

SUPREME COURT OF INDIA

Municipal Corporation of Delhi

Vs.

Yashwant Singh Negi

S.L.P.(Civil) No.4616 of 2010

(K.S. Radhakrishnan) (Dipak Misra)

08.04.2013

JUDGMENT

K. S. RADHAKRISHNAN, J

1. This special leave petition has been preferred against the order dated 11.09.2009 passed by the High Court of Delhi in Review Petition No.79 of 2009 in LPA No.1233 of 2006. Mr. Nidhesh Gupta, learned senior counsel appearing for the respondent raised a preliminary objection that the special leave petition is not maintainable since the main judgment rendered by the High Court on 5.11.2008 in LPA No.1233 of 2006 was not challenged.

2. Mr. Sanjiv Sen, learned counsel appearing for the petitioner placed considerable reliance on the judgment of this Court in *Eastern Coalfields Limited v. Dugal Kumar* (2008) 14 SCC 295 and submitted that the said judgment would apply to the facts of this case and the SLP is perfectly maintainable, even though the petitioner had not challenged the original order passed by the High Court on 5.11.2008. Learned counsel submitted that on dismissal of the review petition, the earlier order stood merged, in the order passed in the review petition, consequently, the SLP is perfectly maintainable. Considerable reliance was placed on paragraphs 21 and 22 of the above Judgment, which read as under:

“21. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. So far as the technical objection raised by the Company with regard to territorial jurisdiction of the High Court of Calcutta is concerned, in our opinion, it would not be appropriate to set aside the order passed in favour of the writ petitioner on that ground. It is clear

from the record that the writ petition came up for admission hearing on 6-9-1999 and the counsel for the appellant Company was present. Not only that he did not raise any objection as to territorial jurisdiction of the court, he expressly made a statement before the court to pass “usual order”. Accordingly, an order was passed directing the Company to allot “balance quantity of 1008 MT” of coal to the writ petitioner. We are, therefore, unable to uphold the contention of the learned counsel for the appellant Company that the High Court of Calcutta had no territorial jurisdiction to entertain the writ petition.

22. But we are also unable to uphold the contention of the writ petitioner that the appeal is not maintainable since the Company had challenged the order passed in review petition dated 28-1-2002 and not the main order dated 17-2-2000 dismissing intra-court appeal.”

3. We find ourselves unable to agree with the views expressed by this Court in *Eastern Coalfields Limited (supra)*. In our view, once the High Court has refused to entertain the review petition and the same was dismissed confirming the main order, there is no question of any merger and the aggrieved person has to challenge the main order and not the order dismissing the review petition because on the dismissal of the review petition the principle of merger does not apply. In this connection reference may be made to the Judgment of this Court in *Manohar S/o Shankar Nale and others v. Jaipalsing S/o Shivilsing Rajput and others (2008) 1 SCC 520* wherein this Court has taken the view that once the review petition is dismissed the doctrine of merger will have no application whatsoever. This Court in *DSR Steel (Private) Limited v. State of Rajasthan and others (2012) 6 SCC 782* also examined the various situations which might arise in relation to the orders passed in review petitions. Reference to paragraphs 25, 25.1, 25.2 and 25.3 is made, which are extracted below for ready reference:

“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 [pic]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 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 pursuing 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.”

4. We are in complete agreement with the principle laid down by this Court in DSR Steel (Private) Limited (supra) and applying the 3rd situation referred to therein in paragraph 25.3, we are inclined to dismiss this special leave petition. We find force in the contention made by the learned senior counsel appearing for the respondent that this SLP is not maintainable, since the main order was not challenged but only the order passed in the review petition alone was challenged in this SLP. Hence, the SLP is, therefore, not maintainable and the same is dismissed.