

(2016) 03 SHI CK 0022

In the High Court Of Himachal Pradesh

Case No : CMP No. 177 of 2016 in Review Petition No. 26 of 2014

Ajay Mahajan

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Section 114

Citation : (2016) 03 SHI CK 0022

Hon'ble Judges : Dharam Chand Chaudhary and Sureshwar Thakur, JJ.

Bench : Division Bench

Advocate : M.R. Qureshi, Naveen Awasthi and Shailendra Surajvanshi, Advocates, for the Appellant; D.S. Nainta, Virender Verma, Addl. AGs and Pushpinder Jaswal, Dy. AG, for the Respondent

Final Decision : Dismissed

Judgement

Dharam Chand Chaudhary, J.—1. In this application, order dated 10.4.2014, passed by a Co-ordinate Bench of this Court in Review Petition No. 26 of 2014 has been sought to be reviewed/recalled. The order reads as follows:--

"Review petition is taken on Board. It is stated by Mr. Deepak Kaushal, learned counsel for the petitioner that Special Leave Petition subject matter of the present review petition, is pending before the Apex Court.

In view of the above peculiar circumstances, the Review Petition is disposed of, subject to the outcome of the Special Leave Petition pending before the Apex Court."

2. The Apex Court has now disposed of the petition for Special Leave to appeal (C) No. 409 of 2014, vide order dated 24.2.2015 (Annexure A-2), which reads as follows:

"The only question which was canvassed before us on behalf of the petitioner was that the State could not have compounded the alleged offence without the

consent of the petitioner. It transpires that a Show Cause Notice dated 23rd February, 2015 has been issued to the petitioner. In these circumstances, the present proceedings have been rendered infructuous and are dismissed as such.

The respondents are free to proceed against the petitioner on the basis of the Show Cause Notice dated 23rd February, 2015 and in accordance with law, as also keeping in view the judgment dated 11th May, 2010 of the High Court of Himachal Pradesh in CWP No. 2632 of 2009.

We clarify that the Demand Notice dated 2nd February 2011 (Annexure P-18) issued by the Respondent No. 1-State Geologist, Department of Industries, Himachal Pradesh, to the petitioner, will not be enforced in view of the issuance of the Show Cause Notice dated 23rd February, 2015.

Special Leave Petition stands dismissed as infructuous."

3. It is seen that the Hon"ble Apex Court has dismissed the petition for special leave to appeal (C), preferred by one Harbhajan Singh, petitioner in CWP No. 1064 of 2011, against the judgment dated 2.7.2013, delivered by a Co-ordinate Bench of this Court in this writ petition and its connected matters, including CWP No. 32/2011 in which Sh. Ajay Mahajan (review petitioner-applicant herein) was petitioner. It is this judgment which was sought to be reviewed by the review-petitioner aforesaid.

4. As noticed at the outset, the review petition has been disposed of by a Co-ordinate Bench of this Court on 10.4.2014, of course subject to the outcome of petition for special leave to appeal. The order so passed has been reproduced in para supra. The petition for special leave to appeal now also stands dismissed vide order dated 24.2.2015. The said order has also been reproduced in para supra. True it is that the petition for special leave to appeal was filed by one Harbhajan Singh, the petitioner in CWP No. 1064/2011, against the judgment dated 2.7.2013, passed by a Co-ordinate Bench of this Court in the said writ petition and its connected matters, which was sought to be reviewed by filing the main petition (Review Petition No. 26/2014), however, review petitioner-applicant Ajay Mahajan, aforesaid is not justified in saying that on the dismissal of the petition for special leave to appeal filed in the Apex Court by a co-petitioner, the judgment passed by this Court in CWP No. 1064/2011 and its connected matters is liable to be reviewed for the reason that all the writ petitions, decided by the Co-ordinate Bench of this Court, vide judgment which has now been sought to be reviewed, were involving similar points for adjudication and as such decided together by a common judgment, rendered in the lead case i.e. CWP No. 1064/2011. The Apex Court has dismissed the petition for Special Leave to Appeal filed by Harbhajan Singh, petitioner in the lead case. The judgment sought to be reviewed, therefore, has attained the finality on the dismissal of the petition for special leave to appeal. Thus, there is no question of review of the judgment in question.

5. No doubt the Apex Court has dismissed the petition for special leave to appeal

taking into consideration that the respondent-State has issued fresh show cause notice dated 23.2.2015 to Harbhajan Singh aforesaid, however, no ground for reviewing the judgment is made out and if the order passed by Hon''ble the Apex Court in the petition for Special Leave to appeal is of any help to the case of the review-petitioner-applicant, he may avail the remedy available to him in accordance with law. Otherwise also, the Co-ordinate Bench of this Court has relied upon the judgment passed in CWP No. 2632/2009, to which each of the petitioners were parties, while passing the judgment now sought to be reviewed.

6. The judgment or order, no doubt, can be reviewed by the Court, which has delivered the same. However, only if it is established that the Court acted without any jurisdiction or in violation of inherent powers while passing such orders. The present is not a case where the judgment sought to be reviewed can be said to be without any jurisdiction or that this Court acted in violation of its inherent jurisdiction.

7. In our considered opinion, there is neither any mistake nor error apparent on the face of record or sufficient reason so as to take in its sweep, a ground analogous to those specified in Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure. There is no material or manifest error on the face of the record, resulting into miscarriage of justice. Review cannot be an appeal in disguise, entitling the party to be reheard, simply because the party wants a decision to be otherwise. In this regard, we are drawing support from the judgment of Apex Court in Kamlesh Verma v. Mayawati and others, , (2013) 8 SCC 320.

8. The judgment sought to be reviewed has now attained the finality. Therefore, on merits also, we do not find any reason to interfere with the well considered judgment rendered in the writ petition by a Co-ordinate Bench of this Court.

The application, therefore, is dismissed. Pending application(s), if any, shall also stand disposed of.