HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

RP No. 115/2022 in
CFA No.18/2014

Reserved on: 14.10.2025
Pronounced on : 17.10.2025
Uploaded on: 17.10.2025

Whether operative part or full judgment is pronounced: Full

Union of India ...Review Petitioner

Through:- Mr. Vishal Sharma DSGI with
Mr. Eishan Dadeechi CGSC

V/s

M/S D. Khosla & Co. ...Respondent(s)

Through:- Mr. Sourabh Malhotra Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. This petition by the Union of India seeks review of an order and judgment dated 09.05.2022 passed in CFA No. 18/2014 titled 'Union of India vs M/S D Khosla and Company' to the extent this Court has remitted the claims of the respondent-Contractor being claim Nos. (1), (2),(4) (8), (15) and (16) back to the Arbitrator for fresh adjudication.

2 The judgment dated 09.05.2022 is sought to be reviewed on the ground that this Court has committed an error apparent on face of record, in that, while setting aside the award of the Arbitrator impugned in CFA No. 18/2014 in respect of claim Nos. (1), (2),(4) (8), (15) and (16) being beyond the terms and conditions of the contract, this Court has remitted the said claims for fresh adjudication yet again by the Arbitrator. My attention was drawn to the discussion made in the order dated

09.05.2022 in respect of each item of claims and para (52) of the judgment whereby the matter was remanded/remitted to the Arbitrator for fresh adjudication.

3 *Per contra*, Mr. Malhotra, learned counsel appearing for the respondent-contractor, would argue that the judgment dated 09.05.2022 (supra) cannot be subjected to review by this Court in view of the order of Hon'ble Supreme Court dated 14.07.2022 passed in SLP(C) No. 10816/2022 dismissing the SLP filed by the respondent-contractor and leaving claims Nos.(2),(3),(8), (16), (18) (19) & (20) to be re-adjudicated upon by the Arbitrator. He would argue that the judgment sought to be reviewed by the Union of India has merged with the order dated 14.07.2022 (supra) of the Hon'ble Supreme Court, and therefore, cannot be reviewed. Learned counsel for the respondent-contractor would place reliance upon a judgment of the Supreme Court in **V.Senthur and another vs. M. VijayKumar and another** (Contempt Petition (Civil) No. 638/2017 in Civil Appeal No. 4954 of 2016, decided on 01.10.2021) to buttress his submission that once the Hon'ble Supreme Court has dismissed the SLP filed against the judgment sought to be reviewed, it is not open to this Court to review the judgment even if good grounds are made out for such review.

4 Having heard learned counsel for the parties and perused the material on record, it needs to be recapitulated that there are broadly three permissible grounds on which a review petition may be entertained: (i) discovery of new and important evidence. The evidence must be relevant and material and should not have been available at the time of judgment

despite due diligence; (ii) mistake or error apparent on the face of record. The error must be obvious, self-evident, and not requiring elaborate reasoning. A wrong decision on merits is not the same as an error apparent on the face of the record; and (iii) any other sufficient reason. The expression "any other sufficient reason" must be read *ejusdem generis* with the above two grounds and cannot be interpreted as granting a blanket licence for litigation or re-adjudication of matters. While exercising the review jurisdiction, it must be borne in mind that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII and Rule 1 CPC. A review petition has a limited purpose and cannot be allowed to be an appeal in disguise .

5 In light of the aforesaid parameters subject to which the review jurisdiction can be exercised, I have examined the review petition filed by the Union of India and the grounds urged for seeking review of the judgment dated 09.05.2022.

6 From a reading of judgment dated 09.05.2022, which is sought to be reviewed to the extent mentioned in the review petition, it clearly transpires that with regard to claim No. 1, this Court has clearly held that the same has been awarded by the Arbitrator without reference to Clause-11 of the contract agreement which is very specific and categoric to the extent that if any change occurs in design/construction procedure due to variation of soil strata, it shall be the contractor's own responsibility for which he would not be paid anything extra but the amount incurred on account of such variation shall be deemed to be included in the lumpsum amount. This Court has, thus, held claim No.1 awarded by the Arbitrator

contrary to Clause-11 of the contract agreement. That being the position, this Court definitely committed an error apparent on the face of record by remitting claim No.1 to the Arbitrator for fresh adjudication.

7 With regard to claim No.2, this Court has, in the judgment sought to be reviewed, clearly held that the same was contrary to Clause 3.2 of the contract agreement which makes it abundantly clear that lumpsum quoted rates by the contractor were to carry out trench excavation and span excavation. Having held thus, there was no warrant to refer claim No.2 to the Arbitrator for fresh adjudication. It seems that due to oversight, claim No.2 too came to be remitted to the Arbitrator for adjudication, particularly when this Court had found claim No.2 contrary to Clause 3.2 of the contract agreement.

8 Claim No. 4 has also been found by this Court, in the judgment sought to be reviewed, to be contrary to the specific terms and conditions of the contract agreement contained in Clause 11(b) thereof. The same is the position with regard to Claim No. 8, which this Court has held to be contrary to Clause 17(g) of the contract agreement and, therefore, not sustainable. That being the clear position held by this Court, there was no good reason or justification to remit claims No. (4) and (8) also to the Arbitrator for *de novo* consideration/adjudication.

9 Claim No. 15 and 16 pertain to grant of interest. The Arbitrator had awarded 18% interest per annum on the claims awarded, and the same was not found favour with this Court as is evident from the discussion made in para (45) of the judgment sought to be reviewed. This

Court came to the conclusion that instead of 18%, the contractor would be entitled to 6% interest per annum on the claims allowed by the Arbitrator and upheld by this Court. Once the issue of interest stood determined by this Court, there was no reason or justification to send that claim/item for fresh adjudication. It seems that in the concluding paragraph (52) of the judgment, this Court has inadvertently remitted the matter with regard to claims Nos. 1, 2, 4, 8, 15 & 16 to the Arbitrator for fresh adjudication when the Arbitrator could not have adjudicated and granted any relief in respect thereof, the same being contrary to the specific terms and conditions of the contract. These matters were beyond the jurisdiction and competence of the Arbitrator and, therefore, could not have been remitted back to him. This aspect has inadvertently escaped the attention of this Court, resulting in an error apparent on the face of record.

10 The plea of the learned counsel for the respondent that the judgment sought to be reviewed has merged with the judgment of the Supreme Court passed in SLP (supra) is without any merit and deserves to be rejected.

11 From a reading of the judgment passed in SLP (supra), it is abundantly clear that the Supreme Court has simply dismissed the SLP without even notice to the Union of India and allowed the respondent-contractor to pursue the matter before the Arbitrator, and, therefore, the judgment passed by this Court cannot, by any stretch of reasoning, be said to have merged with the judgment of the Supreme Court. Paras (21) & (22) of the judgment rendered in **V.Senthur's case** (supra), relied upon by

learned counsel for the respondent-contractor, is relevant and is, therefore, set out hereinbelow:

> **21.** It will be relevant to refer to the following observations of this Court in the case of *Kunhayammed* v. *State of Kerala:*
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> > "**27.** A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. Whatever be the phraseology employed in the order of dismissal, if it is a non-speaking order, i.e., it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution for there is no law which has been declared. If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal. We have already dealt with this aspect earlier. Still the reasons stated by the Court would attract applicability of Article 141 of the Constitution if there is a law declared by the Supreme Court which obviously would be binding on all the courts and tribunals in India and certainly the parties thereto. The statement contained in the order other than on points of law would be binding on the parties and the court or tribunal, whose order was under challenge on the principle of judicial discipline, this Court being the Apex Court of the country. No court or tribunal or parties would have the liberty of taking or canvassing any view contrary to the one expressed by this Court. The order of Supreme Court would mean that it has declared the law and in that light the case was considered not fit for grant of leave. The declaration of law will be governed by Article 141 but still, the case not being one where leave was granted, the doctrine of merger does not apply. The Court sometimes leaves the question of law open. Or it sometimes briefly lays down the principle, may be, contrary to the one laid down by the High Court and yet would dismiss the special leave petition. The reasons given are intended for purposes of

> Article 141. This is so done because in the event of merely dismissing the special leave petition, it is likely that an argument could be advanced in the High Court that the Supreme Court has to be understood as not to have differed in law with the High Court."
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> **22.** It is thus clear that this Court in unequivocal terms has held that if the order of dismissal of SLPs is supported by reasons, then also the doctrine of merger would not be attracted. Still the reasons stated by the court would attract applicability of Article 141 of the Constitution of India, if there is a law declared by this Court which obviously would be binding on all the courts and the tribunals in India and certainly, the parties thereto. It has been held that no court, tribunal or party would have the liberty of taking or canvassing any view contrary to the one expressed by this Court. Such an order would mean that it has declared the law and in that light, the case was considered not fit for grant of leave.

12 From a reading of the aforesaid paragraphs, it is crystal clear that even if the order of dismissal of an SLP is supported by reasons, the doctrine of merger would not be attracted. However, the reasons stated by the Court would attract the applicability of Article 141 of the Constitution of India, if it is tantamount to a law declared by the Supreme Court. Such law laid down would be binding on all Courts and tribunals in India. The mere dismissal of an SLP, with or without reasons, would not attract the doctrine of merger so as to stand substituted in place of the order impugned before it, nor would it amount to a declaration of law by the Supreme Court under Article 141 of the Constitution unless there is a specific declaration of law made while dismissing the SLP by a reasoned order.

13 In the instant case, the Supreme Court has simply dismissed the SLP without even indicating reasons for dismissing such SLP. The net result of the dismissal of the SLP filed by the respondent-contractor is that

the judgment passed by this Court has not been interfered with, without saying anything more. In such situation, the doctrine of merger would not apply, and the judgment passed by this Court would still be open to review, of course, on permissible grounds. This Court, therefore, does not find any substance in the objection raised by the learned counsel for the respondent contractor to the maintainability of this review petition.

14 For the foregoing reasons, I find merit in this review petition and the same is accordingly allowed. The judgment dated 09.05.2022 passed in CFA No. 18/2014 is recalled to the extent of claim Nos. (1) ,(2), (4), (8), (15) & (16). Accordingly, the operative portion of the judgment i.e., para No. (52) is recast as under:

> " For determination of claims of the contractor, i.e, claim Nos. 1 , 2, 4, 8, 15 & 16 shall be deemed to have been set aside and only claim No. 13 shall be remitted back to the Arbitrator for fresh adjudication".

15 We are informed that the Arbitrator has already entered upon a fresh reference and adjudicated all the claims in terms of the judgment dated 19.05.2022. It is, therefore, clarified that the award to the extent it pertains to Claims No. 1, 2, 4, 8, 15, and 16 would be beyond the jurisdiction and competence of the Arbitrator, and any adjudication thereon would be a nullity.

The review petition is accordingly disposed of.

(**Sanjeev Kumar)**
Judge

JAMMU.
17 .10.2025
Sanjeev.

Whether the order is speaking : Yes/No
Whether the order is reportable: Yes/No