859 of 2010 which was allowed on 17.11.2012 in terms of judgment passed in CWP No. 3686 of 2000 – **Harish Kumar and others vs State of Haryana and others** decided on 01.03.2011 as well as **Chandigarh Administration and others vs Mrs. Rajni Vali** JT 2000 (1) SC 159. The Single

Judge held that the facts were not disputed. It also noticed that the State Department had filed a review petition against the dismissal of the SLP in Harish Kumar's case (supra) and that judgment had been upheld by the Supreme Court.

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3. The order dated 17.11.2012 passed in CWP No. 5859 of 2010 by the learned Single Judge was challenged in LPA No. 1335 of 2013 – The Managing Committee, S. D. Senior Secondary School, Ambala Cantt. And another vs Shashi and others and LPA No. 1332 of 2013 – State of Haryana vs Shashi Sharma. Both the LPAs were dismissed as withdrawn with liberty to file review application vide order dated 22.04.2014. The Review Application was filed by the Managing Committee (supra) bearing RA No. 270 of 2014. The same was dismissed as withdrawn vide order dated 07.05.2014 and SLP (C) No. 13504 of 2014 was filed against the review order. The said SLP was dismissed on merits by the Supreme Court on 28.09.2014.

4. Thereafter on 10.03.2015, a review application was filed by the State of Haryana bearing RA No. 492 of 2014 which was tagged along with RA No. 478 of 2014. The facts of RA No. 478 of 2014 were considered by the learned Single Judge and the same came to be allowed. The order mentions RA No. 492 of 2014 in CWP No. 5859 of 2010 and states that the same is being decided as it arises out of a common judgment.

5. Learned counsel for the appellants has invited attention to order passed in RA No. 492 of 2014 in CWP No. 5859 of 2010 which states that for orders, see detailed reasons recorded in a separate order passed today in RA No. 478 of 2014 in CWP No. 10166 of 2011 titled as Rajesh Dhanda and others vs State of Haryana and others. He further states that feeling aggrieved by the said order, the petitioners therein filed SLP before the Supreme Court directly bearing SLP (C) No. 14792 of 2015 Shashi Sharma and others vs State of Haryana and

others wherein on 13.05.2015 notices were issued and stay of further proceedings in CWP No. 5859 of 2010 were directed by the Supreme Court. On 22.01.2019, the said SLP was dismissed as withdrawn with liberty to avail the remedy of Letters Patent Appeal. The petitioners were granted interim protection for four weeks till the said LPA is not filed. Thereafter, the present LPA was preferred by the appellants on 11.02.2019 and an interim protection was granted at the initial stage by this Court vide order dated 20.02.2019.

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6. Learned counsel for the appellants further submits that respondent State of Haryana has wrongfully filed a review petition after the Supreme Court had decided the SLP on merits filed by the Managing Committee on 29.08.2014. Their act was also suffering from concealment as it was wrongly stated in their review application that the order passed in Civil Writ Petition No. 5859 of 2010 was a common judgment. In fact the order under review was passed in other writ petitions as a separate judgment in Civil Writ Petition No. 8314 of 2011 **Sunil Parkash and another vs State of Haryana** on 16.01.2013. Thus, there was no common order between the petitioners and others who had appeared before the Single Bench and the Single Bench ought not have decided the petitioners' review application and set aside the order passed in their cases which was passed in independent writ proceedings. Thus, two judgments could not have been re-called/reviewed by a common order. He further submits that the petitioners were also not given a chance to make their submissions as the review petition was put in a bunch.

7. Learned counsel for the State does not dispute the fact about the review petition in the petitioners' case having been decided with review petition relating to another case. Rather, he submits that on merits the respondent State of Haryana had a good ground for seeking review of the order passed in favour of the

present appellants by the learned Single Bench earlier dated 17.11.2012. He further submits that the appellants were not working against grant-in-aid posts.

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8. We have considered the submissions.

9. While taking into consideration the aforesaid factual aspect, this Court would not enter into the arena relating to review which is required to be adjudicated by the concerned Single Bench on the basis of the facts available before it. It is settled law that the review petition can be clubbed and heard together if it is seeking a review of the same order which is sought to be reviewed in other petition. However, it is apparent that the case of the appellants could not be clubbed with other cases while deciding the review petition as the present review petition filed by the State of Haryana was against an order passed separately by the High Court.

10. This Court also finds that the review petition filed by the State of Haryana was belated. In fact, it had been filed after a period of almost 640 days. By clubbing it with other review petitions, the question regarding limitation was left unanswered by the learned Single Bench.

11. This Court further finds that before filing review petition, LPAs have been preferred by the Managing Committee as well as by the State of Haryana challenging the order passed in favour of the present appellants. Both the LPAs were dismissed with liberty to move an application for review and in terms of the order passed by the Division Bench, the review application was filed by the Managing Committee and the same was dismissed. SLP was filed against the said order before the Supreme Court, which was dismissed on 29.08.2014. Till that time, the State of Haryana had not filed any review application and after dismissal of the SLP by the Supreme Court, the review application was filed.

12. In **Kunhayammed vs State of Kerala** 2000 (6) SCC 359 the Larger Bench of the Supreme Court was examining the provisions of Order 47 Rule 1 CPC and it held as under:-

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“37. The Review can be filed even after SLP is dismissed is clear from the language of Order 47 Rule 1 (a). Thus the words no appeal has been preferred in Order 47 Rule 1(a) would also mean a situation where special leave is not granted. Till then there is no appeal in the eye of law before the superior court. Therefore, the review can be preferred in the High Court before special leave is granted, but not after it is granted. The reason is obvious. Once special leave is granted the jurisdiction to consider the validity of the High Courts order vests in the Supreme Court and the High Court cannot entertain a review thereafter, unless such a review application was preferred in the High Court before special leave was granted.

Conclusions :-

38. 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-Judges 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.

39. 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 in 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 merit worthiness of the petitioners 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 of the C.P.C. 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 of the C.P.C. 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 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.”

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13. Again a Larger Bench of the Supreme Court was examining the maintainability of review petition in **Khoday Distilleries Limited (now known as Khoday India Limited) and others vs Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal (under Liquidation) represented by the Liquidator** 2019 (4) SCC 376, wherein after having noticed various aspects and considering the doctrine of merger and **Kunhayammed's** case (supra) reiterated the conclusion drawn in **Kunhayammed's** case (supra) holding as under:-

“26.2 We reiterate the conclusions relevant for these cases as under: (Kunhayammed case 2000 (6) SCC 359) SCC P.384.

"(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.

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(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.”

26.3 Once we hold that law laid down in Kunhayammed 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.”

14. Thus, the review petition filed by the State of Haryana after dismissal of the SLP and review of respondent- Managing Committee would be held to be maintainable.

15. Having said so, this Court, therefore, reaches to the conclusion that the impugned order passed by the Court reviewing the order passed in CWP No. 5859 of 2010 cannot be sustained as it had not been examined on its own merits. The issues in relation to CWP No. 5859 of 2010 and the judgment passed therein dated 17.11.2012 were neither addressed to nor argued and the same was erroneously tagged with other cases arising out of an altogether different judgment.

16. Accordingly, the order passed on 10.03.2015 in RA No. 492 of 2014 in CWP No. 5859 of 2010 is quashed and set aside. It is directed that the review petition shall be revived to its original number and be heard separately and decided

by the concerned Bench on its own merits. The question of limitation is also left free to be adjudicated.

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17. As this Court has set aside the order passed on 10.03.2015, the interim order passed by this Court becomes absolute.
18. The appeal is allowed accordingly.
19. All pending applications shall stand disposed of.
20. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

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VS

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No