

A M/S. SURESH CHANDRA KHANDELWAL AND CO.
v.
STATE OF M.P. AND ORS.

NOVEMBER 20, 2006

B [ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

C *Remedy—In LPA, appellant seeking permission of High Court to place reliance on decision rendered in another writ petition—High Court disposing of LPA observing that matter may be agitated in review—Review dismissed as not permissible—Appeal on the plea that appellant left without remedy—Held: Plea has substance—It is appropriate for High Court to hear the LPA and dispose of on merits.*

D Appellant filed writ petition before High Court for seeking certain benefits, which was dismissed. Appellant preferred LPA seeking permission of Court to place reliance on decision rendered in another writ petition. Division Bench disposed of LPA observing that the same can be agitated in a review petition. Accordingly review petition was filed which was also dismissed as not permissible.

E In appeal to this Court, appellant contended that it was left without remedy.

Partly allowing the appeal, the Court

F HELD: The plea of the appellant that it was being left without a remedy has substance. The Division Bench declined to interfere in the matter holding that the grievance could be looked into in a review petition. Single Judge observed that the review petition was not maintainable. In the peculiar circumstances, the order of the Single Judge is set aside. It would be appropriate for the Division Bench to hear the LPA and dispose of on merits in accordance with law. [176-D-F]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5075 of 2006.

From the Judgments and Orders dated 7-1-2004, 17-12-2004 and 8-9-2005 of the High Court of Madhya Pradesh, Indore Bench, Indore in Writ Petition

No. 67/1997, M.C.C. No. 461/2004 and L.P.A. No. 149/2005 respectively.

Sushil Kr. Jain, Ajit Chhabra, Punit Jain, Sarad Singhanian and Pratibha Jain for the appellant.

B.S. Banthia for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted.

Challenge in these appeals is to the order passed by a learned Single Judge of the Madhya Pradesh High Court, Indore Bench, dismissing the review petition filed by the appellant.

Background facts in a nutshell are as follows:

Appellant had claimed benefit available under the compounding method in payment of entertainment duty under the provisions of the Madhya Pradesh Entertainment Duties (Advertisement Tax) Act, 1936 (in short the 'Act'). Prayer was sought for to accord the benefit with effect from 1.4.1996 in place of 1.1.1997 as was granted. It was pleaded that though the benefit was granted by order dated 20.12.1996 rightly, it was not proper to confine it for the period from 1.1.1997 to 31.3.1997 instead of from 1.4.1996 to 31.3.1997. The writ petition was dismissed on the ground that no effective relief can be granted to the writ petitioner in 2003-04 in respect of a dispute which related to the year 1996-97. The order dated 7.1.2004 passed in writ petition No. 67/97 was assailed by filing a Letters Patent Appeal. According to the appellant, the filing of the LPA was necessitated because the writ petitioner had sought permission of the Court to place reliance on the decision rendered in another Writ Petition (MP No. 3398 of 1992) dated 21.11.2000. By order dated 26.2.2002, learned Single Judge directed that the matter shall be listed, so it can be taken note of at the time of final hearing. Contrary to the order, learned Single Judge did not take note of the order passed in a similar case. The Letters Patent Appeal was disposed of *inter alia* with the following observations:

"Having heard learned counsel for the parties and after perusal of the record, we are of the opinion that if according to the appellant, the question posed in the appellant's writ petition stood answered by a judgment pronounced by another Single Judge and also keeping in mind that the said judgment has neither been referred to nor considered, then it would be a fit case where appellant should apply for review

A of the said order so as to specifically bring it to the notice of the learned Single Judge and then to advance arguments.”

Accordingly, the review petition was filed on 16.8.2004 which was numbered as MCC No. 461 of 2004. The same was dismissed by the impugned order holding that review was not permissible. It was noted that in any event
B the decision on which reliance was placed by the appellant was not in the nature of a binding precedent.

Learned counsel for the appellant submitted that the LPA filed was not decided, because the Division Bench felt that the same can be agitated in a review petition. Contrary to what was stated by the Division Bench, learned
C Single Judge held that review petition was not maintainable. Consequentially, the appellant was left without a remedy.

Learned counsel for the respondents on the other hand submitted that the learned Single Judge has rightly held that the review petition was not
D maintainable.

We find substance in the plea of learned counsel for the appellant that it was being left without a remedy. The Division Bench declined to interfere in the matter holding that the grievance could be looked into in a review petition. Learned Single Judge observed that the review petition was not
E maintainable.

In the peculiar circumstances, we set aside the order of the learned Single Judge. It would be appropriate for the Division Bench to hear the LPA No. 106 of 2004. The same shall be heard and disposed of on merits in accordance with law.

F The appeals are allowed to the aforesaid extent with no order as to costs.

D.G. .

Appeal partly allowed.