

(1998) 08 MAD CK 0117
In the Madras High Court

A.M. Murugesan and Others

APPELLANT

Vs

E.K. Palanisamy

RESPONDENT

Date of Decision : 31-08-1998

Acts Referred:

Citation : (1999) 1 MLJ 348

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—Even though the petition posted was only to dispense with the production of the original order, maintainability of the review application itself was heard even at its SR stage.

2. Against an order of ad-interim injunction, a revision petition was filed under Article 227 of the Constitution of India. On the basis of ad-interim injunction, police protection was also granted by trial court, against which also a revision petition was filed. Both the revisions were heard by me, and I allowed those revisions, namely, C.R.P. Nos. 997 and 998 of 1998 as per my order dated 14.7.1998. I gave certain directions to the lower court that the property itself will have to be re-delivered and the revision petitioner (E.K. Palanisami) must be put in possession forthwith, and without any further application, and if necessary, he must be restored with possession of the property with police help.

3. It is not disputed by the review petitioners herein that against the common Order passed by me in the above revision petitions, SLP was filed before the Honourable Supreme Court, and the same was also dismissed. It is after the dismissal of the SLP the present review application is filed.

4. It is submitted by learned Senior Counsel for review petitioners that in view of the decision reported in Kapoor Chand and others Vs. Ganesh Dutt and others, , filing of a review application is not barred if the SLP is dismissed in limine. It was further argued that a reading of Section 114 of the CPC makes it clear that it bars a review petition only if the appeal provided under the CPC is exhausted.

The further argument is that appeal to Supreme Court under Article 136 of the Constitution of India being not an appeal provided under the Code of Civil Procedure, Order passed by the Supreme Court (sic) not entertaining the S.L.P in limine is not a binding precedent. How far this contention could be accepted is the Only question to be decided in this case.

5. I will first consider the decision reported in Kapoor Chand and others Vs. Ganesh Dutt and others, . Relevant portion of paragraph 15 reads thus:

...The question regarding Merger of the judgment under review in the order of this Court would have arisen only after this Court had considered the SLP on merits and had passed an order on the matters dealt with in the judgment of the High Court dated July 23, 1987. Till such an order was passed by this Court, it was competent for the High Court to review its judgment dated July 23, 1987 and the review petition could not be dismissed as not maintainable merely because SLP had been filed against the said judgment before the court and was pending. The SLP is dismissed with the aforesaid observations.

(Italics supplied)

6. It is clear from a reading of the said decision that the review application was filed at a time when the SLP was under consideration by the Hon"ble Supreme Court. What is the effect of dismissal of SLP and whether after the dismissal of the SLP even if it be a non-speaking order, will it bar the filing of a review application, came up for consideration in the decision reported in The State of Maharashtra and Anr. v. Shri Prabhakar Bhikaji Ingle (1996)3 Supreme 245. Paragraphs 3 and 4 of the decision read thus:

But in this case, when the self-same main order was confirmed by this Court, the question arises whether the Tribunal has had power under Order 47, Rule 1, C.P.C. or any other appropriate provision under the Tribunals Act to review the orders passed by it and confirmed by this Court by refusing to grant leave. We find that the exercise of the review power is deleterious to the judicial discipline. Once this Court has confirmed the order passed by the Tribunal, that becomes final. Therefore, the Tribunal cannot have any power to review the previous order which stands merged with the order passed by this Court.

It is next contended by the learned Counsel for the respondent that though the Tribunal was communicated with the order of this Court dated 25.8.95, it has thereafter passed the order. It would mean that though it had the knowledge of dismissal of the order passed by this Court, the Tribunal has exercised the power of review and that, therefore, it cannot be said to be illegal. We are wholly unable to appreciate the contention of the learned Counsel. We could, appreciate that if the Tribunal had no knowledge of dismissal of the SLP it might, in certain-circumstances, review its, earlier, order e.g., if it was found that the order was vitiated by any manifest error of law apparent on the face of the record., But having received the communication that this Court has already upheld its order, the Tribunal's exercise of power can be said to be audacious and without any

judicial discipline. Under those circumstances, we do not think that the Tribunal is justified in reviewing its own order when this Court had confirmed the order passed earlier.

(Italics supplied)

The principle enunciated by the Supreme Court in *The State of Maharashtra V. Shri Prabhakar Bhikaji Ingale* (1996)³ Supreme 245 case was reiterated and considered in a more detailed manner in the decision reported in *Sree Narayana Dharmasanghom Trust Vs. Swami Prakasananda and Others*, . There also, the facts were similar. After extracting Prabhakar Bhikaji Ingle's case, in paragraph 4, Their Lordships, in paragraphs 5 and 6, held as follows:

Therefore, once this Court has passed an order, the Order passed by the High Court stands merged with the order passed by this Court, Therefore, the High Court/Tribunal is devoid of the jurisdiction to review the order. This question was also reiterated in *Yogendra Narayan Chowdhury v. Union of India* (1996)⁷ S.C.C. thus:

It is settled law that even the dismissal of SLP in limine without assigning reasons does not operate as *res judicata*. Under these circumstances, we are of the view that the view of the latter Bench of the GAT, Calcutta and of the Cuttack Bench are clearly consistent with the above reasoning. Therefore, we do not find that these are fit cases warranting interference.

Thus, it is settled law that even the dismissal of SLP in limine operates as a final order between the parties and any order passed by the High Court or Tribunal subsequently operates as a *res judicata* as far as the parties thereto are concerned. It is true that in *Indian Oil Corporation Ltd. Vs. State of Bihar and others*, , this Court had pointed out that when the writ petition was dismissed by this Court in limine, the jurisdiction of the High Court under Article 226 is not precluded. The dismissal of the writ petition under Article 32 does not operate as *res judicata*. That principle is entirely different from the review of an order under Order 47, Rule 1. Under these circumstances, we are of the view that the High Court is well justified in refusing to review the order passed in the revision....

(Italics supplied)

7. In view of the above decisions, it is clear that once the Honourable Supreme Court has dismissed the Special Leave Petition, my order has merged with the order of the Honourable Supreme Court, and a review application cannot be entertained. Therefore, the Review Application SR. No. 53809 of 1998 and the C.M.P. filed along with the same are rejected.