

A M/S. SPEED WAYS PICTURE PVT. LTD. AND ANR.

v.

UNION OF INDIA AND ANR.

OCTOBER 23, 1996

B [S.P. BHARUCHA AND S.C. SEN, JJ.]

*Practice & Procedure :*

C *Long standing practice of putting Statements in writing in the form of "minutes of order"—Court passing an order in terms of minutes—Signatures of counsel upon "minutes of order" intended for identification so as to make an order binding upon parties—An order in terms of minutes is an order in invitum, not a consent order—It is appealable and may be reviewed—Difference between "order in terms of minutes" and "order in terms of consent terms"—Explained.*

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13337 of 1996.

E From the Judgment and Order dated 3.4.96 of the Bombay High Court in R.P.No. 1/96 in C.W.P.No. 773 of 1987.

B.V. Desai and N.B. Amin for the Appellants.

The following Order of the Court was delivered :

F Special leave granted.

G On 28th June, 1995 a Division Bench of the High Court at Bombay passed an order dismissing the appellants' writ petition in terms of the "minutes of order" tendered by counsel for the parties. It is the appellants' case that the statement made in the first clause of the "minutes of order" was not correct in that the judgments mentioned therein were inapplicable to the facts of their case. Accordingly, the appellants filed a Review Petition. Upon the Review Petition the order under challenge was passed.

H The order under challenge states that the order dated 28th June, 1995 "was passed on the basis of the consent of the parties, which was recorded in the minutes of the order duly signed by the Senior Counsel for

the parties". The Review Petition was, therefore, not maintainable. A

The notice on the SLP stated that the matter might be disposed of at the SLP stage itself. The notice has been served, but the respondents have not put in an appearance.

The basis upon which the Review Petition was decided is, in our view, not correct. Counsel for the appellants and the respondents put it in writing that a judgment of this Court and a Full Bench judgment of the High Court covered the matter. The writ petition in that High Court could, therefore, not succeed. This could have been orally stated and recorded by the Court. As a courtesy to the Court, the practice of long standing is to put statements such as these in writing in the form of "minutes of order" which are tendered and on the basis of which the Court passes the order : "Order in terms of minutes". The signatures of counsel upon "minutes of order" are intended for identification so as to make the order binding upon the parties counsel represented. An order in terms of minutes is an order in *invitum*, not a consent order. It is appealable and may be reviewed. B C D

It would be a different matter if the order of the court was passed on "Consent Terms", i.e., on a statement above the signatures of counsel which expressly stated it was "by consent". The order of the court in such event would read : "Order in terms of consent terms". E

The order under challenge, made on the basis that the order dated 28th June, 1995 dismissing the writ petition was a consent order must, therefore, be set aside and the Review Petition remanded to the High Court to be considered afresh on merits. We express no view whatsoever on the merits of the Review Petition. F

The appeal is allowed, the order under appeal is set aside and the Review Petition is restored to the file of the High Court to be heard afresh on merits. It is made clear that the condonation of delay in filing the Review Petition is not affected by this order. G

No order as to costs.

G.N.

Appeal allowed.