Union Of India And Ors vs West Coast Paper Mills Ltd. & Anr on 5 February, 2004

Equivalent citations: AIR 2004 SUPREME COURT 1596, 2004 AIR SCW 838, 2004 AIR - KANT. H. C. R. 910, 2004 (2) ALL CJ 909, (2004) 2 ALLMR 399 (SC), (2004) 1 CLR 370 (SC), (2004) 4 KANT LJ 465, (2004) 3 CTC 53 (SC), 2004 (2) ALL MR 399, 2004 (1) CLR 370, 2004 (1) SLT 909, 2004 (3) CTC 53, 2004 (2) ACE 226, 2004 (2) SCC 747, (2004) 2 JT 183 (SC), 2004 (2) SCALE 285, 2004 (1) LRI 552, 2004 ALL CJ 2 909, (2004) 2 PAT LJR 186, (2004) 135 STC 265, (2004) 1 SUPREME 1051, (2004) 2 ALL WC 1830, (2004) 4 CAL HN 67, (2004) 3 CIVLJ 546, (2004) 164 ELT 375, (2004) 113 ECR 330, (2004) 2 MAD LW 811, (2004) 2 RECCIVR 148, (2004) 2 ICC 641, (2004) 2 SCALE 285, (2004) 1 WLC(SC)CVL 358, (2004) 2 CURCC 7, (2004) 2 CURLJ(CCR) 157

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Bench: Chief Justice, S.B. Sinha, S.H. Kapadia

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           CASE NO.:
Appeal (civil)  1061-62 of 1998

PETITIONER:
Union of India and Ors.

RESPONDENT:
West Coast Paper Mills Ltd. & Anr.

DATE OF JUDGMENT: 05/02/2004

BENCH:
CJI, S.B. Sinha & S.H. Kapadia.

JUDGMENT:
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JUDGMENT S.B. SINHA, J :

Doubting the correctness of a two-Judge Bench decision of this Court in P.K. Kutty Anuja Raja & Anr. Vs. State of Kerala & Anr. [JT 1996 (2) SC 167 : (1996) 2 SCC 496], a Division Bench of this Court has referred the matter to a three-Judge Bench.

The factual matrix required to be taken note of is as under:

The respondents herein were transporting their goods through the branch line to the

> appellants from Alnavar to Dandeli wherefor the common rate fixed in respect of all commodities on the basis of weight was being levied as freight. However, a revision was made in the rate of freight w.e.f. 1.2.1964.
>
> Aggrieved thereby and dissatisfied therewith, the respondents herein filed a complaint petition before the Railway Rates Tribunal (hereinafter referred to as 'The Tribunal') challenging the same as unjust, unreasonable and discriminatory as the standard telescopic class rates on three times of inflated distance was adopted for levy of freight on goods traffic. The Tribunal by a judgment dated 18.4.1966 declared the said levy as unreasonable whereagainst the appellants herein filed an application for grant of special leave before this Court.

While granting special leave, this Court also passed a limited interim order which is in the following terms:

> "The Railway may charge the usual rates without inflation of the distance, and the Respondent will give a Bank guarantee to the satisfaction of the Register of this Court for Rupees Two Lakhs to be renewed each year until the disposal of the appeal. One month's time allowed for furnishing the Bank Guarantee. The stay petition is dismissed subject to the above."

Eventually, however, the said Special Leave Petition was dismissed by this Court on 14.10.1970.

A writ petition was filed by the respondent herein on 05.01.1972 which was marked as W.P. NO. 210/1972, and the same was disposed by the High Court on 29.10.1973 observing:

> "All these matters, in my opinion, cannot be properly adjudicated upon in a Writ Petition filed under Art. 226 of the Constitution. If so advised the petitioner could avail of the ordinary remedy of filing a suit for appropriate relief. If such a suit is filed, it will be open to the respondents to raise all available contentions in defence just as it is open to the petitioner to raise all available contentions in support of its claim. Having considered all relevant aspects, I am of the opinion, that this is a case where I should decline to exercise my discretion under Art. 226 of the Constitution.
>
> Subject to the aforesaid observations, this writ petition is dismissed."

Two suits thereafter were filed by the respondents on 12.12.1973 and 18.04.1974 which were renumbered later on as OS NO. 38/1982 and OS No.39/1982.

A contention that the said suits were barred by limitation was raised by the appellants herein stating that the cause of action for filing the same arose immediately after the judgment was passed by 'The Tribunal' on 18.4.1966 and, thus, in terms of Article 58 of the Limitation Act, 1963, they were required to be filed within a period of three years from the said date, as despite the fact that the Special Leave Petition was preferred thereagainst, no stay had been granted by this Court and, thus,

the period, during which the matter was pending before this Court, would not be excluded in computing the period of limitation. Having regard to the plea raised by the Plaintiff-Respondent in the aforementioned suits as regards the applicability of Sections 14 and 15 of the Limitation Act, 1963, the Trial Court held that the suits had been filed within the stipulated period. The High Court in appeal also affirmed the said view.

Mr. P.P. Malhotra, learned senior counsel appearing on behalf of the appellant, at the outset drew our attention to the fact that the Union of India has already complied with the direction of 'The Tribunal' by refunding the excess freight charged from the respondent for the period 18.4.1966 to 25.9.1966. The learned counsel, however, would contend that the suit for refund of excess amount of the freight for the disputed periods (a) 24.6.1963 to 1.2.1964, and (b) 1.2.1964 to 18.4.1966 were barred by limitation in terms of Article 58 of the Limitation Act, 1963, as the cause of action for filing the suit had arisen on the date on which such declaration was made by 'The Tribunal.

Mr. Malhotra would further contend that in absence of an order staying the operation of the judgment, it became enforceable and, thus, the plaintiff-respondent was required to file the suit within the period of limitation specified therefor. Furthermore, the learned counsel would urge that in terms of Section 46A of the Indian Railways Act, the judgment of the Tribunal being final, the starting period of limitation for filing the suit would be three years from the said date. Strong reliance in this behalf has been placed on Juscurn Boid and Another Vs. Pirthichand Lal [L.R. Indian Appeals 1918-1919 page 52], P.K. Kutty (supra), Maqbul Ahmad and others Vs. Onkar Pratap Narain Singh and others [AIR 1935 PC 85] and Secretary, Ministry of Works & Housing Govt. of India and Others Vs. Mohinder Singh Jagdev and Others[(1996) 6 SCC 229].

Mr. Harish N Salve, learned senior counsel appearing on behalf of the respondents, on the other hand, would submit that having regard to the fact situation obtaining in this case Article 113 of the Limitation Act shall apply and not Article 58 thereof. The learned counsel would urge that as admittedly this Court granted Special Leave to Appeal in favour of the appellants and passed a limited interim order, the judgment of the Tribunal was in jeopardy and, thus, cannot be said to have attained finality. Furthermore, the learned counsel would submit that when the doctrine of merger applies, the period of limitation would begin to run from the date of passing the appellate decree and not from the date of passing of the original decree. In support of the said contention, reliance has been placed on a decision of this Court in Kunhayammed and Others Vs. State of Kerala and Another [(2000) 6 SCC 359].

The plaintiff in this case has filed a suit for refund of the excess amount collected by the defendant-Railways for the period 24.6.1963 to 1.2.1964 and 1.2.1964 to 18.4.1966 with interest accrued thereupon. It is not in dispute that in terms of the provisions of the Indian Railways Act, as thence existing 'The Tribunal' was only entitled to make a declaration to the effect that the freight charged was unreasonable or excessive. It did not have any jurisdiction to execute its own order.

It may be true that by reason of Section 46A of Indian Railways Act the judgment of the Tribunal was final but by reason thereof the jurisdiction of this Court to exercise its power under Article 136 of the Constitution of India was not and could not have been excluded.

Article 136 of the Constitution of India confers a special power upon this Court in terms whereof an appeal shall lie against any order passed by a Court or Tribunal. Once a Special Leave is granted and the appeal is admitted the correctness or otherwise of the judgment of the Tribunal becomes wide open. In such an appeal, the court is entitled to go into both questions of fact as well as law. In such an event the correctness of the judgment is in jeopardy.

Even in relation to a civil dispute, an appeal is considered to be a continuation of the suit and a decree becomes executable only when the same is finally disposed of by the Court of Appeal.

The starting point of limitation for filing a suit for the purpose of recovery of the excess amount of freight illegally realised would, thus, begin from the date of the order passed by this Court. It is also not in dispute that the respondent herein filed a writ petition which was not entertained on the ground stated hereinbefore. The respondents were, thus, also entitled to get the period during which the writ petition pending, excluded for computing the period of limitation. In that view of the matter, the civil suit was filed within the prescribed period of limitation.

The Trial Judge as also the High Court have recorded a concurrent opinion that the respondents were entitled to the benefits of Sections 14 and 15 of the Limitation Act, 1963. We have no reason to take a different view.

It is beyond any cavil that in the event, the respondent was held to have been prosecuting its remedy bona fide before an appropriate forum, it would be entitled to get the period in question excluded from computation of the period of limitation.

Articles 58 and 113 of the Limitation Act read thus:

> "Description of Suit Period of Limitation Time from which period begins to run
>
> 58. To obtain any other declaration Three years When the right to sue first accrues
>
> 113. Any suit for which no period of limitation is provided elsewhere in this Schedule Three years When the right to sue accrues"

It was not a case where the respondents prayed for a declaration of their rights. The declaration sought for by them as regard unreasonableness in the levy of freight was granted by the Tribunal.

A distinction furthermore, which is required to be noticed is that whereas in terms of Article 58 the period of three years is to be counted from the date when 'the right to sue first accrues'; in terms of Article 113 thereof, the period of limitation would be counted from the date 'when the right to sue accrues'. The distinction between Article 58 and Article 113 is, thus, apparent inasmuch as the right to sue may accrue to a suitor in a given case at different points of time and, thus, whereas in terms of Article 58 the period of limitation would be reckoned from the date on which the case of action arose first whereas, in the latter the period of limitation would be differently computed depending upon the last day when the cause of action therefor arose.

The fact that the suit was not filed by plaintiff- respondent claiming existence of any legal right in itself is not disputed. The suit for recovery of money was based on the declaration made by 'The Tribunal' to the effect that the amount of freight charged by the appellant was unreasonable. It will bear repetition to state that a plaintiff filed a suit for refund and a cause of action therefor arose only when its right was finally determined by this Court and not prior thereto. This Court not only granted special leave but also considered the decision of the Tribunal on merit.

In Kunhayammed (supra), this Court held:

> "12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way - whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view."

It was further observed:

> "41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though at times the orders granting leave to appeal and dismissing the appeal are contained in the same order and at times the orders are quite brief. Nevertheless, the order shows the exercise of appellate jurisdiction and therein the merits of the order impugned having been subjected to judicial scrutiny of this Court.
>
> 42."To merge" means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve

> a loss of identity and individuality.(See Corpus Juris Secundum, Vol. LVII, pp. 1067-
>
> 68)"

(See also Raja Mechanical Company Pvt. Ltd. Vs. Commissioner of Central Excise, 2002 (4) AD (Delhi) 621) The question as regard applicability of merger with reference to the provisions for departmental appeal and revision had first been considered by this Court in Sita Ram Goel Vs. Municipal Board, Kanpur [1959 SCR 1148] stating :

> "The initial difficulty in the way of the appellant, however, is that departmental enquiries even though they culminate in decisions on appeals or revision cannot be equated with proceedings before the regular courts of law."

However, the said view was later on not accepted to be correct.

Despite the rigours of Section 3 of the Limitation Act, 1963, the provisions thereof are required to be construed in a broad based and liberal manner. We need not refer to the decisions of this Court in the matter of condoning delay in filing appeal or application in exercise of its power under Section 5 of the Limitation Act.

In The State of Uttar Pradesh Vs. Mohammad Nooh [1958 SCR 595] Vivian Bose, J. held that justice should be done in a common sense point of view stating:

> "I see no reason why any narrow or ultra technical restrictions should be placed on them. Justice should, in my opinion be administered in our courts in a common sense liberal way and be broadbased on human values rather than on narrow and restricted considerations hedged round with hair-splitting technicalities...."

However, in that case also a distinction was sought to be made between a judgment of a 'Court' and 'Tribunal'.

In S.S. Rathore Vs. State of Madhya pradesh [(1989) 4 SCC 582], noticing the earlier Constitution Benches decision of this Court in Mohammad Nooh (supra), Madan Gopal Rungta Vs. Secy. To the Government of Orissa [1962 Supp 3 SCR 906], Collector of Customs, Calcutta Vs. East India Commercial Co. Ltd. [(1963) 2 SCR 563] as well as 3-Judge Bench of this Court in Somnath Sahu Vs. State of Orissa [(1969) 3 SCC 384], this Court observed:

> "14. The distinction adopted in Mohammad Nooh case (1958 SCR 595 : AIR 1958 SC 86) between a court and a tribunal being the appellate or the revisional authority is one without any legal justification. Powers of adjudication ordinarily vested in courts are being exercised under the law by tribunals and other constituted authorities. In fact, in respect of many disputes the jurisdiction of the court is now barred and there is a vesting of jurisdiction in tribunals and authorities. That being the position, we see no justification for the distinction between courts and tribunals in regard to the

> principle of merger. On the precedents indicated, it must be held that the order of dismissal made by the Collector did merge into the order of the Divisional Commissioner when the appellant's appeal was dismissed on August 31, 1966."

Rathore's case (supra) was followed in Mohd. Quaramuddin (Dead) By LRS. Vs. State of A.P. [(1994) 5 SCC 118] and noticed in Kunhayammed (supra).

We may now, keeping in view the law laid down by this Court, as noticed hereinbefore, consider the decisions relied upon by Mr. Malhotra.

In Juscurn Boid (supra) the question which arose for consideration was as to in a suit for recovery of the purchase money paid for sale of a patni taluk under Bengal Regulation VIII of 1819, which had been set aside; what would be the date when cause of action therefor can be said to have arisen?

In that case several suits were filed. The sale was reversed in its entirety in the first suit. Stay was not granted in the other suits. In the peculiar fact situation obtaining therein it was held that under the Indian law and procedure when a original decree is not questioned by presentation of an appeal nor is its operation interrupted; where the decree on appeal is one of dismissal, the running of the period of limitation did not stop.

In Maqbul Ahmad (supra) the question which arose for consideration was as to whether subsequent to the passing of a preliminary decree in the mortgage suit, an application to obtain execution under the preliminary decree can be dismissed. In that case a preliminary mortgage decree was obtained on 7th May, 1917 which was amended in some respects on 22nd May, 1917. Some of the mortgagors who were interested in different villages comprised in the mortgage, appealed to the High Court against the preliminary decree. Two such appeals were filed. One appeal succeeded while the other failed. The decrees of the High Court disposing of those appeals were made on 7th June, 1920 whereafter the decree-holder proceeded to seek execution under the preliminary decree. In the aforementioned situation, it was held:

> "It is impossible to say, apart from any other objection, that the application to obtain execution under the preliminary decree was an application for the same relief as the application to the Court for a final mortgage decree for sale in the suit. That being so, it is not permissible, on the basis of S. 14 in computing the period of limitation prescribed, to exclude that particular period."

The question which falls for consideration in this case did not arise therein.

Before we advert to P.K. Kutty (supra) we may notice another decision of this Court in Sales Tax Officer, Banaras and others Vs. Kanhaiya Lal Makund Lal Saraf [AIR 1959 SC 135]. In that case an order of assessment was in question which came up before this Court. The question which arose for consideration therein was as to whether Section 72 of the Indian Contract Act had any application. This Court held that cause of action for filing the suit for recovery would arise from the date when such payment of tax made under a mistake of law became known to the party.

In P.K. Kutty (supra) an order of assessment under the Agricultural Income Tax was set aside by the High Court by a judgment dated 1st January, 1968. A civil suit was filed in the year 1974. The suit was held to be barred by limitation. A Contention was raised therein that the appellant had discovered the mistake on 5th October, 1971 when the Court dismissed the appeal filed by the State against the order passed by the High Court dated 1st January, 1968. This Court negatived the said plea stating:

> "3...We are unable to agree with the learned counsel. It is not in dispute that at his behest the assessment was quashed by the High Court in the aforesaid OP on 1-1-1968. Thereby the limitation started running from that date. Once the limitation starts running, it runs its full course until the running of the limitation is interdicted by an order of the Court."

Distinguishing Kanhaiya Lal (supra), it was observed:

> "5.. .We do not have that fact situation in this case. The appellant is a party to the proceedings and at his instance the assessment of agricultural income tax was quashed as referred to hereinbefore and having had the assessment quashed the cause of action had arisen to him to lay the suit for refund unless it is refunded by the State. The knowledge of the mistake of law cannot be countenanced for extended time till the appeal was disposed of unless, as stated earlier, the operation of the judgment of the High Court in the previous proceedings were stayed by this Court."

In Mohinder Singh Jagdev (supra) also this Court held:

> "7. The crucial question is whether the suit is barred by limitation ? Section 3 of the Limitation Act, 1963 (for short, "the Act") postulates that the limitation can be pleaded. If any proceedings have been laid after the expiry of the period of limitation, the court is bound to take note thereof and grant appropriate relief and has to dismiss the suit, if it is barred by limitation. In this case, the relief in the plaint, as stated earlier, is one of declaration. The declaration is clearly governed by Article 58 of the Schedule to the Act which envisages that to obtain "any other" declaration the limitation of three years begins to run from the period when the right to sue "first accrues". The right to sue had first accrued to the respondent on 10-9- 1957 when the respondent's services came to be terminated. Once limitation starts running, until its running of limitation has been stopped by an order of the competent civil court or any other competent authority, it cannot stop. On expiry of three years from the date of dismissal of the respondent from service, the respondent had lost his right to sue for the above declaration."

Unfortunately in P.K. Kutty (supra) and Mohinder Singh Jagdev (supra) no argument was advanced as regard applicability of doctrine of merger. The ratio laid down by the Constitution Benches of this Court had also not been brought to the court's notice.

In the aforementioned cases, this Court failed to take into consideration that once an appeal is filed before this Court and the same is entertained, the judgment of the High Court or the Tribunal is in jeopardy. The subject matter of the lis unless determined by the last Court, cannot be said to have attained finality. Grant of stay of operation of the judgment may not be of much relevance once this Court grants special leave and decides to hear the matter on merit.

It has not been and could not be contended that even under the ordinary civil law the judgment of the appellate court alone can be put to execution. Having regard to the doctrine of merger as also the principle that an appeal is in continuation of suit, we are of the opinion that the decision of the Constitution Bench in S.S. Rathore (supra) was to be followed in the instant case.

The facts obtaining in Mohinder Singh Jagdev (supra) being totally different, the same cannot said to have any application in the facts obtaining in the present case.

We, therefore, are of the opinion that P.K. Kutty (supra) does not lay down the law correctly and is overruled accordingly.

The matter may now be placed before an appropriate Bench for disposal of the appeals on merits.