

(2025) 03 AHC CK 0971

In the Allahabad High Court

Case No : Civil Misc Review Application No. 33 Of 2025

Adeel Ahmad Khan

APPELLANT

Vs

State Of U.P. And 3 Others

RESPONDENT

Date of Decision : 07-03-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Central Goods And Services Tax Act, 2017 — Section 39, 61, 73(1)
Uttar Pradesh Goods And Services Tax Act, 2017 — Section 39

Citation : (2025) 03 AHC CK 0971

Hon'ble Judges : Piyush Agrawal, J

Bench : Single Bench

Advocate : Nikhil Kumar, Vagish Yadav, Kaushalendra Nath Singh, Ankur Agarwal, Gopal Verma

Final Decision : Disposed Of

Judgement

Subhash Vidyarthi J.

C.M. Application No.NIL of 2025 (Application for Condonation of Delay in filing the Review Application):

1. The review application has been filed with some delay. The review application is accompanied with an application seeking condonation of delay supported by an affidavit wherein filing of a Special Appeal is said to be the cause of delay in filing the review application. Adopting a liberal approach, the application for condonation of delay is allowed and the delay in filing the review application is condoned.

Order on Review Application:

2. The instant application has been filed seeking review of judgment and order dated 03.07.2024, passed in Writ-A No.3191 of 2019.

3. The review applicant had filed a Special Appeal Defective No.629 of 2024

against the judgment and order dated 03.07.2024, passed by this court, which is sought to be reviewed. The Special Appeal was filed after expiry of the period of limitation alongwith an application for condonation of delay in filing the Special Appeal. The application for condonation of delay was allowed and the delay in filing the Special Appeal was condoned by means of an order dated 08.01.2025. After condonation of delay in filing the Special Appeal, the learned counsel for the appellant prayed that the Special Appeal be dismissed as withdrawn and the Special Appeal was accordingly dismissed as withdrawn.

4. Neither the learned counsel for the appellant had sought liberty to file an application for review of the order nor had the Court granted such a liberty to him while dismissing his Special Appeal.

5. Order XLVII, Rule 1 (a) C.P.C. provides that any person aggrieved by an order from which an appeal is allowed but from which no appeal was preferred, may file an application seeking review of the order. Although the provisions of Code of Civil Procedure do not in terms apply to the writ proceedings, the basic principles of civil procedure are applicable to writ proceedings also.

6. The learned counsel for the review applicant has relied upon the following judgments:-

(i) Thakur Singh Vs. Dinanath Sah: 1937 SCC Online Pat 73;

(ii) Badrunnisha Mohmmad Sikadar Vs. Keshiben Jethalal Parmar & anr.:2000 SCC Online Guj 535;

(iii) Kunhayammed and others Vs. State of Kerala and another: (2000) 6 SCC 359;

(iv) Kanoria Industries Limited and ors. Vs. Union of India and others: 2017 SCC OnLine Del 7215; and

(v) Khoday Distilleries Limited Vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited: (2019) 4 SCC 376.

7. In *Thungabhadra Industries Ltd. v. Govt. of A.P.*: AIR 1964 SC 1372, the Hon'ble Supreme Court held that: -

"Order 47 Rule 1(1) of the Civil Procedure Code permits an application for review being filed "from a decree or order from which an appeal is allowed but from which no appeal has been preferred". ...The crucial date for determining whether or not the terms of Order 47. Rule 1(1) are satisfied is the date when the application for review is filed. If on that date no appeal has been filed it is competent for the Court hearing the petition for review to dispose of the application on the merits notwithstanding the pendency of the appeal, subject only to this, that if before the application for review is finally decided the appeal itself has been disposed of, the jurisdiction of the court hearing the review petition would come to an end."

8. The judgment in the case of Thungabhadra Industries Ltd. was followed in *Kunhayammed v. State of Kerala*: (2000) 6 SCC 359, wherein the Hon'ble Supreme Court considered the maintainability of a review application after filing of a Special Leave Petition in light of the provision contained in Order XLVII, Rule 1 (a) C.P.C. and drew the following conclusions: -

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(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 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.

(vi) 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 High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC.”

(Emphasis added)

9. In *Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.*: (2019) 4 SCC 376, the Hon’ble Supreme Court again discussed the point and after referring to various precedents, held 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* and summed up in para 44 are affirmed and reiterated.

26.2. We reiterate the conclusions relevant for these cases as under :

“(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.”

(Emphasis added)

10. As there are numerous authoritative pronouncements of the Hon’ble Supreme Court on the point of maintainability of a review application after dismissal of an appeal, there is no need to refer to the judgments of other High Courts relied upon by the learned counsel for the petitioner.

11. In the present case, the petitioner had filed a Special Appeal, in which no leave of the Court is required. The petitioner had invoked the appellate jurisdiction of this Court and the delay in filing the Special Appeal had been condoned by a Division Bench of this Court, whereafter the appeal became competent to be decided on its merits. It was thereafter that the appellant got the appeal dismissed as withdrawn, without seeking leave to file a review application. Thus, the petitioner had invoked the appellate jurisdiction of the Division Bench and thereafter he got the Special Appeal dismissed.

12. The review application filed after filing and dismissal of the Special Appeal without granting leave to the petitioner to file a review application, cannot be entertained by this Court in view of the principle incorporated in Order XLVII Rule 1 (a) C.P.C. and in view of the law laid down by the Hon’ble Supreme Court in *Thungabhadra Industries Ltd., Kunhayammed and Khoday Distilleries Ltd.* (Supra). Entertaining a review application after the petitioner could not get success in Special Appeal, would be subversive to judicial discipline.

13. In view of the aforesaid discussion, the review application is dismissed.