

CASE NO.:
Appeal (civil) 1156 of 2006

PETITIONER:
Avinash Hansraj Gajbhiye

RESPONDENT:
Official Liquidator, M/s. V. Pharma. P. Ltd

DATE OF JUDGMENT: 17/02/2006

BENCH:
S.B. SINHA & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 23706 OF 2003)

P.K. BALASUBRAMANYAN, J.

1. Leave granted.

2. This appeal, as can be seen from paragraph 1 of the Petition for Special Leave to Appeal, challenges the order of the High Court of Bombay, Nagpur Bench dated 18.7.2003 whereby the Division Bench of the High Court refused to review its judgment in Company Appeal No. 3 of 2002 dated 19.9.2002 dismissing the appeal. Company Appeal No. 3 of 2002 was filed by the appellant, the legal representative of an ex-Director of M/s Vidarbha Pharmaceuticals Private Limited, a company that went into liquidation and which was ordered to be wound up in Company Petition No. 7 of 1985 by order dated 9.11.1998. Though that appeal was against the order dated 16.8.2002 in Company Application No. 56 of 2001, the appellant attempted to challenge the earlier orders dated 7.9.2001 and 22.7.1999, passed during the winding up proceedings. By the order dated 7.9.2001, the Company Judge had dismissed the application No. 40 of 1999 filed by the appellant for setting aside the order dated 22.7.1999 passed by him in a misfeasance application, holding that all the ex-Directors of the Company were jointly and severally liable under Section 543 (1)(a) of the Companies Act to pay to the Company an amount of Rs.6,29,220/- with interest thereon at the rate of 18% per annum with effect from 6.10.1996 along with the costs of the proceedings. The order dated 22.7.1999 that was sought to be challenged was the order on the misfeasance application. The order dated 16.8.2002 was one by which the Company Judge rejected an application for review filed by the petitioner seeking a review of the order passed on 7.9.2001. The appeal was in time only as regards the order dated 16.8.2002 refusing to review the earlier orders in misfeasance proceedings passed by the Company Judge. The appeal was not accompanied by even an application for condoning the delay in filing the appeal as against the orders dated 7.9.2001 and 22.7.1999 even though the challenges to them were clearly barred by limitation. The Division Bench of the High Court, therefore, ordered on 19.9.2002 that the orders passed by the Company Judge on 7.9.2001 and 22.7.1999 were not amenable to scrutiny for their sustainability in the appeal filed and the appeal had to be confined to one from the order dated 16.8.2002. Thereafter, the appeal was dismissed holding that the Company Judge was justified

in refusing to review the orders passed in the Misfeasance Application. The appellant then filed a petition to review the judgment in Company Appeal No. 3 of 2002. By order dated 18.7.2003, the application for review was dismissed. It is that order that is challenged in this appeal.

3. For the purpose of this case, we do not think it necessary to consider the question whether the appeal filed before the Division Bench under Section 483 of the Companies Act against an order refusing to review the orders on the Misfeasance Application was maintainable, the wide words of Section 483 notwithstanding (an order rejecting an application for review is not appealable even under the Code of Civil Procedure either under Order XLIII Rule 1(w) or Order XLVII Rule 7). We proceed on the assumption that the appeal was maintainable.

4. Learned counsel for the appellant submitted that the order of the Division Bench sought to be reviewed, proceeded on the basis that it was an appeal challenging the order dated 16.8.2002 passed by the Company Judge dismissing an application for review preferred by the appellant and the order dated 16.8.2002 passed by the Company Judge and the challenge thereto, included a challenge to the prior orders dated 7.9.2001 and 22.7.1999. This argument cannot be accepted. The order dated 16.8.2002 was that the Petition for review filed by the appellant seeking a review of the order dated 7.9.2001 passed in Company Application No. 40 of 1999, which was one for recalling the order dated 22.7.1999 was liable to be dismissed. The Company Judge after referring to the facts leading to that application and considering the merits of that application held that there was no error apparent on the face of the record which justified a review of the order dated 7.9.2001. The application for review was thus dismissed on 16.8.2002. It was this order that was dealt with in Company Appeal No. 3 of 2002 by the Division Bench in its order which was sought to be reviewed. The order specified that the appeal was against the order dated 16.8.2002. Therefore, the application for review filed by the appellant before the Division Bench could be treated only as an application for review of the order dated 19.9.2002 refusing to interfere with the order dated 16.8.2002. It is not possible to accept the argument of learned counsel for the appellant that the Division Bench while exercising its review jurisdiction or when called upon to exercise its review jurisdiction was bound to consider the reviewability or correctness of all the prior orders including the order on the review petition.

5. While dismissing the Petition for review of the order dated 7.9.2001, on 16.8.2002, the Company Judge found on the basis of the material on record of Company Application No. 40 of 1999 and the contentions sought to be raised by the appellant that there was no error apparent on the face of the record in the order dated 7.9.2001. Therefore, what was involved in Company Appeal No. 3 of 2002 was only the correctness of that order of the Company Judge and the Division Bench by its judgment dated 19.9.2002, found no reason to interfere. The review was sought by the appellant on the basis of certain additional material which according to him had relevance and the Company Judge had found that no ground based on discovery of new and important matter which after the exercise of due diligence was not within the knowledge of the appellant or could not be produced by him at the time when the original order was passed,

was made out. This finding by the Company Judge was affirmed by the Division Bench in its order dated 19.9.2002. When the appellant sought a review of that order, as indicated earlier, the Division Bench considered the conduct of the appellant right through the proceedings and found that the appellant was indulging in dilatory tactics just to thwart the order passed by the Company Judge on the misfeasance application. The court also found that there was no ground made out for reviewing its order dated 19.9.2002. On a consideration of the relevant aspects, we find that the Division Bench and the learned single Judge were both justified in not acceding to the prayer for review made by the appellant.

6. Learned counsel for the appellant submitted that the order on the misfeasance application was made without the appellant, who was only a legal representative of one of the Directors, really getting an opportunity to put forward his contentions. But on the materials, it was found that he had such an opportunity, a notice in that behalf having been taken out to him and served on him. His plea that he had no notice was found to be unacceptable. It is also seen that instead of taking appropriate steps at appropriate times, the appellant had indulged in initiating proceedings one after another which were all found to be untenable and without merit. In the circumstances, one can only say that the appellant has to thank himself for the situation he finds himself in, even if there is any merit in his claims. The High Court cannot be faulted for refusing to review its order dismissing the Company Appeal, or in dismissing the Company Appeal itself.

7. Thus, we are satisfied that no ground is made out for interference with the order of the High Court challenged in this appeal. The order of the High Court is confirmed and this appeal is dismissed.