

This Product is Licensed to : Bhagyashree Lele, Advocate

Docid # IndLawLib/1254616

(2017) 2 ARC 97

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

DIVISION BENCH

VIJAY KUMAR SINGH — Appellant

Vs.

STATE OF U.P. — Respondent

(Before : Narayan Shukla and Rajan Roy, JJ.)

C.M. Application Nos. 71724 of 2016 and 71727 of 2016 In re:- Service Bench No. 642 of 2015

Decided on : 06-01-2017

- Civil Procedure Code, 1908 (CPC) - Section 114

A. Civil Procedure — Review Application — Maintainability — Filing after dismissal of Special Leave Petition (SLP) by Supreme Court — Principles — A review application is not maintainable before the High Court if filed after an SLP against the same judgment has been filed and dismissed by the Supreme Court. Such action is considered an abuse of the process of court and subversive of judicial discipline. (Paras 5, 6, 8)

B. Judicial Discipline — Review Jurisdiction — Abuse of Process — High Court cannot review its own order if an SLP against that order has been dismissed by the Supreme Court. Doing so would be an affront to the Supreme Court's order and an abuse of the court's process. (Para 5)

C. Civil Procedure — Review Application — Condonation of Delay — Grounds for delay — Delay in filing review application is generally not condoned if it occurred after the dismissal of an SLP, especially when the explanation for the delay is unsatisfactory or lacks supporting evidence (medical documents for a claim of depression). (Paras 3, 4, 9)

D. Precedent — Binding Nature — Pending Reference to Larger Bench —

Even if an issue has been referred to a larger bench, existing pronouncements of the Supreme Court on that issue remain binding precedents until explicitly overruled. Lower courts cannot ignore these judgments. (Para 9)

Counsel for Appearing Parties

Gaurav Mehrotra, Advocate, for the Petitioner; C.S.C., A.K. Jauhari and Amithabh Mishra, Advocates, for the Respondent

Cases Referred

- Abbai Maligai Partnership Firm Vs. K. Santhakumaran, (1998) 7 SCC 386
- K. Rajamouli Vs. A.V.K.N. Swamy, (2001) 5 SCC 37
- Khoday Distilleries Ltd. Vs. Mahadeswara S.S.K. Limited, (2012) 12 SCC 291
- Kunhayammed Vs. State of Kerala, (2000) 6 SCC 359
- Meghmala Vs. G. Narasimha Reddy, (2010) 8 SCC 383
- State of Maharashtra Vs. Sarv Shramik Sangh, Sangli, (2013) 16 SCC 16

Final Result : Dismissed

JUDGMENT

Narayan Shukla and Rajan Roy, JJ.—This is a belated application seeking review of our judgment dated 07.08.2015 passed in Writ Petition No. 642 (SB) of 2015 allowing the said writ petition of respondent - petitioner disapproving the alteration of seniority between the parties at such belated stage.

2. Being aggrieved by the said judgment dated 07.08.2015 the applicant filed Special Leave Petition (C) No. 26611 of 2015 which was dismissed in limine on 12.10.2015. Thereafter this review application along with an application for condonation of delay is alleged to have been prepared and filed in the Registry of this Court on 21.03.2016. However, it is said that when the matter was not listed in the Court on the expected date i.e. 29.03.2016 the counsel inquired from the Registry and was told that the file was not traceable and ultimately it was traced out on 26.07.2016, whereupon, some deficiency was intimated in the filing of the application. The record reveals that a copy of the review application was sent by the applicant to the private respondent no.4 only on 27.07.2016 by Speed/Registered post from the 8826 post office of the Lucknow Bench of the High Court. It is only thereafter the matter was processed by the reporting section and requisite reporting was done on 02.08.2016 indicating a delay of 10 months and 21 days in filing the same as on 28.07.2016.

3. The application for condonation of delay filed along with review application does not offer much explanation for the delay except saying that the judgment dated 07.08.2015 was challenged before the Supreme Court, which dismissed the Special Leave Petition on

12.10.2015. Thereafter, applicant was advised to file a review application, whereupon it was prepared in the month of March, 2016.

4. Be that as it may, the said affidavit dated 20.03.2016 does not offer any justifiable explanation for not filing the review application prior to filing of the Special Leave Petition nor for the period subsequent to its dismissal i.e. 12.10.2015 till it was actually filed. It is for this reason it appears that the applicant subsequently filed another application on 26.07.2016 trying to explain the delay mentioning the facts already taken note of herein above as regards the filing of review application in the month of March 2016 and the events thereafter. Even this affidavit does not give any satisfactory reason for filing this application in the month of March, 2016 when the judgment sought to be reviewed was passed on 07.08.2015. Semblance of an explanation is to be found in the rejoinder affidavit filed by the applicant to the counter affidavit filed by private respondent against the application for condonation of delay in filing review application, wherein, it is said that applicant was depressed between 12.10.2015 to 14.03.2016 which is hardly an acceptable explanation in the absence of any medical documents in support thereof.

5. This apart, the question as to whether any application seeking review of a judgment, after filing of S.L.P. against it and its dismissal, is maintainable before the High Court or not, fell for consideration before the Supreme Court in the case of **Abbai Maligai Partnership Firm and another v. K. Santhakumaran and others reported in (1998) 7 SCC 386** wherein a three Judges Bench of the Supreme Court observed as under:-

"The manner in which the learned Single Judge of the High Court exercised the review jurisdiction, after the special leave petitions against the self - same order had been dismissed by this court after hearing learned counsel for the parties, to say the least, was not proper. Interference by the learned single Judge at that stage is subversive of judicial discipline. The High Court was aware that SLPs against the orders dated 7.1.87 had already been dismissed by this court. This High Court, therefore, had no power or jurisdiction to review the self same order, which was the subject matter of challenge in the SLPs in this court after the challenge had failed. By passing the impugned order on 7.4.1994, judicial propriety has been sacrificed. After the dismissal of the special leave petitions by this court, on contest, no review petitions could be entertained by the High Court against the same order. The very entertainment of the review petitions, in the facts and circumstances of the case was an affront to the order of this Court. We express our strong disapproval and hope there would be no occasion in the future when we may have to say so. The jurisdiction exercised by the High Court, under the circumstances, was palpably erroneous. The respondents who approached the High Court after the dismissal of their SLPs by the this court, abused the process of the court and indulged in vexatious litigation. We strongly deprecate the matter in which the review petitions were filed and heard in the High Court after the dismissal of the SLPs by this court. The appeals deserve to succeed on that short ground. The appeals are, consequently, allowed and the impugned order dated 07.04.1994 passed in the review petitions is hereby set aside. The respondents shall pay Rs. 10,000 as

costs."

6. The same issue again came up for consideration in the case of **Meghmala and others v. G. Narasimha Reddy and others reported in (2010) 8 SCC 383** wherein after referring the earlier judgment in the case of Abbai Maligai Partnership Firm (supra) and **Kunhayammed and others v. State of Kerala and another reported in (2000) 6 SCC 359** it expressed the following:-

" Thus, the law on the issue stands crystallized to the effect that in case a litigant files a review petition before filing the Special Leave Petition before this Court and it remains pending till the Special Leave Petition stands dismissed, the review petition deserves to be considered. In case it is filed subsequent to dismissal of the Special Leave Petition, the process of filing review application amounts to abuse of process of the court.

26. In view of the above, we are of the considered opinion that filing of such a review application by the respondents at a belated stage amounts to abuse of process of the Court and such an application is not maintainable. Thus, the High Court ought not to have entertained the writ petition against the order of dismissal of the review application by the Special Court and the order of the High Court to that extent is liable to be set aside."

7. The same issue again fell for consideration before the Supreme Court in **K. Rajamouli v. A.V.K.N. Swamy reported in (2001) 5 SCC 37** wherein following the judgment of Abbai Maligai Partnership Firm (supra) and Kunhayammed and others the Supreme Court held as follows:-

" Following the decision in the case of Kunhayammed & Ors. (surpa) we are of the view that the dismissal of the special leave petition against the main judgment of the High Court would not constitute res judicata when a special leave petition is filed against the order passed in the Review Petition provided the review petition was filed prior to filing of special leave petition against the main judgment of the High Court. The position would be different where after dismissal of the special leave petition against the main judgment a party files a review petition after a long delay on the ground that the party was prosecuting remedy by way of special leave petition. In such a situation the filing of review would be as abuse of the process of the law. We are in agreement with the view taken in Abbai Maligai Partnership Firm (supra) that if High Court allows the review petition filed after the special leave petition was dismissed after condoning the delay, it would be treated as affront to the order of the Supreme Court. But this is not the case here. In the present case, review petition was filed well within time and since the review petition was not being decided by the High Court, the appellant filed the special leave petition against the main judgment of the High Court. We, therefore, overrule the preliminary objection of the counsel for the respondent and hold that this Appeal arising out of special leave petition is maintainable."

8. In view of the aforesaid pronouncement the present review application, which has been

filed after filing of the Special Leave Petition against the judgment sought to be reviewed as also its dismissal, is not maintainable.

9. We are also conscious of the fact that subsequently this issue has been considered by the Supreme Court in the case of **Khoday Distilleries Ltd. And others v. Mahadeswara S.S.K. Limited reported in (2012) 12 SCC 291** wherein this issue has been referred to a larger Bench, however, we cannot be unmindful of the observations made by the Supreme Court in the three judgments quoted herein above, as, we are of the view that merely because of the aforesaid reference we cannot ignore the above quoted judgments of the Supreme Court as long as they hold the field and have binding precedentiary value as held by the Supreme Court in the case of **State of Maharashtra and another v. Sarv Shramik Sangh, Sangli and others reported in (2013) 16 SCC 16**. Accordingly, for the reasons mentioned above we are not inclined to condone the delay in filing the review application for which, the explanation, in any case, is not satisfactory nor to entertain the review application. The application nos. (C.M. Application No. 71724 of 2016 and 71727 of 2016) are hereby dismissed.