

F 504/12

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 2ND DAY OF MARCH 2012 ✓

PRESENT

THE HON'BLE MR.JUSTICE S. ABDUL NAZER

AND

THE HON'BLE MR.JUSTICE K. GOVINDARAJULU

REVIEW PETITION NO.315/2011

Between :

1 The Managing Director-cum-Chairman,
Bharat Sanchar Nigam Ltd.,
Bharat Sanchar Bhawan,
H.C.Mathur Lane, Janpath,
New Delhi – 110 001.

2 The Chief General Manager,
Karnataka Telecom Circle,
Bharat Sanchar Nigam Ltd.,
No.1, Swamy Vivekananda Road,
Halasuru, Bangalore – 560 008.

Both the petitioners are reptyd. by
Sri G.Prakash Rao, Deputy General Manager
(HR & A), Authorised Officer. Petitioners.

(By Sri R.D. Agarwal, Sr. Adv. a/w Sri Pavan Kumar, Adv. for
Sri Vishnu Bhat, Adv.)



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And :

- 1 Sri K.S. Premakumar,
Aged about 47 years,
S/o Sri K.L. Sanjeevaiah,
Occ; Sub-Divisional Engineer (SDE),
Office of Divisional Engineer Data,
Bangalore Telecom District,
7th Floor, New Telecom Building,
Basaveshwara Circl, - *
Bangalore – 560 001.
- 2 Sri S.B. Danand,
Aged about 48 years,
S/o Sri Basappa,
Occ; Sub-Divisional Engineer (SDE),
Office of Divisional Engineer Transmission
Mntc., 3rd Floor, Main Telecom Bldg.,
CTO compound, Belgaum – 590 001.
- 3 Sri S.A. Bellubbi, S/o Sri Anantaraao,
Aged about 39 years,
Occ; SDE (Mobile Service Development),
2nd Floor, BSNL Bhavan,
Near KSRTC Bus Station,
Tumkur – 572 101.
- 4 Sri A.M. Kumbar,
Aged about 39 years,
Occ; SDE OFC Maintenance,
Digital Trans Centre,
Ground Floor, Telephone Exchange Bldg.,
Anand Mahal Road, Bijapur.
- 5 Sri D. Suresh,
Aged about 56 years,
S/o Sri V.M. Doraiswamy,
Occ; SDE TX Maintenance,
BSNL LGF Creator Bldg.,
ITPL, Bangalore – 66.



120. Sri. Suresh M.C.
 Aged about 38 years
 S/o. Channamallappa
 Occ: SDE
 O/o. D.E. C-DOT Exchange
 Ashoka Road,
 Tumkur 572 101
121. Sri. Narasimha Murthy S.B.
 Aged about 40 years
 S/o. Bachanna
 Occ: SDE
 O/o. D.E. Sub-urban Installation
 3rd Floor, FKCCI Building
 K.G. Road, Bangalore – 1
122. Sri. M.L. Kyatha Setty
 Aged about 40 years
 S/o. Linga Setty
 Occ: SDE External
 Telephone Exchange Udayagiri
 Bangalore
123. Sri. Sudhakar C. Gour
 Aged about 37 years
 S/o. Chandrashekhar Gour
 Occ: SDE Mobile Switching Centre
 2nd Floor, Telephone Exchange Building
 Pinto Road, Hubli – 580 020
124. Sri. Srikantha. P
 Aged about 37 years
 S/o. P. Bindumadhavacharya
 Occ: SDE Mobile Services Development
 Ground Floor
 Main Telephone Exchange Compound
 Raichur – 584 101
- RESPONDENTS

(By Sri P.A. Kulkarni, Adv.)



This Review Petition is filed under Order 47 Rule 1 of CPC for review of the order dated 21.4.2011 passed in W.P.No.37322/2010 and W.P.Nos.1576 to 1698/2011, etc.

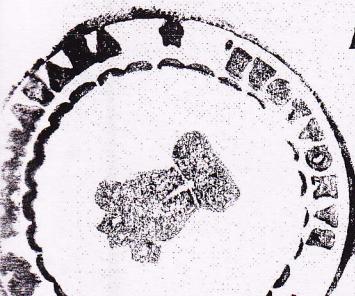
This Review Petition having been heard and reserved for Orders, this day, S.ABDUL NAZER.J., pronounced the following:

ORDER

The petitioners have filed the above review petition under Order 47 Rule 1 read with Section 115 of Code of Civil Procedure to review and suitably modify the order in W.P.No.37322/2010 & W.P.Nos.1576 to 1698/2011 (S-CAT) dated 21.2.2011.

2. Sri R.D.Agarwal, learned Senior Counsel appearing for the petitioners submits that the order of this Court contains an apparent mistake and that the ratio of the decision in ***M.R.GUPTA VS. UNION OF INDIA – AIR 1996 SC 669*** relied on by the respondents herein is of no avail for all practical purposes as well as in pith and substance. It is further argued that the petitioners have filed Special Leave Petition ('SLP' for short) before the Apex Court seeking leave to file an appeal challenging the order of this Court referred to above and that the SLP was dismissed on 25.8.2011. Relying on the judgment of the Supreme Court in

KUNHAYAMMED AND OTHERS VS. STATE OF KERALA



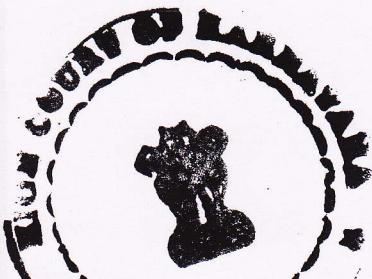
AND ANOTHER – (2000) 6 SCC 359 and GANGADHARA

PALO VS. REVENUE DIVISIONAL OFFICER – 2012 (25)

STR 273 (SC). the learned Senior Counsel submits that the review petition is maintainable despite the dismissal of the SLP.

3. On the other hand, learned Counsel appearing for the respondents submits that the petitioners had filed SLP challenging the order of this Court on 27.7.2011 and the review petition was filed subsequently i.e. on 5.8.2011. The SLP was dismissed on 25.8.2011. The Apex Court while dismissing the appeal on merits has directed the petitioners to comply with the order of this Court within two months from the said date and that the order has already been complied with. Thereafter, they are pursuing this review petition, which is not maintainable.

4. It is not in dispute that on 27.7.2011, the petitioners have filed SLP seeking leave to file an appeal challenging the order of this Court dated 21.4.2011. They have filed a review petition belatedly on 5.8.2011. The Apex Court has dismissed the SLP by order dated 25.8.2011. The order of the Apex Court is as under:



"Upon hearing Counsel, the Court made the following:

ORDER

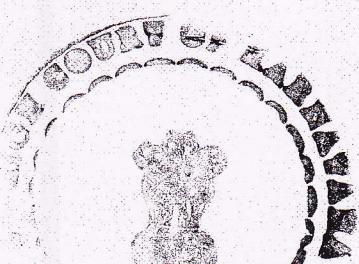
Taken on board.

We find no merit in the Special Leave Petition. The Special Leave Petition is dismissed. We direct the petitioners to comply with the orders within two months from today."

5. It is not in dispute that after the dismissal of the SLP, the petitioners have implemented the order of this Court. Now, they are pursuing the review petition, which was filed on 5.8.2011. In ***ABBAI MALIGAI PARTNERSHIP FIRM AND ANOTHER VS. K.SANTHAKUMARAN AND OTHERS – (1998) 7 SCC 386***, a three Judge Bench of the Hon'ble Supreme Court was considering the validity of an order passed by the learned Single Judge of the High Court in a review petition. In the said case, the Rent Controller had passed order of eviction against the appellants therein on the ground of willful default in payment of rent and bonafide requirement of the premises by the landlord. In an appeal filed by the appellants, the appellate authority has set aside the said

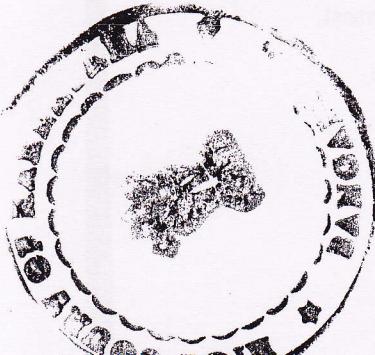


order of the Rent Controller. A revision petition filed by the landlords before the High Court challenging the said order was rejected by confirming the order of the appellate authority. Aggrieved by the said order to the High Court, the landlord filed SLPs before the Apex Court. The appellants had entered caveat-in the Supreme Court and both sides were represented by their learned Counsel. After hearing the learned Counsel for the parties, the Special Leave Petitions were dismissed on 16.9.1987. After dismissal of the SLPs, the respondents filed review petitions before the High Court seeking review of the order of dismissal of the Civil Revision Petitions. There was also a delay in filing the review petitions before the High Court. The learned Single Judge, after condoning the delay, reviewed the earlier order and reversed the order made in Civil Revision Petitions and ordered eviction of the tenant. Aggrieved by the said order in the review petition, the appellants filed the appeals. The Apex Court has held that the High Court had no power or jurisdiction to review the self-same order, which was the subject of challenge in SLP and after the challenge had failed. By passing the order, judicial propriety has been sacrificed. After dismissal of the special leave petitions, on contest,



no review petition could be entertained by the High Court against the same order. The relevant portion of the order of the Apex Court is as under:

"4. The matter in which the learned Single Judge of the High Court exercised the review jurisdiction, after the special leave petitions against the selfsame order had been dismissed by this Court after hearing learned Counsel for the parties, to say the least, was not proper. Interference by the learned Single Judge at that stage is subversive of judicial discipline. The High Court was aware that the SLPs against the orders dated 7.1.1987 had already been dismissed by this Court. The High Court, therefore, had no power or jurisdiction to review the selfsame order, which was the subject matter of challenge in the SLPs in this Court after the challenge had failed. By passing the impugned order on 7.4.1994, judicial propriety has been sacrificed. After the dismissal of the special leave petitions by this Court, on contest, no review petition should be entertained by the High Court against the same order. The very entertainment of the review petitions, in the facts and circumstances of the case, was an affront to the order of this Court. We express our strong disapproval and hope there would be no occasion in the future when we may have to say so.



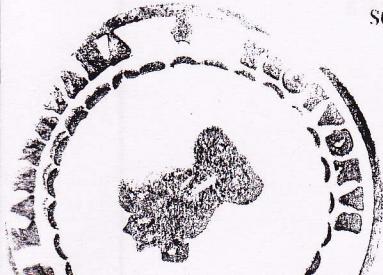
The jurisdiction exercised by the High Court, under the circumstances, was palpably erroneous. The respondents who approached the High Court after the dismissal of their SLPs by this Court, abused the process of the Court and indulged in vexatious litigation. We strongly deprecate the manner in which the review petitions were filed and heard in the High Court after the dismissal of the SLPs by this Court. The appeals deserve to succeed on that short ground. The appeals are, consequently, allowed and the impugned order dated 7.4.1994 passed in the review petitions is hereby set aside. The respondents shall pay ₹10,000/- as costs."

6. In **KUNHAYAMMED**'s case (supra), the Apex Court has held that dismissal of the SLPs by the words 'dismissed on merits' would remain a dismissal by a non-speaking order where no reasons have been assigned and no law has been declared by the Supreme Court. The dismissal is not of the appeal but of the Special Leave Petition and that the order of the High Court does not merge with the order of the Supreme Court. Therefore, even if the SLPs are dismissed, the review petition is maintainable. In **GANGADHARA PALO**'s case (supra), the Apex Court has held 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. Hence, when a special leave petition is dismissed without giving any reasons, the judgment of the High Court does not merge with the order of the Supreme 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, meager (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.

7. As noticed above, in the present case, the respondents had entered appearance before the Apex Court. The Apex Court has dismissed the SLP by holding that there is no merit in it. The Apex Court has directed the petitioners to comply with the orders within two months from the said date. It is not in dispute that the orders of this Court have been complied by the petitioners. As held by the Apex Court in ***ABBAI MALIGAI PARTNERSHIP FIRM's*** case (*supra*), the High Court has no power or jurisdiction to review the selfsame order which was the subject matter of challenge in SLP



and after the challenge had failed. In the circumstances, we are not inclined to entertain this review petition. It is accordingly dismissed. No costs.

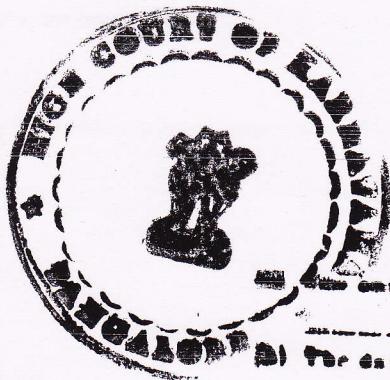
Sd/-
JUDGE

Sd/-
JUDGE

BMM/-

"TRUE COPY"

J. S. N. Iyer
Section Officer
High Court of Karnataka
Bangalore-560 001.



- 6/3/12
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