

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5280 OF 2006

Gangadhara Palo

..Appellant

versus

The Revenue Divisional Officer & Another

..Respondents

O R D E R

Heard learned counsel for the parties.

This Appeal has been filed against the impugned judgment/order dated 28th January, 2005 passed by the High Court of Andhra Pradesh at Hyderabad.

By that order, the review petition as well as the application for condonation of delay in filing the review petition have been dismissed.

The delay was only of 71 days and, in our opinion, a liberal view should have been taken by the High Court and delay of 71 days in filing the review petition should have been condoned and the review petition should have been decided on merits. Hence, we condone the delay of 71 days in filing the review petition before the High Court.

As regards the maintainability of the review petition, Mr. Sanjay Kapur, learned counsel for the respondent submitted that it was not maintainable because

against the main judgment of the High Court dated 19th June, 2001 dismissing the writ petition of the appellant herein,

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the appellant herein filed a special leave petition in this Court which was dismissed on 17th September, 2001.

The aforesaid order of this Court dismissing the special leave petition simply states "The Special Leave Petition is dismissed". Thus, this order gives no reasons. In support of his submission, learned counsel for the respondent has relied upon a decision of this Court in the case of *K. Ajamouli vs. A.V.K.N. Swamy* (2001) 5 SCC 37 and has submitted that there is a distinction between a case where the review petition was filed in the High Court before the dismissal of the special leave petition by this Court, and a case where the review petition was filed after the dismissal of the special leave petition by this Court.

We regret, we cannot agree. In our opinion, it will make no difference whether the review petition was filed in the High Court before the dismissal of the special leave petition or after the dismissal of the special leave petition. The important question really is whether the judgment of the High Court has merged into the judgment of this Court by the *doctrine of merger* or not.

When this Court dismisses a special leave petition by giving some reasons, however meagre (it can be even of

just one sentence), there will be a merger of the judgment of the High Court into the order of the Supreme Court dismissing the special leave petition. According to the *doctrine of merger*, the judgment of the lower court merges

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into the judgment of the higher court. Hence, if some reasons, however meagre, are given by this Court while dismissing the special leave petition, then by the *doctrine of merger*, the judgment of the High Court merges into the judgment of this Court and after merger there is no judgment of the High Court. Hence, obviously, there can be no review of a judgment which does not even exist.

The situation is totally different where a special leave petition is dismissed without giving any reasons whatsoever. It is well settled that special leave under Article 136 of the Constitution of India is a discretionary remedy, and hence a special leave petition can be dismissed for a variety of reasons and not necessarily on merits. We cannot say what was in the mind of the Court while dismissing the special leave petition without giving any reasons. Hence, when a special leave petition is dismissed without giving any reasons, there is no merger of the judgment of the High Court with the order of this Court. Hence, the judgment of the High Court can be reviewed since it continues to exist, though the scope of the review petition is limited to errors apparent on the face of the

record. If, on the other hand, a special leave petition is dismissed with reasons, however meagre (it can be even of just one sentence), there is a merger of the judgment of the High Court in the order of the Supreme Court. (See the decisions of this Court in the cases of *Kunhay Ammed &*

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Others vs. State of Kerala & Another (2000) 6 SCC 359; S.Shanmugavel Nadar vs. State of Tamil Nadu & Another JT 2002 (7) SCC 568; State of Manipur vs. Thingujam Brojen Meetei AIR 1996 SC 2124; and U.P.State Road Transport Corporation vs. Omaditya Verma and others AIR 2005 SC 2250).

A judgment which continues to exist can obviously be reviewed, though of course the scope of the review is limited to errors apparent on the face of the record but it cannot be said that the review petition is not maintainable at all.

Learned counsel for the respondent Mr. Sanjay Kapur has, however, invited our attention to paragraph 4 of the judgment of this Court in the case of *K.Rajamouli (supra)*, wherein it was observed:

"Following the decision in the case of *Kunhayammed (2000) 6 SCC 359*, 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 an abuse of the process of the law. We are in agreement with the view taken in *Abbai Maligai Partnership Firm (1998) 7 SCC 386* that if the High Court allows the review petition filed after the special leave petition was

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dismissed after condoning the delay, it would be treated as an affront to the order of the Supreme Court. But this is not the case here. In the present case, the 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."

We have carefully perused paragraph 4 of the aforesaid judgment. What has been observed therein is that if the review petition is filed in the High Court after the dismissal of the special leave petition, 'it would be treated as an affront to the order of the Supreme Court'.

In our opinion, the above observations cannot be treated as a precedent at all. We are not afraid of affronts. What has to be seen is whether a legal principle is laid down or not. It is totally irrelevant whether we

have been affronted or not.

A precedent is a decision which lays down some principle of law. In our view, the observations made in para 4 of the aforesaid judgment, quoted above, that "if a review petition is filed after the dismissal of the special leave petition, it would be treated as an affront to the order of the Supreme Court" is not a precedent at all. A mere stray observation of this Court, in our opinion, would not amount to a precedent. The above observation of this Court is, in our opinion, a mere stray observation and hence not a precedent.

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By a judicial order, the power of review cannot be taken away as that has been conferred by the statute or the Constitution. This Court by judicial orders cannot amend the statute or the Constitution.

For the reasons given above, we allow this appeal, set aside the impugned order of the High Court, condone the delay in filing the review petition before the High Court and remand the matter to the High Court to decide the review petition on merits in accordance with law expeditiously after hearing the parties concerned.

.....J.
[MARKANDEY KATJU]

NEW DELHI;
MARCH 08, 2011

.....J.
[GYAN SUDHA MISRA]

