

STATE OF ASSAM

v.

RIPA SARMA

(Special Leave Petition (Civil) No. 2671 of 2011)

FEBRUARY 20, 2013

[SURINDER SINGH NIJJAR AND M.Y. EQBAL, JJ.]

Constitution of India, 1950 – Article 136 – Special Leave Petition – Against the judgment of High Court dismissing the review petition – Held: In absence of challenge to the main judgment of High Court, the SLP filed challenging only the subsequent order rejecting the review petition, is not maintainable.

Shanker Motiram Nale vs. Shiolalsing Gannusing Rajput (1994) 2 SCC 753; Suseel Finance and Leasing Company vs. M. Lata and Ors. (2004) 13 SCC 675; M.N. Haider and Ors. vs. Kendriya Vidyalyaya Sangathan and Ors. (2004) 13 SCC 677 – relied on.

Eastern Coalfields Limited vs. Dugal Kumar (2008) 14 SCC 295: (2008) 11 SCR 369 – held per incuriam.

Case Law Reference:

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|--------------------------|--------------------------|---------------|
| (1994) 2 SCC 753 | relied on | Para 5 |
| (2004) 13 SCC 675 | relied on | Para 5 |
| (2004) 13 SCC 677 | relied on | Para 5 |
| (2008) 11 SCR 369 | held per incuriam | Para 7 |

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 2671 of 2011.

From the Judgment & Order dated 26.02.2010 of the

A Gauhati High Court in Review Petition No. 8 of 2010.

Jayant Bhushan, Avijit Roy (for Corporate Law Group), Parthiv K. Goswami, S. Hari Haran, Charu Mathur, J.M. Sharma, Raka B. Phookan, Neha Tandon Phookan, Shailesh Madiyal for the Appearing parties.

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The following Order of the Court was delivered

O R D E R

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1. We have heard Mr. Avijit Roy, learned counsel for the petitioner-State of Assam as well as Mr. Jayant Bhushan, learned senior counsel appearing for the respondent at length.

2. Mr. Jayant Bhushan has raised a preliminary objection to the maintainability of the special leave petition.

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3. The petitioner herein has challenged the order passed by the Division Bench of the Gauhati High Court dated 26th February, 2010 dismissing the review petition filed by the petitioner seeking review of the judgment and order dated 20th November, 2007 rendered in Writ Appeal No. 279 of 2007. The Division Bench has dismissed the review petition on the ground that in substance, the applicant seeks rehearing of Writ Appeal No. 279 of 2007 on the basis of certain facts, which were not brought to the notice of the Court at the time of hearing of the appeal.

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4. It is not disputed before us that judgment and order dated 20th November, 2007 passed in Writ Appeal No. 279 of 2007 was not challenged by way of a special leave petition before this Court. In fact, the aforesaid judgment and order is not even challenged in the present special leave petition. Therefore, the special leave petition is restricted in its challenge, to the order passed by the Division Bench dismissing the review petition on 26th February, 2010.

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5. In support of the submission that the present special

leave petition is not maintainable, Mr. Bhushan has relied on three judgments of this Court. In *Shanker Motiram Nale versus Shiolalsing Gannusing Rajput* reported in (1994) 2 SCC 753, it has been held that the special leave petition which has been filed against the order rejecting the review petition would be barred under Order 47 Rule 7 of the Civil Procedure Code, 1908. The aforesaid judgment has been followed by this Court in *Suseel Finance and Leasing Company versus M. Lata and Others* reported in (2004) 13 SCC 675. This Court held that not only was it bound by the aforesaid judgment in *Shanker Motiram Nale* case, but was also in agreement with it. The law laid down in both the aforesaid judgments was further reiterated in the case of *M.N. Haider and Others versus Kendriya Vidyalaya Sangathan and Others* reported in (2004) 13 SCC 677.

6. In view of the above, the law seems to be well settled that in the absence of a challenge to the main judgment, the special leave petition filed challenging only the subsequent order rejecting the review petition, would not be maintainable.

7. Faced with this situation, Mr. Avijit Roy, learned counsel appearing for the State of Assam seeks to rely on a subsequent judgment of this Court in *Eastern Coalfields Limited versus Dugal Kumar* reported in (2008) 14 SCC 295. He has made a specific reference to paragraphs 22 and 23 of the judgment. In paragraph 23 of the judgment, it is observed as follows :-

“It was submitted by the learned counsel for the appellant that when the review petition was dismissed, the order passed by the Division Bench in intra-court appeal got merged in the order of review petition. But even otherwise, when the order passed in the review petition is challenged, it would not be proper to dismiss this appeal particularly when leave was granted in SLP after hearing the parties. We, therefore, reject the objection raised by the writ petitioner.”

A 8. A perusal of the aforesaid paragraph would clearly show that the judgments noticed by us in the earlier part of the order were not brought to the notice of the Court in Eastern Coalfields Limited case. This apart, the submission with regard to the merger of the main order with the order in review has been B merely noticed, and not accepted. The preliminary objection seems to have been rejected on the ground that since leave has been granted in the special leave petition, it would not be proper to dismiss the same without hearing the parties.

C 9. In the present case, the preliminary objection has been raised at the threshold. In addition, it is an inescapable fact that the judgment rendered in Eastern Coalfields Limited has been rendered in ignorance of the earlier judgments of the Benches of coequal strength, rendering the same *per incuriam*. D Therefore, it cannot be elevated to the status of *precedent*. In view of the above, we accept the preliminary objection raised by Mr. Jayant Bhushan, learned senior counsel.

10. The special leave petition is, accordingly, dismissed.

E 11. Since the special leave petition has been dismissed, no orders are required to be passed on the application for impleadment as party respondent.

K.K.T.

SLP Dismissed.