CASE NO.:
Appeal (crl.) 5556-57 of 1993

PETITIONER:
K. RAJAMOULI

RESPONDENT:
A.V.K.N. SWAMY

DATE OF JUDGMENT: 03/05/2001

BENCH:
V.N, KHARE & S.N. PHUKAN

JUDGMENT:
JUDGMENT

2001 (3) SCR 473

The following Order of the Court was delivered :

A dispute out of the partnership firm arose between the appellant and the respondent With the result, the same was referred to arbitrations. The arbitrators appointed by the parties entered into the reference and appointed an Umpire, The Arbitrators, on 11.7.1987, gave an award for a sum of Rs. 7,00,000 to be paid by the appellant herein to the respondent in three instalments. The respondent filed a suit against the arbitrators and the appellant. The said suit was numbered as Suit No. 1377/87. The prayer in the suit was for a decree in terms of the arbitration award. The said suit was decreed for a sum of Rs. 6,50,000. It is relevant to mention here that the said decree did not provide for any pendente lite interest. Thereafter, the decree holder put the decree in execution. In the execution proceedings, the decree holder claimed pendente lite interest @ 24%. However, the claim of interest by the respondent-decree holder was rejected by the executing Court. The decree holder, thereafter, filed Civil Revision Petition before the High Court against the order passed by the executing Court. The said Revision Petition was dismissed by the High Court on 18.9.1991. The decree holder filed Interlocutory Application No. 1954/91 before the trial Court for amendment of the decree under Section 152 of the Code of Civil Procedure. The prayer in the said interlocutory application was to grant pendente lite interest. The trial Court, on 15.9.1992, rejected the said application of the decree holder. The decree holder, thereafter, preferred a Civil Revision Petition before the High Court against the order of the trial Court rejecting the application. The said Civil Revision Petition was numbered as C.R.P. No. 3077/92. The High Court, on 27,11.1992, allowed the said Civil Revision Petition and awarded interest to the decree holder by amending the decree of the trial Court. On 26,12.1992, the appellant herein filed a review before the High Court in C.R.P. No. 3077/ 1992. During the pungency of the said review petition, the appellant herein filed a Special Leave Petition against the main judgment of the High Court dated 27.11.1993 on 10,1.1993, Subsequently, the said special leave petition came up for hearing before a Bench of this Court on 1.2.1993. This Court summarily rejected the said special leave petition without assigning any reason. On 2.3.1993 the appellant filed a Review Petition before this Court in S.L.P.(c) No, 750/93. This review petition was dismissed on 16 4,1993, On 7.2.1993 the High Court dismissed the review petition. The appellant, thereafter, filed Special Leave Petition against the order dated 17.2.1993 passed by the High Court rejecting the review petition. This Court, on 29.10.1993, granted leave and the Special Leave Petition was converted into this civil appeal.

Mr. B. Kanta Rao, learned counsel appearing for the respondent raised a preliminary objection that earlier Special Leave Petition filed by the appellant having been dismissed by this Court, the second Special Leave Petition was not maintainable being barred by the principle of res

judicata. In support of his contention, learned counsel relied upon the decisions of this Court in Abbai Maligai Partnership Firm and Anr v, K, Santhakumaran and Ors,, [1998] 7 SCC 386, Sree Narayana Dharmsanghom Trust v, Swami Prakasanunda and Ors., [1997] 6 SCC 78 and State of Maharashtra and Anr. v. Prabhakar Bhikaji Ingle, [1996] 3 SCC 463. Learned counsel appearing for the appellant countered the argument by relying upon the decision of three Judge Bench of this Court in Kunhayammed and Ors. v, State of Kerala and Anr., [2000] 6 SCC 359. In this decision, it was held that on dismissal of a special leave petition without giving any reason, the main judgment of the High Court does not merge with the order of the Apex Court and, therefore, the order of the Apex Court does not constitute res judicata in case a Special Leave Petition filed against the order passed in the review petition against the main judgment of the High Court. In the said decision Abbai Maligai Partnership Firm's case (supra) which is also a three Judge Bench decision was considered and explained in paragraph 26 of the judgment which runs as under:

"The underlying logic attaching efficacy to an order of the Supreme Court dismissing SLP after hearing counsel for the parties is discernible from a recent three Judge Bench decision of this Court in Abbai Maligai Partnership Firm v, K. Santhakumaran, [1998] 7 SCC 386. In the matter of eviction proceeding initiated before the Rent Controller, the order passed therein was subjected to appeal and then revision before the High Court. Special leave petitions were preferred before the Supreme Court where the respondents were present on caveat. Both the sides were heard through the Senior Advocates representing them. The special leave petitions were dismissed. The High Court thereafter entertained review petitions which were highly belated and having condoned the delay reversed the orders made earlier in civil revision petitions. The orders in review were challenged by filing appeals under leave granted on special leave petition, This Court observed that what was done by the learned single Judge was 'subversive of judicial discipline.1. The facts and circumstances of the case persuaded this Court to form an opinion that the tenants were indulging in vexations litigations, abusing the process of the Court by approaching the High Court and the very entertainment of review petitions (alter condoning a long delay of 221 days) and then reversing the earlier orders was an affront to the order of this Court. However, the learned Judges deciding the case have nowhere in the course of their judgment relied on doctrine of merger for taking the view they have done. A careful reading of this decision brings out the correct statement of law and fortifies us in taking the view as under."

In nutshell, the decision in the case of Abbai Maligai Partnership Firm was distinguished on the ground that the question of merger of the judgment of the High Court with the order of Supreme Court dismissing the special leave petition was not considered and further in Abbai Maligai Partnership Firm's case (supra) the review petition was filed after a long delay of 221 days after the special leave petition was dismissed by the High Court which was held to be abuse of process of law.

Following the decision in the case of Kunhayammed & Ors, (supra) we are of the view that the dismissal of the special leave petition against the main judgment of the High Court would not constitute res judicata when a special leave petition is filed against the order passed in the Review Petition provided the review petition was filed prior to filing of special leave petition against the main judgment of the High Court The position would be different where after dismissal of the special leave petition against the main judgment a party files a review petition after a long delay on the ground that the party was prosecuting remedy by way of special leave petition. In such a situation the filing of review would be as abuse of the process of the law. We are in agreement with the view taken in Abbai Maligai Partnership Firm (supra) that if High Court allows the review petition filed after the special leave petition was dismissed after condoning the delay, it would be treated as affront to the order of the Supreme Court. But this is not the case here. In the present case, review

petition was filed well within time and since the review petition was not being decided by the High Court, the appellant filed the special leave petition against the main judgment of the High Court. We, therefore, over-rule the preliminary objection of the counsel for the respondent and hold that this Appeal arising out of special leave petition is maintainable.

Shri R. Venugopal Reddy, learned senior counsel appearing for the appellant then urged that where neither the Arbitrators nor the trial Court has awarded any pendente lite interest, it was not open to the High Court to exercise its jurisdiction under Section 152 of the Code of Civil Procedure apart from the fact that trial Court having refused to exercise that power, the same was then exercised in revision under Section 115 CPC by the High Court. The argument has merit.

Section 152 provides that a clerical or arithmetical mistake in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties. The question, therefore, arises is whether omission of pendente lite interest to the decree by the trial Court was an accidental or clerical error. In the case of Dwaraka Das v, State of M.P. and Am, [1999] 3 SCC 500, it was held that the omission in not granting the pendente lite interest could not be held to be accidental omission or mistake and therefore, neither the trial Court nor the appellate Court has power to award pendente lite interest under Section 152 of the Code of Civil Procedure. This decision is squarely applicable to the present case. In the present case, neither the arbitrators nor the trial court awarded pendente lite interest to the decree holder. The executing court also refused to grant pendente lite interest to the decree holder and the same was upheld by the High Court in the revision petition filed against the order of the executing court. However, the position would be different where the judgment of a court provides for pendente lite interest and decree omits to mention such interest. Such a mistake could be corrected under Section 152 CPC, The correct position of law is that a decree cannot add or subtract any relief except what has been provided in the judgment. But this is not the case here, Mr. B. Kanta Rao, learned counsel appearing for the respondent then relied upon a decision of this Court in Janakiramma lyer v. Nilakanta lyer, [1962] suppl. 1 SCR 206. In this case, the trial Court awarded mesne profit, however, in the decree it was written as net profit. On an application filed by the plaintiff for correction of the decree under Section 152 of the Code of Civil Procedure, the word ’net’ was substituted by ’mesne1. This was the case of typographical mistake and, therefore, not applicable to the present case.

For the aforesaid reasons, these appeals deserve to be allowed. We, accordingly, set aside the judgment under challenge. The civil appeals are allowed. There shall be no order as to costs.