

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

MAIN CASE NO.:C.C.Nos.3347, 2497, 3624, 4266, 4966, 5085, 5284, 5567, 6544 of 2022; C.C.Nos.781, 976, 1072, 1938, 2192, 2828, 4058, 4447 and 4552 of 2023; C.C.No.30 of 2024

PROCEEDING SHEET

Sl. No.	DATE	ORDER	OFFICE NOTE
29.	16.12.2024	<u>NV,J</u> Heard learned counsel for the petitioner(s) and learned counsel for the Respondents. While hearing the matters, learned counsel for the Respondents raise an objection that these contempt cases are not maintainable as they were filed based upon the original orders passed by this Court. Whereas, pursuant to the Review Petitions filed by the Respondents, this Court reviewed the original orders at later stage on 12.09.2024, that the Review Petitions are ordered, pursuant to the judgment rendered by the Hon'ble Division Bench of this Court in W.A.No.724 of 2021 and batch, dated 12.10.2023. As such, the original order is no more, the same was merged with the order in Review. Therefore, the order impugned in the present contempt cases are not in existence.	

		Hence, the petitioners are liable to be initiated fresh contempt petitions, assailing the review orders of this Court dated 12.09.2024. Learned counsel further reiterates that it is settled proposition of law that the “principle of doctrine of merger” is applicable when the original order is reviewed by the Court either by itself or pursuant to the Review Petitions as held by the Hon’ble Apex Court in <i>DSR Steel (Private) Limited vs. State of Rajasthan and others</i>¹ observed as under: 25. Different situations may arise in relation to review petitions filed before a Court or Tribunal. 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 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 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	
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¹ (2012) 6 SCC 782

		<i>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.</i> Learned counsel also relied upon the ratio laid down by the Hon'ble Apex Court in <i>Bussa Overseas and Properties Private Limited and Another</i>², wherein it is held as under: <i>29. Needless to state that when the prayer for review is dismissed, there can be no merger. If the order passed in review recalls the main order and a different order is passed, definitely the main order does not exist. In that event, there is no need to challenge the main order, for it is the order in review that affects the aggrieved party.</i>	
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² (2016) 4 SCC 696

		In view of the ratio as held by the Hon'ble Apex Court, the case in hand the original order impugned in the contempt cases were also reviewed. Therefore, the principle of doctrine of merger is applicable and the present contempt petitions are not maintainable and liable to be rejected by granting liberty to file fresh contempt petitions by assailing the impugned orders in Review passed by this Court. Whereas, the learned counsel for the petitioners submits that even though the original orders impugned in the contempt petitions are reviewed, in respect of core aspect i.e. entitlement of principal amount to be payable to the petitioners as directed is continued even in the order in Review. In fact, the review petitions were filed by the Respondents after filing contempt petitions and after receipt of notices and at the stage of counter affidavits and also after one year from the date of judgment in W.A.No.724 Of 2021 and batch, dated 12.10.2023 is nothing but an after thought on part of the Respondents.	
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		Learned counsel for the petitioners also contended that while considering the Writ Appeals, the direction of the learned single judge in batch of writ petitions for payment of principle amount was not interfered only in respect of rate of interest as directed was interfered and modified. Therefore, as far as the payment of principle amount is concerned either in the Writ Appeal order or in the order in review by this Court, there is no change. But, change is happened only in respect of rate of interest. The petitioners herein in the present contempt cases are requesting only for the principle amount. Therefore, the principle of merger as contended by the Respondents is not applicable in the given facts and circumstances. Learned counsel further submits that even applying the principle of doctrine of merger as far as the principle amount is concerned, there is no change and the Respondents are liable to pay the principle amounts as held in original order, for which the learned counsel for the petitioners relied	
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		upon the ratio laid down by the Kerala High Court in <i>Mariamamma Thomas vs. S.M. Vijayanand</i>³, wherein it is held as under: <i>25. Summarizing the precedential position despite the decisional cleavage I may hold thus:</i> <i>(a) The principle of merger does apply to contempt proceedings, too; but its attenuation is permissible, nay desirable, if it meets the ends of justice;</i> <i>(b) before the Constitutional Courts, if an order gets simply affirmed (or the appeal summarily dismissed) in the adjudicatory echelons, the order to be complied with is the primary one; on its violation, the beneficiary can maintain contempt proceedings before the Bench of first instance;</i> <i>(c) prudent is the approach to put on hold the contempt proceedings until the appeal concludes, but the affirmation in appeal does not necessitate initiation of fresh contempt proceedings, more particularly, before the appellate bench;</i> <i>(d) despite affirming the order, if the appellate bench materially modifies or varies the impugned order, the merger takes place; therefore, it needs fresh contempt proceedings before the appellate bench; but</i> <i>(e) if the Appellate Court only relaxes the rigour of the order, say, by enlarging the time for compliance which is no effacement of the order there is no merger; therefore, the violation, if any, must be in relation to the original order.</i>	
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³ (2019) 1 KLT 249

		Learned counsel also relied upon the ratio rendered by the High Court of Kerala at Ernakulam in C.C.No.789 of 2023, wherein it is observed as under: 6. It was held by the Apex Court in State of Madras v. Madurai Mills Co. Ltd., AIR 1967 SC 681 that the doctrine of merger is not a doctrine of rigid and universal application and its application depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring the appellate or revisional jurisdiction. The question whether the principle of merger applies to contempt proceedings has been considered by a learned Single Judge of the Andhra Pradesh High Court in K.K.R. Nair v. Mohan Das and Another, 1989 SCC OnLine AP 241. It is a case where a Single Judge of the Andhra Pradesh High Court set aside an order terminating an employee from service. The said decision was affirmed in appeal and the Special Leave Petition preferred against the decision of the appellate court was dismissed by the Apex Court. Even thereafter, the petitioner in the writ petition was not reinstated. He, therefore, filed the contempt petition before the learned Single Judge, the maintainability of which was objected to, on the ground that the principle of merger applies and that the contempt proceedings could therefore be filed only before the Apex Court. The learned Single Judge of the Andhra Pradesh High Court, however, held that the doctrine of merger is not a doctrine of rigid and universal application and that proceedings for contempt could be initiated before the learned Single Judge. 9. As noted, the principle of merger is not a	
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		<i>principle of rigid and universal application and its application depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring the appellate or revisional jurisdiction. If this principle is applied absolutely, it will lead to anomalous situations. For instance, in a given case where an appeal is preferred against the decision of a Single Judge allowing a writ petition after the institution of the contempt proceedings, even if the appeal is dismissed on merits or in limine, the proceedings needs to be dropped and the beneficiary of the order in the case would be compelled to initiate a fresh proceedings before the appellate court, if the order is not complied with. Similarly, in a given case where a writ petition is allowed by the appellate court reversing the decision of the Single Judge and if the decision of the appellate court is affirmed by the Apex Court after granting Special Leave to Appeal as provided for under Article 136 of the Constitution, then the contempt proceedings for enforcement of the same can be initiated only before the Apex Court. Needless to say, to the extent it was held in Abin Suraj that the doctrine of merger applies absolutely to contempt proceedings, we are constrained to hold that the principle of law has not been correctly laid down in Abin Suraj.</i> Having observed the citations relied upon by the learned counsel for the petitioners as well as learned counsel for the Respondents, the “Principle of the doctrine of merger” is partially applicable. Whereas, as far as the primary claim of the petitioners, i.e. the liability of the	
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		Respondents for payment of the principal amount is intact and continued in both the orders. Mere change of other facets of the order i.e. rate of interest as well as granting some more time for conducting vigilance enquiry, which cannot be conducted due to lapse of period of defect liability. It is also observed that the petitioners herein are again reiterated that their claim before the Court is only in respect of the for the principal amount as directed in the original order but not for any rate of interest as modified either in the Review petition pursuant to the orders passed in Writ Appeal. Therefore, in view of the facts and circumstances, the Review petitions are filed after lapse of one year from the date of orders in Writ Appeal to avoid contempt proceedings against the Respondents, when this Court insisting for counter affidavit(s) / reply to the counter affidavit(s). Therefore, the objections raised by the learned counsel for the Respondents by way of Memo is liable to be rejected.	
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		In view of the foregoing discussion, the objection raised by the Respondents for continuation of the contempt proceedings pursuant to the Review Orders of this Court or due to the principle of doctrine of merger is hereby overruled. The contempt petitions shall be maintainable to the extent of claim of the principal amount by the petitioners. The objections of the respondents are overruled and all contempt cases are taken on file. Learned counsel for the respondents submits that due to afflux of time, respondents herein were replaced by present incumbents. Let there be a direction to the petitioners for impleading the present incumbents, for implementing the orders passed by this Court. In view of the submissions made by the learned counsel for the respondents, learned counsel for the petitioners are directed to file implead petitions, impleading the present incumbents as party respondents. For hearing list these matters on 31.12.2024. NV, J Knr/KBN	
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