

A MUNICIPAL CORPORATION OF DELHI  
v.  
YASHWANT SINGH NEGI  
(Special Leave Petition (Civil) No. 4616 of 2010)

B APRIL 08, 2013  
[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

CONSTITUTION OF INDIA, 1950:

C *Art. 136 - SLP challenging the order passed by High Court in review petition and not the main judgment - Held: Not maintainable - Once the High Court has refused to entertain the review petition and the same was dismissed confirming the main order, there is no question of any merger and the aggrieved person has to challenge the main order and not the order dismissing the review petition because on the dismissal of the review petition the principle of merger does not apply - Principle of merger.*

E In the instant petition for special leave to appeal against the order passed by the High Court in a review petition, the respondent raised a preliminary objection that since the main judgment rendered by the High Court was not challenged, the SLP was not maintainable.

F Dismissing the petition, the Court

G HELD: Once the High Court has refused to entertain the review petition and the same was dismissed confirming the main order, there is no question of any merger and the aggrieved person has to challenge the main order and not the order dismissing the review petition because on the dismissal of the review petition the principle of merger does not apply. Therefore, the instant SLP is not maintainable, since the main order was

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**not challenged but the order passed in the review petition alone was challenged. [para 3-4] [553-A-B; 554-G-H]** A

*Eastern Coalfields Limited v. Dugal Kumar* 2008 (11) SCR 369 = (2008) 14 SCC 295 - held inapplicable.

*Manohar S/o Shankar Nale and Others v. Jaipalsing S/o Shivralsing Rajput and Others* 2007 (12) SCR 364 = (2008) 1 SCC 520 *DSR Steel (Private) Limited v. State of Rajasthan and Others* 2012 (5) SCR 583 = (2012) 6 SCC 782 - relied on. B

**Case Law Reference:** C

**2008 (11) SCR 369 held inapplicable para 2**

**2007 (12) SCR 364 relied on Para 3**

**2012 (5) SCR 583 relied on Para 3** D

**CIVIL APPELLATE JURISDICTION : Special Leave  
Petition (Civil) No. 4616 of 2010**

From the Judgment and Order dated 11.09.2009 of the High Court of Delhi at New Delhi in Review Petition No. 79 of 2009. E

Sanjiv Sen, Anirudh Gupta, P. Parmeswaran for the Petitioner.

Nidesh Gupta, Tarun Gupta, S. Janani for the Respondent. F

The Judgment of the Court was delivered by

**K.S. RADHAKRISHNAN, J.** 1. This special leave petition has been preferred against the order dated 11.09.2009 passed by the High Court of Delhi in Review Petition No.79 of 2009 in LPA No.1233 of 2006. Mr. Nidhesh Gupta, learned senior counsel appearing for the respondent raised a preliminary objection that the special leave petition is not maintainable since the main judgment rendered by the High Court on 5.11.2008 in LPA No.1233 of 2006 was not challenged. G

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A 2. Mr. Sanjiv Sen, learned counsel appearing for the  
petitioner placed considerable reliance on the judgment of this  
Court in *Eastern Coalfields Limited v. Dugal Kumar* (2008)  
14 SCC 295 and submitted that the said judgment would apply  
to the facts of this case and the SLP is perfectly maintainable,  
B even though the petitioner had not challenged the original order  
passed by the High Court on 5.11.2008. Learned counsel  
submitted that on dismissal of the review petition, the earlier  
order stood merged, in the order passed in the review petition,  
consequently, the SLP is perfectly maintainable. Considerable  
C reliance was placed on paragraphs 21 and 22 of the above  
Judgment, which read as under:

"21. Having heard the learned counsel for the parties, in  
our opinion, the appeal deserves to be partly allowed. So  
far as the technical objection raised by the Company with  
D regard to territorial jurisdiction of the High Court of Calcutta  
is concerned, in our opinion, it would not be appropriate  
to set aside the order passed in favour of the writ  
petitioner on that ground. It is clear from the record that the  
writ petition came up for admission hearing on 6-9-1999  
E and the counsel for the appellant Company was present.  
Not only that he did not raise any objection as to territorial  
jurisdiction of the court, he expressly made a statement  
before the court to pass "usual order". Accordingly, an  
order was passed directing the Company to allot "balance  
F quantity of 1008 MT" of coal to the writ petitioner. We are,  
therefore, unable to uphold the contention of the learned  
counsel for the appellant Company that the High Court of  
Calcutta had no territorial jurisdiction to entertain the writ  
petition.

G 22. But we are also unable to uphold the contention of the  
writ petitioner that the appeal is not maintainable since the  
Company had challenged the order passed in review  
petition dated 28-1-2002 and not the main order dated 17-  
2-2000 dismissing intra-court appeal."

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3. We find ourselves unable to agree with the views expressed by this Court in *Eastern Coalfields Limited* (supra). In our view, once the High Court has refused to entertain the review petition and the same was dismissed confirming the main order, there is no question of any merger and the aggrieved person has to challenge the main order and not the order dismissing the review petition because on the dismissal of the review petition the principle of merger does not apply. In this connection reference may be made to the Judgment of this Court in *Manohar S/o Shankar Nale and others v. Jaipalsing S/o Shivlalsing Rajput and Others* (2008) 1 SCC 520 wherein this Court has taken the view that once the review petition is dismissed the doctrine of merger will have no application whatsoever. This Court in *DSR Steel (Private) Limited v. State of Rajasthan and Others* (2012) 6 SCC 782 also examined the various situations which might arise in relation to the orders passed in review petitions. Reference to paragraphs 25, 25.1, 25.2 and 25.3 is made, which are extracted below for ready reference:

"25. Different situations may arise in relation to review petitions filed before a court or tribunal.

25.1. One of the situations could be where the review application is allowed, the decree or order passed by the court or tribunal is vacated and the appeal/proceedings in which the same is made are reheard and a fresh decree or order passed in the same. It is manifest that in such a situation the subsequent decree alone is appealable not because it is an order in review but because it is a decree that is passed in a proceeding after the earlier decree passed in the very same proceedings has been vacated by the court hearing the review petition.

25.2. The second situation that one can conceive of is where a court or tribunal makes an order in a review petition by which the review petition is allowed and the decree/order under review is reversed or modified. Such an order shall then be a composite order whereby the court

A not only vacates the earlier decree or order but  
simultaneous with such vacation of the earlier decree or  
order, passes another decree or order or modifies the one  
made earlier. The decree so vacated reversed or modified  
is then the decree that is effective for the purposes of a  
B further appeal, if any, maintainable under law.

25.3. The third situation with which we are concerned in  
the instant case is where the revision petition is filed before  
the Tribunal but the Tribunal refuses to interfere with the  
decree or order earlier made. It simply dismisses the  
C review petition. The decree in such a case suffers neither  
any reversal nor an alteration or modification. It is an order  
by which the review petition is dismissed thereby affirming  
the decree or order. In such a contingency there is no  
question of any merger and anyone aggrieved by the  
D decree or order of the Tribunal or court shall have to  
challenge within the time stipulated by law, the original  
decree and not the order dismissing the review petition.  
Time taken by a party in diligently pursuing the remedy by  
way of review may in appropriate cases be excluded from  
E consideration while condoning the delay in the filing of the  
appeal, but such exclusion or condonation would not imply  
that there is a merger of the original decree and the order  
dismissing the review petition."

4. We are in complete agreement with the principle laid  
F down by this Court in *DSR Steel (Private) Limited* (supra) and  
applying the 3rd situation referred to therein in paragraph 25.3,  
we are inclined to dismiss this special leave petition. We find  
force in the contention made by the learned senior counsel  
appearing for the respondent that this SLP is not maintainable,  
G since the main order was not challenged but only the order  
passed in the review petition alone was challenged in this SLP.  
Hence, the SLP is, therefore, not maintainable and the same  
is dismissed.

R.P.

SLP dismissed.

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