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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

DIPANKAR DATTA; J., K.V. VISWANATHAN; J.

SEPTEMBER 23, 2025.

CIVIL APPEAL NOS.11752-11753/2025 [ARISING OUT OF SLP(C) NOS.30056-30057/2024]

SATHEESH V.K. *versus* THE FEDERAL BANK LTD.

Maintainability of Second Special Leave Petition – Held, withdrawal of a special leave petition (SLP) without obtaining liberty to file a fresh petition bars a subsequent challenge to the same order, as the principle of public policy embodied in Order XXIII Rule 1 of the Code of Civil Procedure applies to SLPs under Article 136 of the Constitution - Second SLP is not maintainable when the earlier petition was unconditionally withdrawn, particularly where no liberty was granted to approach the Court again, and the litigant seeks to re-agitate the same issue after exhausting review remedies. [Relied on *Upadhyay Co. v. State of U.P.* (1999) 1 SCC 81; *Sarguja Transport Service v. STAT*, (1987) 1 SCC 5; *Paras 19-21*]

Code of Civil Procedure, 1908 - Order XLVII Rule 7(1) - Doctrine of Merger and Review Jurisdiction – Held, doctrine of merger does not apply when an SLP is dismissed without reasons, permitting a review petition to be filed before the High Court - This principle does not extend to cases where the SLP is withdrawn rather than dismissed, as withdrawal constitutes abandonment of the remedy - An order rejecting a review petition does not merge the original decree and thus cannot be independently appealed under Order XLVII Rule 7(1) of the CPC - Appeal dismissed. [Relied on: *Kunhayammed v. State of Kerala & Anr.* (2000) 6 SCC 359; *Paras 18, 29, 31*]

For Petitioner(s): Mr. M. K. S. Menon, Adv. Ms. Usha Nandini V., AOR Mr. Shashank Menon, Adv. Mr. John Thomas Arakal, Adv.

For Respondent(s): Mr. Aljo K. Joseph, AOR Mr. Saket Jee, Adv. Mr. Santhosh Kumar Kolkundra, Adv. Mr. Rajesh Kumar, Adv. Mr. Vinay Kumar Puvvala, Adv. Ms. Ankita Kutthi, Adv.

J U D G M E N T

DIPANKAR DATTA, J.

1. Appellant, Satheesh V.K., is a borrower within the meaning of section 2(f) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002¹. Undisputedly, the appellant obtained financial assistance from the respondent-Federal Bank, a secured creditor within the meaning of section 2(zd) of the SARFAESI Act, by creating equitable mortgage over properties situated in Kozhikode. However, the appellant having defaulted in his obligation to repay the loan, the respondent classified the loan account as ‘Non-Performing Asset’ (NPA) and initiated measures under section 13(4) of the SARFAESI Act.

2. Aggrieved by the action taken by the respondent, the appellant invoked the jurisdiction of the High Court of Kerala at Ernakulam under Article 226 of the Constitution by presenting a writ petition². According to the respondent, the total outstanding amount was Rs.7,77,41,321/-. The order dated 1st October, 2024 passed by the High Court disposing of the writ petition required the appellant to pay Rs.2,00,00,000/- on or before 30th October, 2024 and the remaining amount along with future interest in 12 (twelve) equal monthly instalments. The first instalment was to be paid on or before 15th November,

¹ SARFAESI Act

² Writ Petition (C) No.33280 of 2024

2024 and the remaining eleven (11) instalments were to be paid on or before 15th day of each succeeding month. The impugned order further directed that in case of failure to make payment of Rs.2,00,00,000/- or any of the subsequent instalments, as directed, the respondent would be free to proceed against the appellant under the SARFAESI Act for realisation of the dues in accordance with law. Appellant was also granted liberty to approach the respondent for one time settlement after making payment of the initial sum of Rs.2,00,00,000/- on or before 30th October, 2024.

3. The order dated 1st October, 2024 was challenged by the appellant in a special leave petition³ before this Court. Order dated 28th November, 2024 recorded on the said special leave petition by a coordinate Bench reads as follows:

ORDER

1. After arguing for some time and on our expressing reservation in entertaining the present petition, the learned senior counsel for the petitioner seeks permission to withdraw the present petition.

2. Permission to withdraw is granted.

3. The Special Leave Petition is dismissed as withdrawn.

4. Having been permitted to withdraw the special leave petition, the appellant next approached the High Court with a petition⁴ seeking review of the order dated 1st October, 2024. Such petition came to be dismissed *vide* order dated 5th December, 2024.

5. Consequent upon such dismissal, these two civil appeals were presented by the appellant before this Court on 12th December, 2024. The appeal⁵ registered prior in point of time is directed against the order dated 1st October, 2024 of disposal of the appellant's writ petition, whereas the one⁶ subsequently registered is directed against the dismissal of the review petition.

6. The alacrity with which the appellant moved from court to court between 1st October, 2024 (date of disposal of his writ petition) and 12th December, 2024 (date of presenting the special leave petitions before this Court giving rise to these appeals) without showing semblance of an inclination to repay the dues of the respondent and to buy time by resorting to technicalities are certainly factors which we propose to bear in mind while deciding these appeals.

7. Mr. Aljo K. Joseph, learned counsel appearing for the respondent, has vehemently objected to maintainability of the appeals. He has referred to the aforesaid order dated 28th November, 2024 passed on the appellant's previous special leave petition and contended that no liberty having been sought and/or granted by this Court to present a fresh special leave petition to lay a challenge to the order dated 1st October, 2024, the appellant has no right in law to approach this Court once again after withdrawing the initial challenge. Also, in view of Order XLVII Rule 7 (1) of the Code of Civil Procedure, 1908⁷, there can be no appeal against an order refusing review.

8. The objection to the maintainability of the appeal against the order dated 1st October, 2024 was sought to be countered by Mr. Menon, learned counsel for the appellant, by citing the decision of a coordinate Bench of this Court in **S. Narahari and**

³ Special Leave Petition (C) No.28259/2024

⁴ RP No.1294 of 2024

⁵ Civil Appeal No.11752/2025

⁶ Civil Appeal No.11753/2025

⁷ CPC

Others v. S.R. Kumar and Others⁸. It was pointed out that a reference was made for constitution of a larger Bench to deliberate and adjudicate the issue as to whether a second special leave petition would be maintainable against an order which was previously challenged in a special leave petition but the challenge had either been withdrawn or spurned. Our attention was further drawn by Mr. Menon to orders dated 29th July, 2024 and 13th August, 2024 passed by another coordinate Bench of this Court [of which one of us (Dipankar Datta) was a member] in ***N.F. Railway Vending and Catering Contractors Association Lumding Division vs. Union of India & Ors.***⁹ where, noticing ***S. Narahari*** (supra), the special leave petitions were adjourned till such time the reference is decided.

9. Apart from referring to the aforesaid decisions, Mr. Menon relied on a compilation of precedents starting from ***Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal***¹⁰. Reliance was placed on paragraph 8 of ***Dhakeswari Cotton Mills Ltd.*** (supra) on the extent of powers conferred by Article 136 of the Constitution, reading as follows:

“8. ... It is not possible to define with any precision the limitations on the exercise of the discretionary jurisdiction vested in this Court by the constitutional provision made in Article 136. The limitations, whatever they be, are implicit in the nature and character of the power itself. It being an exceptional and overriding power, naturally it has to be exercised sparingly and with caution and only in special and extraordinary situations. Beyond that it is not possible to fetter the exercise of this power by any set formula or rule. All that can be said is that the Constitution having trusted the wisdom and good sense of the Judges of this Court in this matter, that itself is a sufficient safeguard and guarantee that that power will only be used to advance the cause of justice, and that its exercise will be governed by well-established principles which govern the exercise of overriding constitutional powers. It is, however, plain that when the Court reaches the conclusion that a person has been dealt with arbitrarily or that a court or tribunal within the territory of India has not given a fair deal to a litigant, then no technical hurdles of any kind like the finality of finding of facts or otherwise can stand in the way of the exercise of this power because the whole intent and purpose of this Article is that it is the duty of this Court to see that injustice is not perpetuated or perpetrated by decisions of courts and tribunals because certain laws have made the decisions of these courts or tribunals final and conclusive. ...”

10. According to Mr. Menon, the power conferred by Article 136 of the Constitution of India is an extra-ordinary power and such power must be exercised to advance the cause of justice and not to thwart it.

11. Other decisions relied on by Mr. Menon are ***Patel Narshi Thakershi and Ors. v. Shri Pradyumansinghji Arjunsinghji***¹¹, ***S. Nagaraj and Others v. State of Karnataka and Another***¹², ***Lily Thomas and Others v. Union of India & Ors.***¹³, ***Kunhayammed and Others v. State of Kerala & Another***¹⁴, ***Ramnik Vallabhdas Madhvani and Others v. Taraben Pravinlal Madhvani***¹⁵, ***Union of India v. Amrit Lal Manchanda and Another***¹⁶, and ***Khoday Distilleries Limited (Now Known as Khoday India Limited)***

⁸ (2023) 7 SCC 740

⁹ Special Leave Petition (C) Nos.17501-17502/2024

¹⁰ AIR 1955 SC 65

¹¹ (1971) 3 SCC 844

¹² Supp (4) SCC 595

¹³ (2000) 6 SCC 224

¹⁴ (2000) 6 SCC 359

¹⁵ (2004) 1 SCC 497

¹⁶ (2004) 3 SCC 75

and Others v. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal (Under Liquidation) Represented by the Liquidator¹⁷.

12. Of these decisions, **Kunhayammed** (supra) and **Khoday Distilleries Limited** (supra) have relevance and, therefore, we propose to consider the same in some detail for deciding the question arising before us at a later part of this judgment. The other decisions not being directly related to the point under consideration are not separately considered. Suffice to record, these decisions lay down general principles of law, *inter alia*, of what is a review, that power to review is not an inherent power and has to be statutorily conferred, whether *res judicata* is applicable in a case where there is inherent lack of jurisdiction, how to read precedents, and that law has to bend before justice in given circumstances.

13. On merits, Mr. Menon referred to the decision in **M/s Pro Knits v. The Board of Directors of Canara Bank & Ors.**¹⁸ and **Shri Shri Swami Samarth Construction & Finance Solution and Another v. Board of Directors of NKGST Co-op. Bank Ltd and Others**¹⁹ to contend that the appellant's company being an unit which is an MSME, it is entitled to the benefits flowing from Notification dated 29th May, 2015 issued by the Central Government in terms of Section 9 of the Micro Small and Medium Enterprises Development Act, 2006 and that the respondent had acted illegally in not extending the benefit of such notification to the appellant.

14. Since the question of examining the merits of the appellant's claim would arise if the objection to the maintainability were overcome, we proceed to examine the maintainability aspect first.

15. In course of hearing, we had invited Mr. Menon's attention to the order of recent origin dated 1st September, 2025 of another coordinate Bench in **Vasantalata Kom Vimalanand Mirjankar Rep. by G.P.A. Holder vs. Deepa Mavinkurve & Ors.**²⁰. Mr. Menon sought to distinguish **Vasantalata** (supra) by referring to the opening sentence of paragraph 7. It was submitted that this Court in **Vasantalata** (supra) had dealt with a case where a special leave petition was dismissed and not withdrawn, as in the present case; therefore, **Vasantalata** (supra) has no application here.

16. The question we are tasked to decide, though of frequent occurrence now-a-days, is not *res integra*. It is, whether a special leave petition (second in the series) would be maintainable against a judgment and order which was earlier challenged before this Court but such challenge turned out to be abortive because the special leave petition before this Court is either (i) withdrawn unconditionally, or (ii) dismissed on merits by a brief order not containing reasons, or (iii) withdrawn with liberty to apply for review but without the liberty to approach this Court once again, should the review too fail.

17. No doubt, the co-ordinate Bench in **S. Narahari** (supra) has referred the issue to a larger Bench for consideration. The facts therein may be noted now. The coordinate Bench in **S. Narahari** (supra) was seized of the question as to whether, upon dismissal of a special leave petition against the parent order as withdrawn with liberty to file a review before the high court but without liberty to approach this Court again against the parent order should the review fail, a fresh special leave petition filed against both the parent order and the review rejection order would be maintainable. The Bench pondered whether

¹⁷ (2019) 4 SCC 376

¹⁸ (2024) 10 SCC 292

¹⁹ SCC OnLine SC 1566

²⁰ Special Leave Petition (C) Diary No.36933/2025

liberty granted by this Court to approach the high court in review automatically places the said matter in the “escalation matrix”, and makes the remedy of a special leave petition available again. The Bench traced the first line of cases, **Vinod Kapoor v. State of Goa**²¹ and **Sandhya Educational Society v. Union of India**²² which ruled that when no liberty has been granted to approach the Supreme Court once again, a subsequent special leave petition is not maintainable. This was contrasted with the decision rendered in **Khoday Distilleries** (supra) wherein after placing reliance on **Kunhayammed** (supra), a three-Judge Bench came to the conclusion that even after dismissal of a special leave petition, a review before the high court is maintainable.

18. The Bench in **S. Narahari** (supra) while acknowledging that the question in the matter before it was different, was of the view that the logic employed by the larger Bench in **Khoday Distilleries** (supra) caused a crack in the reasoning of the first line of cases and came to the conclusion that **Khoday Distilleries** (supra) essentially ruled that the doctrine of merger does not apply when a special leave petition is dismissed by way of a non-speaking order. If indeed that be so, the Bench in **S. Narahari** (supra) was concerned that such dismissal by way of a non-speaking order is not to be considered as law declared under Article 141 of the Constitution and then the same cannot be considered *res judicata*; therefore, in every such dismissal, the remedy of filing a special leave petition would still persist. Further, if a review is allowed to be filed after a special leave petition is dismissed, then a fresh special leave petition cannot be barred arbitrarily. Hence, the matter was referred to a larger Bench to put a quietus to the issue.

19. Having noticed **S. Narahari** (supra), a stark dissimilarity in facts is discernible. There, the unsuccessful petitioner at the time of dismissal of the special leave petition as withdrawn had prayed for and was granted leave to apply for a review. Upon the review being dismissed, the parent order was challenged once again. Before us, there is something very adverse to the appellant. He having sensed that the co-ordinate Bench was not inclined to entertain the special leave petition, did not invite an order of dismissal thereof on merits but went away content with permission to withdraw. Neither permission was sought to apply for review nor was any window kept open by this Court to permit the appellant to approach it once again mounting a challenge to the same order. This is a plain and simple case where the law laid down in the previous century by a co-ordinate Bench in its decision in **Upadhyay & Co. v. State of U.P. and Others**²³ would squarely apply.

20. As noted by the co-ordinate Bench in its order dated 13th August, 2024 in **N.F. Railway Vending and Catering Contractors Association** (supra), relied on by Mr. Menon, the decision in **Upadhyay & Co.** (supra) was not placed for consideration of the coordinate Bench in **S. Narahari** (supra).

21. In **Upadhyay & Co.** (supra), it was held thus:

“**9.** In the meanwhile, the petitioner challenged the order of the Allahabad High Court dated 3-5-1996 by filing SLP (C) No. 12673 of 1996 in this Court. But for reasons better known to the petitioner he withdrew the SLP on 9-7-1996. Thereafter, he filed an application before the High Court for clarification of the order dated 3-5-1996, but the Division Bench did not find anything to be clarified about that order and hence dismissed the petition on 10-10-1997.

10. The present special leave petitions are filed against the two orders of the High Court, one dated 3-5-1996 and the other dated 10-9-1997.

²¹ (2012) 12 SCC 383

²² (2014) 7 SCC 701

²³ (1999) 1 SCC 81

11. We made a recapitulation of the events as above for the purpose of showing that the petitioner has absolutely no case in the present SLPs. He cannot, at any rate, now challenge the order of the High Court dated 3-5-1996 over again having withdrawn the SLP which he filed in challenge of the same order. It is not a permissible practice to challenge the same order over again after withdrawing the special leave petition without obtaining permission of the court for withdrawing it with liberty to move for special leave again subsequently.

12. The above principle has been incorporated as a rule in the realm of suits. Order 23 Rule 1 of the Code of Civil Procedure deals with withdrawal of suit or abandonment of part of the claim. Sub-rule (3) says that the court may in certain contingencies grant permission to withdraw from a suit with liberty to institute a fresh suit in respect of the subject-matter of such suit. Sub-rule (4) reads thus:

‘1. (4) Where the plaintiff—

(a) abandons any suit or part of a claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.’

13. The aforesaid ban for filing a fresh suit is based on public policy. This Court has made the said rule of public policy applicable to jurisdiction under Article 226 of the Constitution [*Sarguja Transport Service v. STAT : (1987) 1 SCC 5*]. The reasoning for adopting it in writ jurisdiction is that very often it happens, when the petitioner or his counsel finds that the court is not likely to pass an order admitting the writ petition after it is heard for some time, that a request is made by the petitioner or his counsel to permit him to withdraw it without seeking permission to institute a fresh writ petition. A court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit withdrawal of the petition. When once a writ petition filed in a High Court is withdrawn by the party concerned, he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as a party aggrieved by the order passed by the High Court. If so, he cannot file a fresh petition for the same cause once again. The following observations of E.S. Venkataramiah, J. (as the learned Chief Justice then was) are to be quoted here:

‘[W]e are of the view that the principle underlying Rule 1 of Order 23 of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in the High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission.’

14. ***

15. We have no doubt that the above rule of public policy, for the very same reasoning, should apply to special leave petitions filed under Article 136 of the Constitution also. Even otherwise, the order passed by the Division Bench of the High Court on 3-5-1998 does not warrant interference on merits as the learned Judges of the High Court have taken into account all the relevant facts and come to the correct conclusion.”

(emphasis ours)

22. *Upadhyay & Co.* (supra), which precedes *Kunhayammed* (supra) in point of time, is still the law holding the field declaring in no certain terms that the principle flowing from

Order XXIII Rule 1 of the CPC is also applicable to special leave petitions presented before this Court. Reading **Upadhyay & Co.** (supra) together with **Sarguja Transport Service** (supra), which had the occasion to deal with a subsequently filed writ petition under Article 226 of the Constitution of India after unconditional withdrawal of the first writ petition under the same article, the position in law seems to be this - a second special leave petition would not be maintainable at the instance of a party, who elects not to proceed with the challenge laid by him in an earlier special leave petition and withdraws such petition without obtaining leave to file a fresh special leave petition; if such party applies for a review before the court from whose order the special leave petition was initially carried and the review fails, then he can neither challenge the order rejecting the review nor the order of which review was sought.

23. That no appeal lies from an order rejecting a petition for review is clear from the plain language of Order XLVII Rule 7(1), CPC. We need not burden this judgment by referring to any authority on this point.

24. However, the principle underlying Order XLVII Rule 7(1), CPC may be understood. Whenever a party aggrieved by a decree or order seeks a review thereof based on parameters indicated in Section 114 read with Order XLVII, CPC and the application ultimately fails, the decree or order under review does not suffer any change. It remains intact. In such an eventuality, there is no merger of the decree or order under review in the order of rejection of the review because such rejection does not bring about any alteration or modification of the decree or order; rather, it results in an affirmance of the decree or order. Since there is no question of any merger, the party aggrieved by the rejection of the review petition has to challenge the decree or order, as the case may be, and not the order of rejection of the review petition. On the contrary, if the petition for review is allowed and the suit or proceedings is placed for rehearing, Rule 7(1) permits the party aggrieved to immediately object to the order allowing the review or in an appeal from the decree or order finally passed or made in the suit, i.e., after rehearing of the matter in dispute.

25. It is now time to consider the decisions relied upon by Mr. Menon.

26. The passage from the decision in **Dhakeswari Cotton Mills Ltd.** (supra) referred to by Mr. Menon has no application on facts and in the circumstances of the present case. We are inclined to the view that the nature of power exercisable by this Court under Article 136, as elaborately laid down there, would apply in the first round when a judgment and order is challenged and not when the challenge to the same judgment and order is withdrawn in the first round and a second bite at the cherry is attempted without having obtained the permission of the Court to re-approach it.

27. Reliance placed by Mr. Menon on the decisions in **Kunhayammed** (supra) and **Khoday Distilleries Limited** (supra) also do not aid the appellant's cause for the reasons that follow.

28. In **Kunhayammed** (supra), the facts were these. After the special leave petition of the State of Kerala which was directed against an appellate judgment and order of the High Court dated 17th December, 1982 was dismissed on 18th July, 1983 by a single line order²⁴, the State had invoked the review jurisdiction of the High Court in January, 1982 seeking review of the said judgment and order dated 17th December, 1982. A preliminary objection to the maintainability of the review petition was raised before the High Court, which came to be overruled by an order dated 14th December, 1995. The said order also

²⁴ "Special Leave Petition is dismissed on merits."

directed the review petition to be posted for hearing on merits. The order dated 14th December, 1995 overruling the preliminary objection was carried to this Court in a special leave petition, on which leave was granted on 16th September, 1996. By an order dated 14th March, 2000, the matter was referred to a three-Judge Bench for decision.

29. *Kunhayammed* (supra) is considered an authority on the doctrine of merger. However, on the facts before the three-Judge Bench, it was held that since the judgment and order of the High Court dated 17th December, 1982 did not merge in the single line unreasoned order of dismissal of the special leave petition (dated 18th July, 1983), the petition for review was maintainable.

30. Turning to ***Khoday Distilleries*** (supra), two appeals were under consideration. It is found that in the lead appeal, a petition for review of the judgment and order dated 12th November, 2008 was not entertained by the High Court of Karnataka by its order dated 9th September, 2011 on the ground that a special leave petition against the said judgment and order dated 12th November, 2008 stood dismissed by a single line order²⁵ of this Court dated 4th December, 2009. The question of law arising for decision was noted in paragraph 8, reading as follows:

“8. The question of law which needs to be determined in the aforesaid circumstances is as to whether the review petition is maintainable before the High Court seeking review of a judgment against which the special leave petition has already been dismissed by this Court.”

31. After extensively referring to and/or relying on ***Kunhayammed*** (supra), the three-Judge Bench summed up the legal position in paragraph 26 as under:

“26. From a cumulative reading of the various judgments, we sum up the legal position as under:

26.1. The conclusions rendered by the three-Judge Bench of this Court in *Kunhayammed* and summed up in para 44 are affirmed and reiterated.

26.2. We reiterate the conclusions relevant for these cases as under: (*Kunhayammed case*, SCC p. 384)

‘(iv) An order refusing special leave to appeal may be a nonspeaking 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 the 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 the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC.’

²⁵ “Delay condoned. Special leave petition is dismissed.”

26.3. Once we hold that the law laid down in *Kunhayammed* is to be followed, it will not make any difference whether the review petition was filed before the filing of special leave petition or was filed after the dismissal of special leave petition. Such a situation is covered in para 37 of *Kunhayammed* case⁶.

27. Applying the aforesaid principles, the outcome of these appeals would be as under.

Civil appeal arising out of Special Leave Petition (Civil) No. 490 of 2012

28. In the instant case, since special leave petition was dismissed in limine without giving any reasons, the review petition filed by the appellant in the High Court would be maintainable and should have been decided on merits. Order dated 12-11-2008 passed by the High Court is accordingly set aside and matter is remanded back to the High Court for deciding the review petition on merits. The civil appeal is disposed of accordingly.”

32. In *Khoday Distilleries Limited* (supra), the order under appeal was clearly in the teeth of the ratio laid down in *Kunhayammed* (supra) and it was only a matter of time for such erroneous order to be set aside.

33. Since the facts in *Kunhayammed* (supra) and *Khoday Distilleries Limited* (supra) were different, there is evidently no consideration of the decision in *Upadhyay & Co.* (supra) which clinches the issue and assists us in drawing the conclusion we do hereunder.

34. Insofar as the order dated 13th August, 2024 passed in *N.F. Railway Vending and Catering Contractors Association Lumding Division* (supra) is concerned, the order records developments having taken place subsequent to the order dated 29th July, 2024 which, in the opinion of the Bench, required a further consideration. The order dated 13th August, 2024, for such reason, recalled the earlier order dated 29th July, 2024 and issued notice on the special leave petition as well as on the application for stay together with interim protection. The order dated 13th August, 2024 recalled the order dated 29th July, 2024 whereby hearing was adjourned *sine die* awaiting the reference made in *S. Narahari* (supra). No assistance can, thus, be drawn by the appellant from such order.

35. We have no doubt that entertaining a special leave petition in a case of the present nature would be contrary to public policy and can even tantamount to sitting in appeal over the previous order of this Court which has attained finality. The maxim *interest reipublicae ut sit finis litium* (it is for the public good that there be an end to litigation) would apply in all fours when it is found that proceedings challenging an order were not carried forward by withdrawing the special leave petition and the litigant has returned to the same court after some time mounting a challenge to the self-same order which was earlier under challenge and such challenge had not been pursued. This is a course of action which cannot be justified either in principle or precept.

36. For the foregoing reasons, the preliminary objections to the maintainability of the appeals raised by the respondent succeed.

37. The civil appeals are, consequently, dismissed. Connected applications, if any, stand closed.

38. If so advised, the appellant may pursue his remedy before the appropriate forum in accordance with law.