

(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.

[Para 44]

Held, Having thus made the law clear, the case at hand poses no problem for solution. The earlier order of the High Court was sought to be subjected to exercise of appellate jurisdiction of the Supreme Court by the State of Kerala wherein it did not succeed. The prayer contained in the petition seeking leave to appeal to this Court was found devoid of any merits and hence dismissed. The order is a non-speaking and unreasoned order. All that can be spelled out is that the Court was not convinced of the need for exercising its appellate jurisdiction. The order of the High Court dated 17-12-1982 did not merge in the order dated 18-7-1983 passed by this Court. So it is available to be reviewed by the High Court. Moreover such a right of review is now statutorily conferred on the High Court by sub-section (2) of Section 8-C of the Kerala Act. The legislature has taken care to confer the jurisdiction to review on the High Court as to such appellate orders, also against which though an appeal was carried to the Supreme Court, the same was not admitted by it. An appeal would be said to have been admitted by the Supreme Court if leave to appeal was granted. The constitutional validity of sub-section (2) of Section 8-C has not been challenged. Though, Shri T.L.V Iyer, the learned Senior Counsel for the appellant made a feeble attempt at raising such a plea at the time of hearing but unsuccessfully, as such a plea has not so far been raised before the High Court, also not in the petition filed before this Court.

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