

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.4609-4610 OF 2024
(Arising out of SLP(C)Nos.25654-25655 of 2023)

SANGITA

... APPELLANT

Versus

THE STATE OF MAHARASHTRA & ANR.

... RESPONDENTS

O R D E R

1. Leave granted.

2. The instant appeals are directed against the judgment and order dated 19.08.2023, passed by a Division Bench of the High Court of Judicature at Bombay, Bench at Aurangabad, whereby the Review Application filed by the ex-proprated land owners, eventually seeking further enhancement of compensation, has been dismissed invoking the 'Doctrine of Merger' on the premise that the judgment under review dated 09.01.2019, of the Division Bench of the High Court, stood merged in the order dated 03.07.2019 passed by this Court dismissing SLP(C).....D.No.15990/2019.

3. The High Court while interpreting the decision of a three-Judge Bench of this Court in Khoday Distilleries Ltd. (Now known as Khoday India Ltd.) & Ors. vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd., Kollegal (Under Liquidation) represented by the Liquidator, (2019) 4 SCC 376, has opined that since the delay was condoned by this Court in the Special Leave Petition, it can be said that leave to appeal was granted and this Court, while dismissing the Special Leave Petition, invoked the appellate jurisdiction. The High Court, thus, was of the view that dismissal

of the Special Leave Petition by this Court amounted to be a decision on merits of the case which would attract the 'Doctrine of Merger'.

4. The aggrieved land owners are before us by way of instant appeals.

5. We have heard learned counsel for the appellant as well as learned Additional Solicitor General of India for the respondent-State and carefully perused the material placed on record.

6. During the course of hearing, it could not be disputed that the High Court has erroneously construed the dictum of this Court in Khoday Distilleries Ltd.(supra). It is well-settled that when this Court refused to grant special leave to appeal, be it even by way of a reasoned order, it will not attract the 'Doctrine of Merger'. That would be an order where this Court, in the facts and circumstances of the case, declined to exercise its jurisdiction under Article 136 of the Constitution. This view, as taken by a three-Judge Bench of this Court in Kunhayammed and others vs. State of Kerala and another, (2000) 6 SCC 359, was reiterated by this Court in Khoday Distilleries Ltd.(supra), as follows:

"26. From a cumulative reading of the various judgments, we sum up the legal position as under:

26.1. The conclusions rendered by the three-Judge Bench of this Court in Kunhayammed [Kunhayammed v. State of Kerala, (2000) 6 SCC 359] and summed up in para 44 are affirmed and reiterated.

26.2. We reiterate the conclusions relevant for these cases as under: (Kunhayammed case [Kun-

hayammed v. State of Kerala, (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.

(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.”

26.3. Once we hold that the law laid down in *Kunhayammed* [*Kunhayammed v. State of Kerala*, (2000) 6 SCC 359] 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 [*Kunhayammed v. State of Kerala*, (2000) 6 SCC 359].”

7. However, if the leave to appeal was granted and a consequential order was passed, such an order would then attract the 'Doctrine of Merger' and consequently, the decision of the High Court which is under challenge, shall stand merged with that of the order passed by this Court. Since the High Court's judgment will stand subsumed in the order of this Court and in a way, will no longer be in existence, an application seeking review thereof shall not be maintainable. In this view of the matter, the impugned order to the extent it declined to entertain the Review Application on the premise that after the dismissal of the Special Leave Petition, no Review Petition was maintainable, is liable to be set aside. Ordered accordingly. The matter is remitted to the High Court to decide the Review Application on merits.

8. It is clarified that we have not expressed any opinion on the merits of the case.

9. The parties are directed to appear before the High Court of Judicature at Bombay, Bench at Aurangabad, on 29.04.2024.

10. The instant civil appeals are disposed of accordingly.

11. As a result, the pending interlocutory application also stands disposed of.

.....J.
(SURYA KANT)

.....J.
(K.V. VISWANATHAN)

NEW DELHI;
APRIL 01, 2024.

ITEM NO.43

COURT NO.4

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).25654-25655/2023

(Arising out of impugned final judgment and order dated 19-08-2023 in CA No.10391/2022 and RAST No.20770/2020 passed by the High Court of Judicature at Bombay at Aurangabad)

SANGITA

Petitioner(s)

VERSUS

THE STATE OF MAHARASHTRA & ANR.

Respondent(s)

(IA No.239047/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 01-04-2024 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Petitioner(s) Dr. R. R. Deshpande, AOR
Ms. Prachiti Deshpande, Adv.
Ms. Priyanaka Deshpande, Adv.
Mr. Bhagwant Deshpande, Adv.
Mr. Akshay Kapoor, Adv.
Ms. Vibha Kapoor, Adv.

For Respondent(s) Mr. Aniruddha Deshmukh, Adv.
Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya Aniruddha Pande, AOR
Mr. Bharat Bagla, Adv.
Mr. Sourav Singh, Adv.
Mr. Aditya Krishna, Adv.

Mr. K.M. Nataraj, A.S.G.
Mr. R Bala, Sr.Adv.
Mr. Amrish Kumar, AOR
Mrs. Indira Bhakar, Adv.
Mr. Sharath Nambiar, Adv.
Mr. Annirudh Sharma II, Adv.
Mr. B.K Satija, Adv.
Mr. Rajesh Kumar Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The parties are directed to appear before the High Court of Judicature at Bombay, Bench at Aurangabad, on 29.04.2024.

The instant civil appeals are disposed of in terms of the signed order.

As a result, the pending interlocutory application also stands disposed of.

(SATISH KUMAR YADAV)
ADDITIONAL REGISTRAR

(PREETHI T.C.)
COURT MASTER (NSH)

(Signed order is placed on the file)