
(2013) 04 SC CK 0149

In the Supreme Court Of India

Case No : Civil Appeal No. 2927 Of 2013

Sandhya Educational Society & Anr

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Code of Civil Procedure, 1908 — Section 141, Order 47 Rule 7
Constitution of India, 1950 — Article 136

Citation : (2014) 7 SCC 701

Hon'ble Judges : H.L. Dattu, J; Jagdish Singh Khehar, J

Bench : Division Bench

Advocate : Mukul Rohatgi, P.S. Patwalia, Meenakshi Arora, Mohit D. Ram, Vasav Anantharaman, Binu Tamta, Sushma Suri, Rachana Srivastava

Final Decision : Dismissed

Judgement

1. Leave granted.

2. This appeal is directed against the judgment and order passed by the High court of Delhi in C.M. Application No. 5607 of 2004 in W.P.(C) No. 3596 of 1987, dated 18.11.2011. By the impugned judgment and order, the High Court has dismissed the Review Petition filed by the appellants. Being aggrieved by the aforesaid order, the appellants are before us in this appeal.

3. Shri H.P. Rawal, learned Additional Solicitor General, with regard to the maintainability of the special leave petition against the order passed in a Review Petition, brings to our notice the judgment and order passed by this Court in the case of Vinod Kapoor vs. State of Goa & Ors., AIR 2012 SC 3722; Suseel Finance & Leasing Co. vs. M. Lata and Ors., (2004) 13 SCC 675 and M.N. Haider and Ors. vs. Kendriya Vidyalaya Sangathan and Ors., (2004) 13 SCC 677.

4. Per contra, Shri Mukul Rohatgi, learned senior counsel for the appellants would submit, that, this Court while observing the maintainability of a special leave petition against the order passed by a Writ Court in a Review Petition, has taken

into consideration only the provisions under Order XLVII Rule 7 of the Code of Civil Procedure, 1908 ("the CPC" for short) and not Section 141 of the CPC and therefore requires re-consideration of the issue involved in the instant appeal by a three Judge Bench of this Court.

5. Heard the learned counsel for the parties to the lis.

6. To decide this issue in controversy, it is necessary to have a re-look into the decisions of this court. In Vinod Kapoor's case (supra) at paragraphs 5 and 10, this Court has observed as under :

"5. When the appeals were taken up for hearing, a preliminary issue was raised on behalf of the respondent No. 8 that the Civil Appeals by way of Special leave Petition were not maintainable. According to the learned counsel for the respondent No. 8, the appeal against the order dated 29-1-2000 of the High court in Writ Petition No. 253 of 1999 is not maintainable as the appellant had earlier challenged the said order before this court in a Special leave Petition, but had withdrawn the same and, therefore, the order dated 29.01.2000 of the High Court dismissing Writ Petition No. 252 of 1999 filed by the appellant had become final and could not be challenged again.....

10. Moreover, on the High Court rejecting the application for review of the appellant, the order rejecting the application for review is not appealable by virtue of the principle in Order XLVII, Rule 7 of the CPC. In Shanker Motiram Nale v. Shiolalsing Gannusing Rajput; Suseel Finance & Leasing Co. v. M. Lata and others and M.N. Haider and others. v. Kendriya Vidyalaya Sangathan and others (supra) cited by the learned counsel for respondent No. 8, this Court has consistently held that an appeal by way of special leave Petition under Article 136 of the constitution is not maintainable against the order rejecting an application for review in view of the provisions of Order XLVII, rule 7 of the CPC."

7. In the case of Suseel Finance & Leasing Co. vs. M. Lata and Ors., (2004) 13 SCC 675 at paragraph 3, this Court has observed as under :

"3. In the case of Shanker Motiram Nale vs. Shiolalsing Gannusing Rajput it has been held by this Court that against an order rejecting an application for review, a special leave petition is not maintainable. this authority is directly on the point in issue. Not only are we bound by it but we are also in agreement with it. Faced with this situation, it is sought to be submitted that this Court in the cases of Green view Tea & Industires v. collector and K. rajamouli v. A.V.K.N. Swamy has taken contrary views. We find that in these two cases the question whether a special leave petition was maintainable against an order rejecting a review petition, was not considered at all. In these cases, the question was whether special leave petition was barred by principles of res judicata. It was held that special leave petition was not barred by principles of res judicata. In neither of these cases has reference been made to the abovementioned judgment of this court in Shanker Motiram nale case. In both these cases it has been held that a special leave petition is maintainable only in the context of it not being barred on

principles of res judicata. In both these cases the question whether a special leave petition is against an order disposing of a review petition was not considered at all. These cases therefore have no relevance at all."

8. In *M.N.Haider and Ors. vs. Kendriya Vidyalaya Sangathan and Ors.*, (2004) 13 SCC 677 at paragraph 4, this Court has observed as under:

"4. We are unable to accede to this request. In none of these cases has it been considered that once a special leave petition against the main order has been dismissed it would not be open to challenge the main order again. Further, it is settled law (cases of *Shanker Motiram nale v. Shiolalsing Gannusing Rajput* and *Suseel finance & Leasing Co. v. M. Lata* may be looked at) that a special leave petition is not maintainable against an order in a review petition. These authorities have not been shown or considered by this court whilst passing the above orders. Once SLP is not maintainable no orders can/should be passed thereon except to dismiss the same. In view of the settled position, the abovementioned orders cannot be considered to be a precedent.

9. The consistent view of this Court appears to be that the special leave petition under Article 136 of the Constitution is not maintainable against the order rejecting the review petition alone.

10. In our considered opinion, the judicial decorum and discipline is paramount and, therefore, a co-ordinate bench has to respect the judgments and orders passed by another co-ordinate bench and cannot on mere assumptions refer the matter for consideration by a larger bench. In that view of the matter, keeping in view the well-settled legal position in the cases of *Vinod Kapoor*, *Suseel Finance & Leasing Co.* and *M.N. Haider* (Supra), we dismiss this appeal as not maintainable.

Ordered accordingly.

C.A.No. of 2013 @ S.L.P.(C) NO.27753/2012

1. Leave granted.

2. This appeal is directed against the judgment and order passed by the High Court of judicature of Delhi in Writ Petition (Civil) No. 3596 of 1987, dated 26.03.2004. The High Court by its impugned judgment and order has dismissed the writ petition filed by the petitioner.

3. Being aggrieved by the aforesaid judgment and order passed by the High Court, the appellant was before this Court in Special Leave Petition (Civil) No.8735 of 2004. This Court by its order dated 06.05.2004, had directed the petitioner to withdraw the special leave petition with liberty to approach the High Court by filing a Review Petition. The order passed by this Court reads as under:

"It is argued that the High Court had called for the files and found that there was no direction to dispense with notice under Section 5-A of the Land Acquisition Act. We do not find any such material in the judgment of the High Court. Liberty

is granted to the petitioners to approach the High Court again and have it clarified whether the High Court had found, from the files, that there was no direction to dispense with notice under Section 5-A. The High Court must also clarify whether any such point was pressed before it. In view of the above, learned senior counsel for the petitioners seeks leave of the Court to withdraw the present petition. The Special Leave Petition is allowed to be withdrawn."

4. Aggrieved by the order so passed by the High Court in the review petition, the appellant is once again before us, inter alia, questioning the correctness or otherwise of the judgment and order passed in Writ Petition (Civil) No.3596 of 1987, dated 26.03.2004.

5. While considering the special leave petition so filed, this Court had issued notices to the respondents and accordingly, the respondents are before us in this appeal.

6. When the matter is taken up for hearing, the learned counsel appearing for the respondents by way of preliminary objection has brought to our notice the decision of this Court in the case of Vinod Kapoor vs. State of Goa & Ors., AIR 2012 SC 3722, in particular, paragraphs 8 and 12 of the judgment to contend that the special leave petition filed by the petitioner is not maintainable before this Court, since the petitioner while withdrawing the special leave petition had not taken permission of this Court, to question the judgment and order passed in the writ petition, in the event their review petition is not entertained by the Writ Court. The observations made by this Court is as under:

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8. The question that we have to decide is whether the appeal will lie against the order dated 29.01.2000 of the High Court dismissing Writ Petition No.253 of 1999 when an earlier Special Leave Petition against the said order dated 29.01.2000 of the High Court was filed by the appellant but was withdrawn with the permission of this Court to pursue his remedy by way of review against the said order dated 29.01.2000 of the High Court. As the appellant has withdrawn the Special Leave to Appeal against the order dated 29.01.2000 of the High Court with permission to pursue his remedy by way of review instead and had not taken the liberty from this Court to challenge the order dated 29.01.2000 afresh by way of special leave in case he did not get relief in the review application, he is precluded from challenging the order dated 29.01.2000 of the High Court by way of Special Leave to Appeal under Article 136 of the Constitution.

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12. In the result, we hold that the Civil Appeals are not maintainable and we accordingly dismiss the same. We, however, make it clear that we have not expressed any opinion on the merits of the case of the appellant or on whether

the Authority of the Municipal Council could under law issue the notices to the respondent no.8 or take any action in respect of the construction made by him on the land in Survey No.250/212 in Village Taleigao."

7. Per Contra, Mr.P.S.Patwalia, learned senior counsel appearing for the appellant would submit that the issue in dispute has been referred to a Larger Bench by the co-ordinate Bench of this Court in the case of Khoday Distilleries Ltd. & Ors. vs. Mahadeshwara S.S.K. Ltd. in S.L.P. (Civil) No.490 of 2012, dated 19th October, 2012 and, therefore, the petition/appeal requires to be taken up for hearing after the matter is decided by the larger Bench of this Court. We do not agree with the submission made by the learned senior counsel Mr. Patwalia.

8. We have looked into the decisions so pointed out by Mr. P.S Patwalia. In our opinion, the facts and circumstances of the above mentioned case is entirely different from the facts and circumstances of the present case. Therefore, in our opinion, the reference order cited by the learned senior counsel would not assist the appellant in any manner whatsoever. Moreover, the particular issue now canvassed by the learned counsel for the respondents was never an issue nor was dealt by this Court in the aforesaid decision.

9. This Court in Vinod Kapoor vs. State of Goa & Ors.(supra), has categorically observed that once the special leave petition is dismissed as withdrawn without obtaining appropriate permission to file a special leave petition once over again after exhausting the remedy of review petition before the High Court, the same is not maintainable.

10. The issue raised in this appeal is identical with the issue raised and considered by this Court in Vinod Kapoor vs. State of Goa & Ors.(supra). Therefore, while accepting the contentions of learned counsel for the respondent, we hold that the petition filed by the appellant is not maintainable.

11. Accordingly, we dismiss this civil appeal without going into the merits of the case.

Ordered accordingly.