

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1514 of 2017

In
Miscellaneous Jurisdiction Case No.1852 of 2014

Subbalal Singh S/o Jatul Singh @ Jatul Gope R/o Village Jinpura, P.O. -
Bhadasi, P.S. and District Arwal.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. SriDistrict Magistrate, Arwal.
3. Sri.....Sub-Divisional Officer, Arwal
4. Sri.....Circle Officer, Arwal Circle, Arwal.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rakesh Narayan Singh, Advocate
For the Opposite Party/s : Mr. AAG-12

CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
CAV JUDGMENT

Date : 22-09-2026

Heard the learned counsel for the parties.

2. The present contempt petition has been filed for non-compliance of order dated 17.12.2014 passed in M.J.C. No.1852 of 2014 whereby the Hon'ble Single Judge while recording "that the learned counsel for the State submits that against the order under contempt the State Respondents have preferred L.P.A. No.717 of 2014 in which after condoning the delay in filing the L.P.A., direction has been given to list the L.P.A. for admission. As the L.P.A. is pending against the order under contempt, it is not advisable to keep the present contempt application pending, which is disposed of granting liberty to the



petitioner to file a short contempt petition, once the order of writ Court becomes final, by only annexing the order under contempt”.

3. The learned counsel for the petitioner submits a writ petition bearing C.W.J.C. No.21809 of 2012 was filed by the petitioner. The said writ petition was heard by an Hon’ble Single Judge of this Court and vide order dated 29.11.2012, the Hon’ble Single Judge disposed of the writ petition by holding and recording that “highlighting not only the non-compliance but also violation of the order dated 20.01.2010/10.03.2010 passed by the Collector, Arwal in Encroachment Appeal Case No. 6/D.M/2009 A/15 the petitioner filed petition dated 06.10.2012 (Annexure-16 series), before the Collector, Arwal soon after the demolition of his house by the circle officer even without measuring the land in question. The Collector, Arwal, should consider the aforesaid allegation and if it is true then ask the Circle Officer to restore the demolished house and then take measurement as was directed in the order (Annexure-15). Besides restoration of the house the Collector shall also recommend for appropriate disciplinary action against the circle officer”.

4. The learned counsel for the petitioner next



submits that when the order dated 29.11.2012 passed in C.W.J.C. No.21809 of 2012 was not being complied with, the petitioner filed MJC No.1551 of 2013. The Hon'ble Single Judge vide order dated 15.01.2014 was pleased to record that "the District Magistrate, Arwal is present in Court in compliance of the order of this Court dated 2, 08.01.2014. It is submitted on his behalf that possession of the petitioner over plot no.102 appertaining to Khata no.74, area 6 decimals shall be restored in the light of the order of the Collector, Arwal dated 20.2.2010/10.3.2010 (Annexure-6) by putting up such construction as it was there before demolition within one month. In case petitioner has encroached any portion of other public land, then such encroached portion shall be made encroachment free after initiating another proceeding in accordance with law. The Learned counsel for the petitioner then submitted that plot nos.1 and 397 appertaining to Khata nos.75 and 122 respectively are under encroachment by the employees and staff of the police department. In case that is so, the authorities shall take appropriate proceeding to ensure that the aforesaid public land is also made encroachment free for carving out a road approaching the police line. In the light of the statement made by the District Magistrate, Arwal, the contempt proceeding is



disposed of”.

5. The learned counsel for the petitioner further submits that when the order dated 15.01.2014 passed in M.J.C. No.1551 of 2013 was not being complied with by the State Respondents/opposite parties, the petitioner was constrained to file M.J.C. No.1852 of 2014. He submits that during course of hearing of the contempt petition, it was informed by the State Opposite parties that against the order dated 15.01.2014 passed in M.J.C. No.1551 of 2013, the State Respondents/opposite parties have filed an appeal bearing L.P.A No.717 of 2014. On the basis of the information provided by the State opposite parties, the Contempt petition was disposed of by observing that “as the L.P.A. is pending against the order under contempt, it is not advisable to keep the present contempt application pending, which is disposed of granting liberty to the petitioner to file a short contempt petition, once the order of writ Court becomes final, by only annexing the order under contempt”.

6. The Learned counsel for the petitioner next submits that finally the appeal preferred by the State Respondents bearing L.P.A No.717 of 2014 was heard by a Hon’ble Division Bench of this Court and vide order dated 24.10.2016 the Hon’ble Division Bench, while recording the



facts in paragraph nos.4 and 5 of the order dated 24.10.2016, proceeded to record in paragraph no.6 that “consequently, we modify the order dated 15.01.2014 passed in M.J.C. No.1551 of 2013 and direct the Collector to complete the demarcation, as per the earlier order of the Collector dated 20.02.2010 and 10.03.2010, in presence of the writ applicant and take appropriate action in accordance with law”. It was further directed that “it may be stated that since the matter is pending since long, the needful shall be done within one month from the date, the parties appear before the Collector, i.e. 21st November 2016 for further proceedings. The order of reconstruction shall be in tune with the order of the Circle officer/Collector”.

7. The learned counsel for the petitioner submits that after disposal of L.P.A. No. 717 of 2014, in terms of the liberty given by the Hon’ble Single Judge vide order dated 17.12.2014, the present contempt petition has been filed. He submits that till date the opposite parties have not complied the orders passed by the Hon’ble Single Judge on 29.11.2012 passed in C.W.J.C. No.21809 of 2012 and the order dated 15.01.2014 passed in M.J.C. No.1551 of 2014. He submits that the opposite parties are in contempt and despite repeated opportunities being granted to them, the opposite parties have



not complied the orders passed by the Hon'ble Writ Court. He submits that in a nutshell order dated 29.11.2012 passed in C.W.J.C. No.21809 of 2012 was affirmed and only minor variation was made by which prior to reconstruction of the house of the petitioner measurement/demarcation was to be made. He submits that thereafter the District Magistrate, Arwal by his memo no.529 dated 01.12.2016 directed the Circle Officer, Arwal for demarcation of the land in presence of the L.R.D.C., Arwal and to submit a report of demarcation. Pursuant to the order of the District Magistrate, Arwal, measurement of land was done on 22.12.2016 in presence of the L.R.D.C., the Circle Officer, the survey Amin, Revenue Karamchari and the petitioner and his Amin, in which no encroachment by the petitioner was found. Thereupon on 24.12.2016, the Anchal Amin submitted his report before the Circle Officer, Arwal. He submits that from the measurement report prepared by the District Magistrate, in the light of the order dated 24.10.2016 passed in L.P.A No.717 of 2014, it will be evident that the petitioner had never encroached any land and his house was wrongly demolished. He submits that in terms of the order passed by the Hon'ble Writ Court, which was affirmed in L.P.A No.717 of 2014, the Respondents were under



obligation to reconstruct the House of the petitioners, since the report showed no encroachment by the petitioner. He further submits that the petitioner thereafter requested the District Magistrate, Arwal for reconstruction of his house in pursuance of the orders passed by this Hon'ble Court. The learned counsel for the petitioner submits that the action of the respondents, in particular the District Magistrate, Arwal is highly contemptuous and he is willfully and deliberately trying to play with this Hon'ble Court, since at first, he gave an undertaking in MJC no.1551 of 2013 and on the basis of his undertaking the contempt petition was disposed of. Subsequently, when MJC no.1852 of 2014 was filed, thereafter he filed L.P.A No.717 of 2014 in which again an order was passed on 24.10.2016, but he did not comply the order and therefore the District Magistrate is liable to be punished. He submits that the action of the District Magistrate in not complying with the orders passed by this Hon'ble Court is not to be appreciated.

8. Per contra, the learned counsel appearing on behalf of the Opposite Party State submits that for providing better connectivity from National Highway No-33, Arwal-Jehanabad Road to important Government Institutions, the police line, District Jail, the 100-bedded Jannayak Karpuri



Thakur Hostel, the District Transport Office, the District Industry Office, the Milk Freezing Center and the adjoining villages, the opposite parties found it necessary to widen the existing road by six feet (three feet on each side). It was decided to obtain general consensus of the villagers for widening of the road, for which a public notice was published for convening a meeting on 13.09.2012. The villagers of village Jimpura, in presence of the Sub-Divisional Officer, Arwal and other Officials and 33 villagers, including the petitioner also appeared and participated and gave their consent for widening of the road. As per the Cadastral Survey Khatiyan, the land in question bearing plot no.02 and 102, Khata No.74, Mauza Jimpura is recorded as a Gairmazarua Malik (Parti Kadim). Out of 33 individuals, 31 persons, including the petitioner were found to be encroaching upon public land. They voluntarily consented to remove 3 feet of encroachment on each side and two persons offered their private land for the same. Thereafter, the petitioner filed CWJC No.21809 of 2012. The said writ petitioner was disposed of vide order dated 29.11.2012 and in compliance of the order dated 29.11.2012, the District Magistrate, Arwal disposed of Case No.11/DM/2013 vide order dated 27.04.2013/06.05.2013. The petitioner thereafter filed M.J.C.



No.1551 of 2013, wherein an Hon'ble Single Judge vide order dated 15.01.2014 disposed of the contempt petition. The state authorities being aggrieved with the order dated 15.01.2014 passed in M.J.C. No.1551 of 2013 preferred L.P.A. No.717 of 2014, which was disposed of by the Hon'ble Division Bench vide order 24.10.2016, whereby the Hon'ble Division Bench directed that any reconstruction would only be undertaken after determination of the encroachment and directed fresh demarcation, in terms of the Collector's earlier order dated 20.02.2010/10.03.2010. In compliance thereof Circle Officer was directed to conduct measurement in presence of the petitioner. The measurement of the land in question was done in presence of the officials of the State Government and the petitioner, as well as his Amin on 22.12.2016. The report was submitted on 24.12.2016 wherein it was found that no encroachment of the land was found by the petitioner situated in Mauza Chiraiyatand, Thana No.19, Khata No.122, Plot No.397 and Mauza Jinpura, Thana No.29, Khata No.75, Plot No.01. At the time of measurement, it was found that the encroachment in the form of houses and courtyards (Dalan & Gaushala) in Mauza Jinpura, Thana No.29, Khata No.74, Plot No.02 and 102, part of which in plot no.102 has already been cleared to the



extent of approximately 163 sq. feet for the purposes of road widening of the police line. The land of the petitioner in plot no.02 was not touched or disturbed, during the encroachment drive. Land measuring 6 decimals appertaining to Plot No.02, Khata No.74, Thana No.29, Mauza Jinpura and land measuring approximately 1013 sq. feet appertaining to Plot No.102, Khata No.74, Thana No.29, Mauza Jinpura were found to be still under occupation of the petitioner. In terms of the directions issued by the Hon'ble Division Bench in L.P.A. No.717 of 2014, the opposite parties completed all the formalities within the time frame.

9. The learned counsel appearing on behalf of the State submits that the directions issued by this Hon'ble Court have been adhered to in true letter and spirit. In terms of the directions issued by this Hon'ble Court, the land measurements were conducted on 21.01.2013, 24.12.2016 and finally on 08.11.2023 wherein it was recorded that the petitioner produced revenue receipt for 6 decimal of land in Khata No.74, which conspicuously does not mention any Plot number. He further produced an illegible Sada Hukumnana, from which no legal inference or ownership claim could be drawn. From conjoint reading of the measurement report and the revenue records, it is



manifest that no question of payment of compensation arises, as the land encroached upon is a Government land recorded as Gairmazarua Malik. The petitioner has utterly failed to establish any lawful title or ownership of the land, upon which encroachment drive was undertaken. The respondents have not removed any encroachment from the petitioner's private land and no action whatsoever was taken on land appertaining to Khata No.74, Plot No.02, as alleged. He submits that in presence of the petitioner, the authorized revenue official and the competent authorities, the measurement was done and the petitioner was not found payable for any compensation. He submits that the opposite parties have duly complied with the order under contempt.

CONSIDERATION

10. Having heard the learned counsel for the parties and after going through the records, it appears that when order dated 29.11.2012 passed in C.W.J.C. No.21809 of 2012 was not being complied with, the petitioner was constrained to approach this Hon'ble Court by filing the contempt petition bearing MJC No.1551 of 2013. The contempt petition filed by the petitioner was disposed of vide order dated 15.01.2014. Again, a contempt petition was filed by the petitioner bearing M.J.C. No.1852 of



2014. During course of hearing of the contempt petition, it was informed by the State Opposite parties that against the order dated 15.01.2014 passed in M.J.C. No.1551 of 2013, the State Respondents/opposite parties have filed an appeal bearing L.P.A No.717 of 2014. On the basis of the information provided by the State opposite parties, the contempt petition was disposed of by an Hon'ble single Judge vide order dated 17.12.2014, giving liberty to the petitioner to file a short contempt petition, once the order of the Writ Court becomes final, by only annexing the order under contempt. It appears that the Letters Patent Appeal filed by the State of Bihar was heard by a Hon'ble Division Bench of this Court and the Hon'ble Division Bench, while taking note of the directions given by the Hon'ble Writ Court as well as the orders passed in M.J.C. No.1551 of 2013 proceeded to direct in paragraph no. 6 that "consequently we modify the order dated 15.01.2014 and direct the Collector to complete the demarcation of the land as per the earlier order of the Collector dated 20.02.2010 and 10.03.2010 in the presence of the writ applicant and then take appropriate action in accordance with law". It was further directed that since the matter is pending since long, needful shall be done within one month, from the date, the parties appear before the Collector i.e. 21st November



2016, for further proceeding. It appears to this Court that in terms of the directions issued by the Hon'ble Division Bench in L.P.A No.717 of 2014, the measurement was done in presence of the petitioner on 22.12.2016. The report was submitted on 24.12.2016. Subsequently vide order dated 05.10.2023 passed by an Hon'ble Single Judge in the present contempt proceeding again measurement of the land was done on 08.11.2023 and it was found that the petitioner has utterly failed to establish any lawful title or ownership upon the land on which the encroachment drive was undertaken. Even then the petitioner was not satisfied and thereafter different orders were passed by different Hon'ble Benches. Finally, the matter was listed before this court and was heard on 17.08.2026, however, due to non availability of the learned counsel for the petitioner the matter was directed to be listed on 25.08.2026. When the matter was taken up on 25.08.2026, this court after going through the entire records, including the orders passed in the writ petition, the earlier contempt petition, the Letter Patent Appeal and the orders passed in the present proceeding and after hearing the parties, asked the learned counsel for the petitioner that how the present contempt petition is maintainable before an Hon'ble single Judge of this court, after passing of the order dated



24.10.2016 passed by an Hon'ble Division Bench of this court, whereby the Hon'ble Division Bench was pleased to modify the orders passed by the Hon'ble Single Judge dated 15.01.2014 passed in MJC no.1551 of 2013, after taking note of the directions given by the Hon'ble Single Judge vide his order dated 15.01.2014.

11. The learned counsel for the petitioner after making his submissions on the issue of maintainability, had referred to a decision of the Hon'ble Supreme Court of India reported in **2025 (E) PLJR SC 75136 (Rajan Chadha & Anr. VS Sanjay Arora)** wherein the Hon'ble Supreme Court of India has recorded that the learned Single Judge of the High Court, while passing impugned Judgment and final order has reviewed entire order of the another learned Single Judge. Propriety is that if the respondent was of the view that order passed by an earlier Single Judge holding him guilty of contempt was not correct in law, the only option available to him was to file an appeal under provisions of Section 19 of the contempt of the Courts Act. The learned Single Judge could not have held that the respondent has not committed contempt of Court. It is a different matter as to whether this Court while considering provisions of Section 12 and 13 of the contempt of Court Act



could have arrived at a finding as to whether respondent was liable to be punished or not or whether in facts of the case, he should be discharged or the punishment awarded was liable to be remitted on apology made to satisfaction of the Court or not. It was held that once a Single Judge of High Court has already recorded a finding that the respondent is guilty of contempt, a subsequent Single Judge (On change of Roster) does not have jurisdiction to re-examine the correctness of that finding and hold that no contempt was made.

12. By relying upon the decision in the case of Rajan Chadha (Supra), the learned counsel for the petitioner submitted that in the present contempt proceeding different Hon'ble Single Judges have directed the opposite parties to comply the orders passed by the Writ Court on 29.11.2012, 15.01.2014 and 17.12.2014, then this Court has got no jurisdiction to take a view different from the Hon'ble Single Judges in the present contempt proceeding. He submitted that different Hon'ble Benches of this Court were entertaining the contempt petition and were issuing different directions to the opposite parties, then this Court has got no jurisdiction to hold that no contempt proceeding is maintainable or would lie before the Hon'ble Single Judge.



13. In the considered opinion of this Court, after going through the records, that once the order of the Writ Court was taken note of by the Hon'ble Division Bench of this Court in L.P.A No.717 of 2014 and the order passed in M.J.C. No.1551 of 2013 was modified, by giving certain directions, no contempt would lie before the Hon'ble Single Judge. In the opinion of this Court, the orders passed by the Hon'ble Single Judge dated 29.11.2012, passed in C.W.J.C. No.21809 of 2012, order dated 15.01.2014 passed in M.J.C. No.1551 of 2013 and order dated 17.12.2014 passed in M.J.C. No.1852 of 2014, all merged in the order dated 24.10.2016 passed in L.P.A No.717 of 2014.

14. However, the law with regard to the doctrine of merger is required to be considered in the present case, before coming to a definite conclusion, that whether order passed by the Hon'ble Single Judge has been violated or not and whether the orders passed by the Hon'ble Single Judge merged in the order dated 24.10.2016 passed in L.P.A. no.717 of 2014 or not. For better appreciation of the doctrine of merger, this Court would refer to a Judgment of the Hon'ble Supreme Court of India reported in **2000 (6) SCC 359 (Kunhayammed & Ors. V/S The State of Kerala & Anr.)** wherein in paragraph no.44 it



has been held as under:

“44. To sum up, our conclusions are:

(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.

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

15. Further the Hon'ble Supreme Court of India in a case reported in **2011 (4) SCC 602 (Gangadhara Palo V/S The Revenue Divisional Officer & Anr.)** in paragraph no.5 to 9 has held as under:

"5. We regret, we cannot agree. In our opinion, it will make no difference whether the review petition was filed in the High Court before the dismissal of the special leave petition or after the dismissal of the special leave petition. The important question really is whether the judgment of the High Court has merged into the judgment of this Court by the doctrine of merger or not.



6. When this Court dismisses a special leave petition by giving some reasons, however meagre (it can be even of just one sentence), there will be a merger of the judgment of the High Court into the order of the Supreme Court dismissing the special leave petition. According to the doctrine of merger, the judgment of the lower court merges into the judgment of the higher court. Hence, if some reasons, however meagre, are given by this Court while dismissing the special leave petition, then by the doctrine of merger, the judgment of the High Court merges into the judgment of this Court and after merger there is no judgment of the High Court. Hence, obviously, there can be no review of a judgment which does not even exist.

7. The situation is totally different where a special leave petition is dismissed without giving any reasons whatsoever. It is well settled that special leave under Article 136 of the Constitution of India is a discretionary remedy, and hence a special leave petition can be dismissed for a variety of reasons and not necessarily on merits. We cannot say what was in the mind of the Court while dismissing the special leave petition without giving any reasons. Hence, when a special leave petition is dismissed without giving any reasons, there is no merger of the judgment of the High Court with the order of this Court. Hence, the judgment of the High Court can be reviewed since it continues to exist, though the scope of the review petition is limited to errors apparent on the face of the record. If,



on the other hand, a special leave petition is dismissed with reasons, however meagre (it can be even of just one sentence), there is a merger of the judgment of the High Court in the order of the Supreme Court. (See the decisions of this Court in Kunhayammed v. State of Kerala [(2000) 6 SCC 359], S. Shanmugavel Nadar v. State of T.N. [(2002) 8 SCC 361: JT (2002) 7 SC 568], State of Manipur v. Thingujam Brojen Meetei [(1996) 9 SCC 29: 1996 SCC (L&S) 1181: AIR 1996 SC 2124] and U.P. SRTC v. Omaditya Verma [(2005) 4 SCC 424: AIR 2005 SC 2250].)

8. A judgment which continues to exist can obviously be reviewed, though of course the scope of the review is limited to errors apparent on the face of the record but it cannot be said that the review petition is not maintainable at all.

9. The learned counsel for the respondent Mr. Sanjay Kapur has, however, invited our attention to para 4 of the judgment of this Court in K. Rajamouli [(2001) 5 SCC 37], wherein it was observed: (SCC p. 41, para 4)

“4. Following the decision in Kunhayammed [(2000) 6 SCC 359] we are of the view that the dismissal of the special leave petition against the main judgment of the High Court would not constitute res judicata when a special leave petition is filed against the order passed in the review petition provided the review petition was filed prior to filing of special leave petition against the main judgment of the High Court. The position would be different where after



dismissal of the special leave petition against the main judgment a party files a review petition after a long delay on the ground that the party was prosecuting remedy by way of special leave petition. In such a situation the filing of review would be an abuse of the process of the law. We are in agreement with the view taken in Abbai Maligai Partnership Firm [Abbai Maligai Partnership Firm v. K. Santhakumaran, (1998) 7 SCC 386] that if the High Court allows the review petition filed after the special leave petition was dismissed after condoning the delay, it would be treated as an affront to the order of the Supreme Court. But this is not the case here. In the present case, the review petition was filed well within time and since the review petition was not being decided by the High Court, the appellant filed the special leave petition against the main judgment of the High Court. We, therefore, overrule the preliminary objection of the counsel for the respondent and hold that this appeal arising out of special leave petition is maintainable.”

(emphasis supplied)

16. Similarly, an Hon’ble Division Bench vide its judgment dated 16.09.2016 passed in **Civil Review No.04 of 2016 (Sri Rajesh Kumar versus Smt. Pushpa Rani)** while considering the doctrine of merger, in paragraph no.10 to 13 has held as under:

“10. What the decision, in Meghmala (supra), thus, lays down that if review petition has been



*filed before the Special Leave Petition is filed and dismissed, the review petition still remains pending for consideration and deserves to be considered. However, if such an application for review was made after dismissal of the review petition, then, the process of filing of such a review application would amount to abuse of process of the Court and would, therefore, not be possible. The conclusion, so arrived at, in **Meghmala** (supra), runs contrary to the law laid in **Kunhayammed** (supra), wherein the Court has held that if the leave to appeal has not been granted at the very threshold without entering into the appellate jurisdiction, the doctrine of merger would not apply and, therefore, dismissal of the Special Leave Petition without assigning any reason would not subsume the order against which the Special Leave Petition was filed. Hence, in the light of decision, in **Kunhayammed** (supra), notwithstanding the dismissal of a Special Leave Petition, review petition is still maintainable. The position of law, in this regard, has been summed up, at paragraph 44, in **Kunhayammed** (supra), in the following words:*

“44. To sum up, our conclusions are:

(i) Where an appeal or revision is provided against a decree 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 the law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is up to 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 decree put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or decree 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.”

11. *There does exist a distinction between an appeal and a leave to apply for appeal. When an appeal is provided and the appeal is preferred, the appeal stands instituted; but when a leave for appeal is applied, then, until the leave is, in such a situation, granted, there is really no appeal. Hence, the disposal of the Special Leave Petition or of any petition for leave to appeal does not*



*subsume the order from which the appeal arose, for, with the rejection of the petition for leave, no appeal survived. Article 136 of the Constitution of India deals with 'special leave to appeal', which may be granted by the Supreme Court. When special leave to appeal is dismissed/disallowed by the Supreme Court with or without a speaking order, the order from which the appeal arose does not merge into such an order, for, as already indicated hereinabove, with the dismissal of the Special Leave Petition, no appeal survives and no appeal can be said to have been borne and considered. In fact, when the special leave to appeal is declined, there is no appeal. Hence, question of the merger of the order into the order declining to grant special leave to appeal would not, in the light of **Kunhayammed** (supra), arise at all.*

*12. In the light of what have been held in **Kunhayammed** (supra), the principles laid down there being three Judge Bench is still binding on us inasmuch as the reference, made to a larger Bench by the order passed by the three Judge Bench in **Khoday Distilleries Ltd.** (supra), has not laid down any law, as indicated above, and only referred the matter to a larger Bench. The decision, in **Meghmala** (supra), being a two Judge Bench, we are presently bound by the decision in **Kunhayammed** (supra), which lays down that if a Special Leave Petition is dismissed in limine without the appeal having come into existence, because of the leave having been declined, the doctrine of merger will not*



apply and, therefore, a petition for review of the order of the High Court remains open.

*13. Situated thus, we are clearly of the view that in the light of the decision in **Kunhayammed**(supra), this Court does have the power to review if a case for review is made out.”*

17. Recently the Hon’ble Supreme Court of India in a case reported in **2025 (3) SCC 543 (Balbir Singh and another versus Baldev Singh (dead) through his legal representatives & Ors.)** in paragraph no.28 to 34, 49 and 50 has held as under:

28. In Kunhayammed v. State of Kerala [Kunhayammed v. State of Kerala, (2000) 6 SCC 359; (2000) 245 ITR 360; (2000) 119 STC 505], while explaining the doctrine of merger, this Court held thus: (SCC p. 370, para 12)

“12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way — whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the



superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view.”

29. *Further, while explaining the position that emerges on the grant of special leave to appeal by this Court [Kunhayammed v. State of Kerala, (2000) 6 SCC 359: (2000) 245 ITR 360: (2000) 119 STC 505], it was observed: (Kunhayammed case [Kunhayammed v. State of Kerala, (2000) 6 SCC 359: (2000) 245 ITR 360: (2000) 119 STC 505], SCC p. 383, para 41)*

“41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one.”

30. *This position of law has been affirmed and reiterated by a three-Judge Bench decision of this Court in Khoday Distilleries Ltd. v. Sri*



Mahadeshwara Sahakara Sakkare Karkhane Ltd. [Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd., (2019) 4 SCC 376]

31. *The decision in Kunhayammed [Kunhayammed v. State of Kerala, (2000) 6 SCC 359; (2000) 245 ITR 360; (2000) 119 STC 505] was followed by a three-Judge Bench decision of this Court in Chandi Prasad v. Jagdish Prasad [Chandi Prasad v. Jagdish Prasad, (2004) 8 SCC 724], which held thus: (Chandi Prasad case [Chandi Prasad v. Jagdish Prasad, (2004) 8 SCC 724], SCC p. 731, paras 23-24)*

“23. The doctrine of merger is based on the principles of propriety in the hierarchy of the justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject-matter at a given point of time.

24. It is trite that when an appellate court passes a decree, the decree of the trial court merges with the decree of the appellate court and even if and subject to any modification that may be made in the appellate decree, the decree of the appellate court supersedes the decree of the trial court. In other words, merger of a decree takes place irrespective of the fact as to whether the appellate court affirms, modifies or reverses the decree passed by the trial court.”

32. *The decision in Chandi Prasad [Chandi*



Prasad v. Jagdish Prasad, (2004) 8 SCC 724] was followed by a two-Judge Bench of this Court in *Shanthi v. T.D. Vishwanathan [Shanthi v. T.D. Vishwanathan, (2019) 11 SCC 419: (2019) 4 SCC (Civ) 787]*, rendered on 24-10-2018 in the following terms: (*Shanthi case [Shanthi v. T.D. Vishwanathan, (2019) 11 SCC 419: (2019) 4 SCC (Civ) 787]*, SCC p. 421, para 7)

“7. ... When an appeal is prescribed under a statute and the appellate forum is invoked and entertained, for all intents and purposes, the suit continues. When a higher forum entertains an appeal and passes an order on merit, the doctrine of merger would apply. The doctrine of merger is based on the principles of the propriety in the hierarchy of the justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject-matter at a given point of time.”

33. Thus, once the High Court allowed the second appeals in favour of the plaintiffs, there was evidently a merger of the judgment of the trial court with the decision of the High Court. Once the High Court as an appellate court in second appeal renders its judgment it is a decree of the second appellate court which becomes executable hence, the entitlement of the decree-holder to execute the decree of the second appellate court cannot be defeated.



34. The issue may be looked at from another perspective in terms of the provisions of Section 28 of the Act referred to earlier.

49. In CIT v. Amritlal Bhogilal & Co. [CIT v. Amritlal Bhogilal & Co., (1958) 34 ITR 130: 1958 SCC OnLine SC 59:; this Court in para 10 observed as under : (SCC On Line SC)

“10. 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 that subsists and is operative and capable of enforcement....”

50. Thus, the Supreme Court merely reiterated the observation of the Bombay High Court in Tejaji Farasram [CIT v. Tejaji Farasram Kharawalla, (1953) 23 ITR 412: 1953 SCC On Line Bom 28: AIR 1954 Bom 93] and stated that the hierarchy of courts and tribunals is to be maintained when the decision is reversed by the superior court and even when the superior court merely affirms the decision of the subordinate court.”

18. Having considered the law laid down by the



Hon'ble Supreme Court of India as well as the Hon'ble Division Bench of this Court, with regard to the doctrine of merger, this Court is of the considered opinion that once the Hon'ble Division Bench has passed an order on 24.10.2016 in L.P.A. No.717 of 2014, the order passed by the Hon'ble Single Judge in the Writ petition as well as in the contempt petition merges in the orders passed by the Hon'ble Division Bench. The cause to sue before this Hon'ble Court/Hon'ble Single Judge does not survives. The reliance placed by the learned counsel placed by the petitioner on the Judgment of the Hon'ble Supreme Court of India in the case of **Rajan Chadha (Supra)** will not be applicable in the present case, since this Court has not expressed any opinion with regard to compliance or non-compliance of the orders passed by the Hon'ble single Judge in the writ proceeding or in the contempt proceeding. This Court has only adjudicated the fact that whether the present contempt petition would lie before the Hon'ble Single Judge or not and based on the doctrine of merger, this Court comes to the conclusion that the contempt petition, if any, would not lie before an Hon'ble Single Judge, after passing of the order dated 24.10.2016 passed in L.P.A. no.717 pf 2014.

19. Accordingly, on the consideration made above,



this Court is of the considered opinion that the contempt petition is not maintainable before an Hon’ble Single Judge, therefore the present contempt petition is dismissed.

20. Pending applications, if any, shall also stand disposed of.

(Ritesh Kumar, J)

Kunal/-

AFR/NAFR	NAFR
CAV DATE	25.08.2026.
Uploading Date	
Transmission Date	NA

