
(1995) 09 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3247 of 1990

Smt. Daya Wanti

APPELLANT

Vs

Yadvindra Public School and Others

RESPONDENT

Date of Decision : 22-09-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 115

Citation : (1996) 112 PLR 208

Hon'ble Judges : S.P. Kurdukar, C.J.; Swatanter Kumar, J.; N.K. Kapoor, J

Bench : Full Bench

Advocate : Ashok Gupta, for the Appellant; Ajay Tiwari, for the Respondent

Judgement

N.K. Kapoor, J.—Whether dismissal of an appeal or revision in limine has the effect of merging the lower Court's order in that of the Higher Court is the question referred by my brother A.P. Chowdhri, J. (since retired) before a larger Bench in view of the conflicting views expressed in two division Bench judgments of this Court. Before advertng to the core question as well as to ancillary questions which have been highlighted by the respective counsel, it would be appropriate to refer in brief the facts leading to the filing of Revision Petition No. 3247 of 1990, and its reference before the Full Bench.

2. Briefly put, Smt. Dayawanti instituted a suit for possession and permanent injunction against the respondents alleging that she was owner in possession of the building in dispute on the basis of gift deed dated 31.3.1976. It was further stated by the petitioner-the plaintiff that during her absence in June, 1980, defendants- the respondents took illegal possession of the five quarters constructed in the house. So, she prayed for possession of the property in dispute as well as prayed for permanent injunction restraining the respondents from interfering in her possession of the main building as well as the vacant land appurtenant thereto. It so happened that despite number of opportunities granted by the Court the plaintiff failed to adduce any evidence and so the Court ordered that the plaintiff's evidence be closed in terms of Order 17 Rule 3 CPC.

Resultantly, the suit of the plaintiff was dismissed. Appeal filed by the plaintiff was dismissed by the District Judge and the regular second appeal No. 975 of 1989 too was dismissed by this Court in limine on 10.8.1989. A review application was filed before this Court (application No. 50-C of 1989), which was disposed of with the following observations:-

"Dismissed. The appellant, may, if she is so advised, approach the learned District Judge, Patiala for review of his order dated 16.12.1988 on the grounds urged in the present petition."

It is pursuance to this order of the Court that the plaintiff filed an application under Order 47 Rule 1 CPC before the District Judge, Patiala. The review petition was dismissed by the District Judge observing that the same was not maintainable as judgment and decree of the Court dated 16.12.1988 had merged with the judgment and decree of this Court dated 10.8.1989.

3. At the motion hearing, it was argued that dismissal of an appeal by non-speaking order in limine does not amount merging of judgment and decree of the lower appellate Court in that of this Court and it is precisely for this reason that review application bearing No. 50-C of 1989 was filed and this Court while dismissing the same permitted the petitioner to approach the District Judge for review of his order dated 16.12.1988 and so the District Judge could not dismiss the review application as not maintainable holding that order dated 16.12.1988 has merged in the judgment of this Court dated 10.8.1989. The learned Judge noticed the conflicting views expressed in *Amarjit Singh and Others Vs. Financial Commissioner, Taxation, Punjab, Chandigarh and Others*, and *Mattu Ram and Ors. v. Union Territory of Chandigarh* 1988 1 P.L.R. 8 and referred the matter to a larger Bench to resolve the controversy.

4. The learned counsel for the petitioner has argued that in view of the specific direction given by the learned Single Judge on his review application, the District Judge could not dismiss the same on the ground of its maintainability. Firstly, the course adopted by the learned District Judge was highly improper and otherwise too the impugned order of the District Judge is unsustainable in law, in view of the division Bench judgment in *Matu Ram and Other's case* (supra). According to the counsel. Dismissal of an appeal in limine does not amount to the merging of the judgment and decree of the lower appellate Court in that of this Court. Infact, when an appeal is dismissed in limine no decree is drawn up and so for all intents and purposes the decree of the lower appellate Court is executable.

5. The learned counsel for the respondents on the other hand argued that in the hierarchy of Courts judgment of the inferior Court merges in that of the superior Court and any such decision given in an appeal or revision by a superior Court not only binds the parties but is the only executable decree. Thus, for all intents and purposes it is the decree/order of the superior Court which is executable. Doctrine of merger has almost a universal applicability. Even a decision given by this Court under Articles 226/227 of the Constitution debars a person from

agitating the matter afresh except in few permissible modes, namely by way of a review application or an appeal before the apex Court or under Article 32 of the Constitution of India. The counsel cited the decision of apex Court in Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, and the division Bench judgment reported as Amarjeet Singh and Others's case (supra).

6. In the connected review petition bearing No. 140 of 1993 the argument advanced by the respective counsel in CR No. 3247 of 1990 have been adopted. In this petition the point is with regard to powers of the Court Under Sections 152 and 153 CPC to make all necessary amendments of the judgment and decrees which have crept in from an accidental slip or omission. The application which was allowed by the Additional District Judge has been challenged on the ground that since the order stood merged in the order of this Court, the appeal having been dismissed in limine on 28.1.1987 the Additional District Judge had no jurisdiction to order such a correction.

7. CPC provides remedy of an appeal to an aggrieved party u/s 96 C.P.C. and a further appeal on question of law u/s 100 CPC. Decision affirmed, modified or varied by such higher authority becomes operative and binds the parties. For all intents and purposes it is the later decision of a higher forum which becomes operative and executable. Doctrine of merger is based upon this principle that as and when the decision of a lower Court is affirmed, modified or varied in appeal or revision, it is the decision of such appellate authority or the revisional authority which binds the parties and hence executable. Whether this doctrine has a universal applicability or is only attracted to decisions of a Court or a Tribunal having the trappings of a Court or the same can be extended even in respect of authorities conducting departmental enquiries has been subject matter of consideration before the apex Court in State of U.P. v. Mohammad Nooh AIR 1958 SC 86 and the Court was pleased to observe as under:-

"An order of dismissal passed on a departmental enquiry by an officer in the department and an order passed by another officer next higher in rank dismissing an appeal therefrom and an order rejecting an application for revision by the head of the department can hardly be equated with any propriety with decrees made in a civil suit under the CPC by the Court of first instance and the decree dismissing the appeal therefrom by an appeal Court and the order dismissing the revision petition by a yet higher Court, because the departmental tribunals of the first instance or an appeal or revision are not regular Courts manned by persons trained in law although they may have the trappings of the Courts of law." It was further that while it is true that a decree of a Court of first instance may be said to merge in the decree passed on appeal therefrom or even in the order passed in revision, it does so only for certain purposes, namely, for the purposes of computing the period of limitation for execution of the decree; or for computing the period of limitation for an application for final decree in a mortgage suit. So, under the Indian law and procedure an original decree is not suspended by the presentation of an appeal or its operation interrupted i.e. when

decree in appeal is merely one of dismissal.

8. The matter again came up for consideration before the apex Court in Commissioner of Income Tax, Bombay Vs. Amritlal Bhogilal and Co., and it was held as under-

"There can be no doubt that, if an appeal is provided against an order passed by a tribunal, the decision of the appellate authority is the operative decision in law. If the appellate authority modifies or reverses the decision of the tribunal, it is obvious that it is the appellate decision that is effective and can be enforced. In law the position would be just the same even if the appellate decision merely confirms the decision of the tribunal. As a result of the confirmation or affirmance of the decision of the tribunal by the appellate authority the original decision merges in the appellate decision and it is the appellate decision alone which subsists and is operative and capable of enforcement.

xx xx xx xx."

9. In a later judgment in State of Madras v. Madurai Mills Co. Ltd. AIR 1967 MAD 681, the Court after referring to its two aforesaid decisions held that doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that wherever there are two orders, one by the inferior authority and other by a superior authority, passed in an appeal or revision, there is a fusion or merger of two orders irrespective of the subject matter of the appellate or the revisional order and the scope of appeal or revision contemplated by the particular statute. According to the Court, the application of doctrine depends on the nature of the appellate or revisional order in each case and the scope of statutory provision conferring the appellate or the revisional jurisdiction.

10. In Shankar Ramchandra Abhyankar's case (supra) a question was raised as to whether the High Court can interfere under Articles 226 and 227 of the Constitution of India with the order of the appellate Court under the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947, when a petition u/s 115 CPC against the same order had been previously dismissed by the single Judge of that High Court. The Court after considering the matter came to the conclusion that invoking of the revisional jurisdiction of the Court is also part of the general appellate jurisdiction of the High Court as a superior court. Exercise of revisional jurisdiction by the Court is basically part of the jurisdiction of the Court except that it is larger in its ambit and so any such exercise would amount to merger of the order of lower Courts in those of higher Courts without any distinction between a petition for revision or an appeal. It is in these circumstance, it was held that "the principle of merger of orders of inferior Courts would not become affected or inapplicable by making any distinction between a petition for revision and an appeal."

11. Whether principle of merger of orders of inferior Courts in the orders of superior Courts is applicable to the writ petition under Article 226 of the Constitution of India and whether any ex-parte order dismissing petition under

Articles 226/227 of the Constitution of limine can be considered to be an order on merits or operates as res-judicata came up for consideration before this Court in *Rajwant Singh and Ors. v. The Financial Commissioner and Ors.* (1973) 75 P.L.R. 827. In that case order passed by Assistant Settlement Commissioner dated 5.6.1965 and the order passed by authorised Chief Settlement Commissioner, Haryana dated 24.10.1967 were challenged by way of filing a writ petition. This writ petition was dismissed by the motion Bench on 5.1.1968 with the only word "Dismissed". It is therefore that the petitioner whose writ petition had been dismissed in limine filed a petition u/s 33 of the "Displaced Persons Compensation and Rehabilitation Act, 1954 before the Central Government, which was accepted on 10.11.1970. It is this order which was challenged by the petitioners by way of a writ petition seeking its quashing. It is with this background that the Court came to the conclusion that Rehabilitation authorities mentioned in the Act, including the Central Government u/s 33 thereof, or any Courts or tribunals subordinate to the High Court and against their orders no appeal as a matter of right lies to the High Court nor has been provided by the statute. The orders passed by any of the authorities can be challenged in this Court by way of writ petition. It is not a statutory remedy but a constitutional remedy. This extra-constitutional remedy provided by the Constitution does not oust the remedy provided under the statute and decision of this Court on a petition under Articles 226 and 227 of the Constitution will operate as a res-judicata before any other Tribunal or Court only if the matter is decided on merits after hearing both the parties. An ex-parte order dismissing the petition under Articles 226 and 227 of the Constitution in limine is neither an order on merits nor operates as res-judicata as has been ruled by their Lordships of the Supreme Court in *Daryao and Others Vs. The State of U.P. and Others*, . Distinguishing the view expressed in *Shankar Ramchandra Abhyankar's* case (Supra), the Court held as under:-

"The principle of merger of orders of inferior Courts in the orders of the superior Courts is wholly inapplicable to the writ petitions under Article 226 of the Constitution. I, therefore, find no merit in the submission of the learned counsel. I may emphasise that after the dismissal in limine of the writ petition, the final and operative order was that of the Chief Settlement Commissioner and not of the High Court and against that order of the Chief Settlement Commissioner, the statutory remedy u/s 33 of the Act was available to Bant Ram."

12. The matter again came up for consideration before this Court in *Amarjit Singh and Others* case (supra). In this case the revisional order of the Financial Commissioner was challenged by way of writ petition which was dismissed in limine. It is thereafter that party filed in application for review before the Financial Commissioner to review his previous order, which prayer was allowed and so the matter came up for consideration before this Court. It was thus contented by the petitioners that order of Financial Commissioner having been confirmed by this Court in the writ petition could not be reviewed by the Financial Commissioner as the same stood merged in the order of the High Court and so

the Financial Commissioner had no jurisdiction to review that order. The counsel for the respondents in support of the order passed by the Financial Commissioner placed reliance upon the decision of this Court in Rajwant Singh's case (supra) and so the matter was referred to the division Bench. On carefully considering the matter in the light of submission made by the respective counsel and keeping in view the decisions of the apex Court in Som Nath Sahu v. The State of Orissa 1969 U.J 351 (SC) and Shankar Ramchandra Abhyankar's case (supra) it was held as under:-

"Therefore, the decision of the High Court being the decision of a Superior Court, if it deals with the very same question of law and fact, which had culminated in the decision of the Financial Commissioner, then in our opinion the decision of the Financial Commissioner positively merged in the decision of the High Court. Therefore, the emphasis of Shri Dhingra on the basis of Rajwant Singh (supra), that the High Court did not fall within the hierarchy of Courts starting from Assistant Collector and ending with the Financial Commissioner and that the High Court exercised extraordinary jurisdiction in writ petition, would be of no consequence. This is so spelled out from so many other decisions of the Supreme Court in which the plea of merger was successfully raised and upheld by that Court. Even the conception of a statutory remedy under a different statute would be of no avail. The contention of Shri Dhingra is that because of that statutory remedy the decision by a superior Court even on merits, would be brushed aside by an inferior Court provided the latter exercises jurisdiction under a statute and a specific remedy is given. This would not only be against the public policy, but would also greatly affect the doctrine of res judicata and would confer jurisdiction on inferior tribunals to set at naught the decision of superior Courts including, of the High Court in writ jurisdiction. This could not conceivably be the position."

Decision rendered by the single Bench in Rajwant Singh's case (supra) was overruled. It was further held that unless a limine decision of the High Court is set at naught in one of the modes delineated in Bansi v. Additional Director, Consolidation of Holdings, Rohtak (1966) 68 P.L.R. 52 (F.B.), the said decision stands and controls the field between the parties. The decision, even if in limine cannot be set aside by an inferior Court even though it may exercise the statutory remedy by way of review.

13. However, in the later Division Bench judgment in Matu Ram's case (supra), it has been held that dismissal in limine of a letters patent appeal does not amount to merging of the order of single Judge. Facts of the case are as under:-

Under land acquisition proceedings, Land Acquisition Collector awarded compensation at the rate of Rs. 33,000/- per acre. On a reference u/s 18 of the Act, District Judge enhanced the compensation to Rs. 76,000/- per acre and this Court allowed the appeal and determined the market value of the property at the rate of Rs. 80,000/- per acre. In addition thereto the claimants were awarded solatium at the rate of 15% and interest at the rate of 6% from the date of taking possession till payment thereof. Yet dissatisfied letters patent appeal was

filed by the claimants, which was dismissed by the division Bench vide order dated 17.1.1985. It is thereafter that another application was filed seeking modification of the order dated 17.1.1985 of the division Bench seeking grant of enhanced solatium and interest and additional compensation as envisaged by Act 68 of 1984.

This prayer was opposed by the respondent who raised a preliminary objection that prayer made in this application amounts to review of the judgment of the division Bench which application could be filed within a period of 30 days of the judgment whereas the present application has been filed after about 2 years and hence barred by limitation.

The Court after considering the matter held as under:-

"In these circumstances, it cannot be said that while passing the said order, the Court omitted to do something which it wanted to do or it did something which it did not want to do and that the omission in this regard was as a result of some clerical or arithmetical mistake. The case would, Therefore, fall outside the ambit of Section 152 of the Code of Civil Procedure, If the Court committed a mistake in dismissing the letters patent appeal filed by the applicants the on error that respect can be corrected only by means of an application for review of the judgment and the present application, if treated as an application for review of the order dated January 17, 1985, would be barred by time. As no application u/ s 5 of the Limitation Act has been filed for condoning the delay, the application would not be maintainable. However, this does not preclude us for treating his application as an application for correcting the error in the judgment of the learned Single Judge dated August 27, 1984 and we treat it accordingly."

While dealing with the objection of the respondent that since the order of the single Judge has merged in the order passed by the letters patent Bench and so such an error cannot be corrected in the judgment of the learned single Judge, the division Bench held as under:-

"In our opinion, where an appeal against a judgment is dismissed summarily, it cannot be said that the judgment merges in the order passed by the appellate Bench. In this view of the matter, we see no impediment in our way in correcting the judgment of the learned Single Judge dated August 27, 1984."

16. A perusal of the aforesaid judgment reveals, that the effect of merger of decision of an inferior Court in that of a superior Court in the light of the decision of the apex Court or the earlier decisions of this Court have not been averted to. The Court appears to have been swayed by the fact that the relief which the petitioner was entitled as per statutory provisions has been declined for no justifiable reason. The Division Bench in Matu Ram's case (supra) has not examined the matter in the light of numerous decisions of the Supreme Court of India with regard to the principle of merger of decision of an inferior Court in that of the superior or Court in appeal or revision and even in a writ petition. It also appears that the earlier decision in Amarjit Singh's case (supra) was not brought

to the notice of Division Bench. On considering the decisions in the two Division Bench judgments in the light of decisions of the Supreme Court of India, the view taken in Amarjit Singh's case (supra) commands us. The later view in Matu Ram's case (supra) does not lay down a good law and is consequently overruled.

14. Despite having answered the question referred, peculiar facts of the revision petition needs to be stated. Learned Judge while dismissing the review application permitted the petitioner to approach the District Judge by filing an application for review of his order dated 16.12.1988. Perhaps the learned Judge then had in mind the later division Bench judgment of this Court in Matu Ram's case (supra) on the other hand, the District Judge formed a view that such a dismissal amounts to merging of the earlier order of the Court in that of the High Court and so declined to examine the review application on merits. No doubt, the District Judge had no authority to question the direction given by this Court while dismissing the review application and that the District Judge was bound to examine the matter on its merits. Since, we have come to the conclusion that order of dismissal passed by a superior Court amounts to merging of the order of the inferior Court in that of the Superior Court, it would indeed be unjust if the petitioner is wholly deprived of right for re-consideration of the earlier decision, for which he filed the review application. In this view of the matter, we direct that C.M. No. 50-C of 1989 be placed before the appropriate Bench for re-consideration.

15. In the other revision petition bearing No. 140 of 1993, the Additional District Judge has ordered for the correction of errors which crept in the Judgment on account of some accidental slip or omission. Section 152 CPC empowers the Court to correct any such accidental slip or omission at, any time either of its own motion or on the application of any of the parties. Any order passed by the Court does not amount to passing of a decree hence not appealable. Any such amendment does not in any way affect the merit of the controversy which has been determined by the Court and so even when such unamended judgment has been affirmed by a superior Court it does not preclude the Court which passed by decree from correcting such an order. Reliance on the doctrine of merger was thus wholly mis-placed. Accordingly we hold that (i) the dismissal of an appeal or revision by a superior court has the effect of merging of the decision of the inferior court with that of the superior court and (ii) the doctrine of merger applies, it be a decision in a revision petition or appeal or dismissal of a writ petition in limine by the court.