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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 18.11.2025***
Judgment pronounced on: 19.12.2025

\+ LPA 891/2011 & CM APPL. 19817/2011 (Stay)

UNION OF INDIA & ANR. .....Appellants

Through: Mr. Arnav Kumar, Ms Savi Garga & Mr. Adit Garg, Advs.

versus

BEST LABORATORIES PVT. LTD. .....Respondent

Through: Mr. Ashish Verma, Mr. Akhil Ranganathan, Mr. Saksham Thareja, Mr. Nikhil Thakur & Ms. Kriti, Advs.

\+ LPA 859/2013 & CM APPL. 18085/2013 (Addl. Doc.)

SHIMAL INVESTMENT AND TRADING CO (PRESENTLY KNOWN AS RHC HOLDING PRIVATE LIMITED) .....Appellant

Through: Appearance not given.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Arnav Kumar, Ms Savi Garga & Mr. Adit Garg, Advs.

\+ LPA 894/2013 & CM APPL. 31989/2017 (Dir.)

UNION OF INDIA & ANR. .....Appellants

Through: Mr. Arnav Kumar, Ms Savi Garga & Mr. Adit Garg, Advs.

versus

SHIMAL INVESTMENT AND TRADING CO.
.....Respondent

Through: Appearance not given.

\+ LPA 94/2019

M/S AMKAY LABORATORIES PVT. LTD. .....Appellant

Through: Mr. Piyush Sharma, Mr.Anuj Kumar Sharma & Mr. Aditya Dikshit, Advs.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. Arnav Kumar, Ms Savi Garga & Mr. Adit Garg, Advs.

\+ LPA 96/2019

M/S AMKAY LABORATORIES PVT. LTD. .....Appellant

Through: Mr. Piyush Sharma, Mr. Anuj Kumar Sharma & Mr. Aditya Dikshit, Advs.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Appearance not given.

\+ LPA 132/2019 & CM APPL. 9401/2019 (stay)

UNION OF INDIA & ANR. .....Appellants

Through: Mr. Vikram Jetly, CGSC with Ms. Shreya Jetly, Adv.

versus

M/S HESA PHARMACEUTICA .....Respondent

Through: Mr. R Sudhinder, Ms. Prerana

Amitabh & Ms. Anushka Sharma, Advs.

\+ LPA 151/2019 & CM APPL. 10054/2019 (stay)

UNION OF INDIA & ANR. .....Appellants

Through: Mr. Arnav Kumar, Ms Savi Garga & Mr. Adit Garg, Advs.

versus

M/S AMKAY LABORATORIES PRIVATE LTD. .....Respondent

Through: Mr. Piyush Sharma, Mr.Anuj Kumar Sharma & Mr. Aditya Dikshit, Advs.

\+ LPA 157/2019 & CM APPL. 10150/2019 (stay)

UNION OF INDIA & ANR. .....Appellants

Through: Mr. Arnav Kumar, Ms Savi Garga & Mr. Adit Garg, Advs.

versus

M/S AMKAY LABORATORIES PRIVATE LTD. .....Respondent

Through: Mr. Piyush Sharma, Mr. Anuj Kumar Sharma & Mr. Aditya Dikshit, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR J.

1. The present batch of Appeals primarily raises challenges on two issues, which are stated to stand covered by the Judgment of the

Allahabad High Court in ***T.C. Healthcare Pvt. Ltd. and Ors. v. Union of India***[1]. The said Judgment was subsequently affirmed by a three-Judge Bench of the Hon'ble Supreme Court in ***T.C. Healthcare Pvt. Ltd. and Ors. v. Union of India***[2].

2. As the present batch of Appeals raises common issues which are stated to have already been conclusively settled by the aforesaid Judgments and no further adjudication is asserted to be necessary, we propose to dispose of the present batch of Appeals by way of this common Judgment.

3. For the sake of clarity and consistency, in the present Judgment, we propose to refer to the governmental authorities collectively as the "***Union of India***", while the pharmaceutical companies that approached the learned Single Judge by way of writ petitions shall be referred to as the "***Private Parties***".

4. The Judgment of the Hon'ble Supreme Court in ***T.C. Healthcare*** *(supra)* was thereafter sought to be reviewed by the Union of India; however, the Review Petition came to be dismissed by the Hon'ble Supreme Court both on the ground of delay as well as on merits.

5. The matter did not conclude at the stage of review, as the Union of India proceeded to file a Curative Petition before the Hon'ble Supreme Court, which too was dismissed *vide* order dated 24.08.2022.

6. The two main issues that Union of India has raised in these Appeals are as follows:

(a) The issue with respect to the recovery of the trade margin of 16% as overcharge amount, and

[1] 2010 SCC OnLine All 834
[2] 2020 15 SCC 117.

(b) The issue with respect to liability to pay interest in respect of the period prior to the order directing the deposit of overcharged amount.

7. Learned Counsel appearing for the Union of India would fairly concede that the issues raised in the present Appeals were duly considered by the Allahabad High Court and were conclusively decided against the Union of India. However, he would submit that although these issues were examined by the Allahabad High Court, they did not find express articulation or consideration in the Judgment of the Hon'ble Supreme Court. Consequently, it is contended that the said Judgment does not operate as a binding precedent on this Court in respect of the issues raised herein.

8. The issues arising in the present Appeals, which had earlier fallen for consideration before the Allahabad High Court in ***T.C. Healthcare*** *(supra)*, were examined and decided in the following terms:

> "**48.** The next submission of the petitioners that maximum retail price is fixed giving trade margin of 16% and the petitioners never received the aforesaid margin. The said amount had never received by it, it cannot be recovered as overcharge amount. Under paragraph 13 the manufacturer is liable to deposit the amount accrued due to charging of price higher than those fixed. The word "accrue" has been defined in Webster Comprehensive Dictionary Encyclopedic Edition in following manner: -
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> > "ac-crue v.i. -crued, cru-ing 1 To come as a natural result or increment, as by growth: with to. 2 To arise as an addition, accession, or advantage; accumulate, as the interest on money: with from. 3 Law To become established as a permanent right - n. A loop or false mesh in network which increases the number of meshes in a given row. [< obs. n. accrue an accession
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> **49.** The word "accrued" has been used in relation to manufacturer who is being asked to deposit the overcharge amount. By overcharge the amount accrued has to be determined and realised. Paragraph 13 of the DPCO 1995 does not use the phrase "deposit of overcharge amount". Paragraph 19 of the DPCO 1995 deals with

price of formulation sold to the dealer. Paragraph 19 of the DPCO 1995 is as follows:-

> "19. Price of formulations sold to the dealer:
>
> (1) A manufacturer, distributor or wholesaler shall sell a formulation to a retailer, unless otherwise permitted under the provisions of this Order or any order made thereunder, at a price equal to the retail price, as specified by an order or notified by the Government, (excluding excise duty, if any) minus sixteen percent thereof in the case of Scheduled. drugs.
>
> (2) Notwithstanding anything contained in sub-paragraph (1), the Government may be a general or special order fix, in public interest, the price of formulation sold to the wholesaler or retailer in respect of any formulation the price of which has been fixed or revised under this Order.

50. Under paragraph 19 of the DPCO 1995 the manufacturer is obliged to sell a retailer at a price equal to the retail price as specified by an order or notified by the Government minus 16% thereof in case of scheduled drug. For example, retail price of a drug is Rs. 100/-, the manufacturer is obliged to sell the drug to retailer for an amount of Rs. 84/ as 16% has been treated to be trade margin. The amount of 16% which is statutorily provided as trade margin for a retailer cannot be said to be accrued to the manufacturer. Thus while computing the overcharge amount the allowance of amount of 16% as provided under sub-paragraph (1) of Paragraph 19 has to be given to the manufacturer. The amount which has never accrued to the manufacturer cannot be recovered as overcharge amount. Thus the submission of the petitioners that while calculating the overcharge amount 16% has to be deducted, which had never accrued to the manufacturers, is accepted.

51. The last submission of the petitioners is that the petitioners are not liable to pay interest prior to the date of issue of orders dated 12th September, 2008 and 20th October, 2008 directing deposit of the overcharge amount. Paragraph 13 of the DPCO 1995 is enabling power given to the Government to require the overcharge amount to be deposited by notice. The notice for deposit of the overcharge is, thus, contemplated by paragraph 13 of the DPCO 1995 itself.

52. The liability to pay interest has been specifically provided under Section 7-Commodities Act. 1955 is quoted as below: -

> "7-A. Power of Central Government to recover certain amounts as arrears of land revenue (or as a public demand). (1) Where any person, liable to-
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> (a) pay any amount in pursuance of any order made under Section 3, or
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> (b) deposit any amount to the credit of any Account or Fund constituted by or in pursuance of any order made under that section,

> makes any default in paying or depositing the whole or any part of such amount, the amount in respect of which such default has been made shall [whether such order was made before or after the commencement of the Essential Commodities (Amendment) Act, 1984, and whether the liability of such person to pay or deposit such amount arose before or after such commencement] be recoverable by Government together with simple interest due thereon computed at the rate of [fifteen per cent) per annum, from the date of such default to the date of recovery of such amount, as an arrear of land revenue [or as a public demand].'
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> **53.** Section 7A of the Essential Commodities Act, 1955 contemplates recovery by Government with simple interest on the due amount in case any default is committed in payment by a person liable to pay any amount. The order has been passed in this case by respondent No. 2 directing for deposit of overcharge amount by orders dated 12th September, 2008 and 24th October, 2008. The said orders direct deposit of the said amount within fifteen days from issue of the letter falling which recovery proceedings under the provisions of the day Essential Commodities Act, 1955 were to be initiated. The default of the petitioner to pay overcharge amount shall arise after fifteen days from issue of the order. The liability to pay simple interest shall arise after a default is committed as per Section 7A(1). Thus no interest could have been charged prior to issue of the order dated 12th September, 2008 and 24th October, 2008. The orders dated 12th September, 2008 and 24th October, 2008 insofar as it demands respective amount towards interest cannot be sustained."

9. It is the contention of the learned counsel for the Union of India that these two issues have not been decided by the Hon'ble Supreme Court in so far as there is no discussion on these aspects in the Judgment of the Hon'ble Supreme Court.

10. He would thus contend that these issues were *sub silentio* and as no determination on merits had been accorded by the Hon'ble Supreme Court, the same would not operate as the law of the land under Article 141 of the **Constitution of India**[3] and resultantly, would require a determination by this Court.

[3] Constitution

11. In support of his contention that the issues that have not been expressly determined by the Hon'ble Supreme Court, and that the same could not operate as binding law, the learned counsel for the Union of India has relied upon the Judgments of the Hon'ble Supreme Court in ***S. Shanmugavel Nadar v. State of Tamil Nadu and Another***[4] [paragraphs 2-5 and 7], ***Secunderabad Club v. CIT***[5] [paragraphs 14-17, 23 and 24], ***Odisha State Financial Corporation v Vigyan Chemical Industries & Ors.***[6] [paragraph 13]**,** ***Kunhayammed and Ors v. State of Kerala and Anr***[7] [paragraphs 27 and 40] and the judgement of the Allahabad High Court in ***Paresh Yadav & Ors. v. State of U.P & Ors.***[8] [paragraphs 2, 6-8, 31-32]**.**

12. He would further contend that since the said issues were not accorded consideration by the Hon'ble Supreme Court, the Judgment of the Allahabad High Court could not be held to have merged into the Judgment of the Hon'ble Supreme Court and, therefore, these issues have not been conclusively decided.

13. The arguments of the learned Counsel for the Union of India were limited to this aspect and no others.

14. ***Per Contra***, learned counsel for the Private Parties would strenuously contend that there arises no occasion for a determination on these issues since, after the adjudication of the same by the Allahabad High Court, the matter having travelled all the way up to the Hon'ble Supreme Court, and thereafter sought to be reviewed and further being the subject matter of a Curative Petition, no further

[4] (2002) 8 SCC 361
[5] 2023 SCC OnLine SC 1004
[6] 2025 SCC OnLine SC 1609
[7] (2000) 6 SCC 359
[8] 2014 SCC OnLine All 12956

determination on these issues is necessitated and the same stand concluded.

15. Learned counsel appearing for the Private Parties would further contend that the *doctrine of merger* squarely applies to the present case. It would be submitted that the Special Leave Petitions, including one preferred by the Union of India, were granted leave and consequently converted into Civil Appeals. Upon adjudication, the Hon'ble Supreme Court conclusively affirmed the Judgment of the Allahabad High Court. As a result, by operation of the *doctrine of merger*, the Judgment of the Allahabad High Court stands merged with that of the Hon'ble Supreme Court and, therefore, is binding in the present case.

16. To further augment their stand, the learned counsel for the Private Parties would rely upon the judgement of the Hon'ble Supreme Court in ***Exporian Developers Private Limited v Himanshu Dewan and Ors.***[9]***, Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd***[10]***.,*** and ***CIT v. Amritlal Bhogilal & Co.***[11]***.***

ANALYSIS:

17. We have heard learned counsel for the Union of India and the Private Parties at length. We have already extracted the relevant paragraphs from the Judgment of the Allahabad High Court, along with the issues articulated therein, which were carried in Civil Appeal before the Hon'ble Supreme Court and were duly examined.

[9] 2023 SCC Online SC 1029
[10] (2019) 4 SCC 376
[11] (1958) 34 ITR 130

18. The Hon'ble Supreme Court, while considering the various Civil Appeals preferred by the parties therein, including Union of India, against the said Judgment, succinctly crystallised the core issue under challenge and, at paragraph 4 of ***T.C. Healthcare*** *(supra)*, summarised it in the following terms:

> "**4.** Before the High Court, it was contended by the present appellants that the price fixation exercise was undertaken arbitrarily and was the result of non-application of mind. It was urged that the notification overlooked the cost and efficiency of major manufacturers. It was also urged that the price fixation through the impugned notifications was ultra vires Para 7 of the DPCO, as there were no price norms in respect of formulations that used the sustained release technology or method in the final product for effective dose delivery. It was further urged that the respondents had no figures or details with respect to cost or efficiency of major manufacturers and that consequently, they were obliged to call for such particulars. Similarly, in respect of Unicontin, it was urged by Modi that there were no norms in respect of the continuous release technology used for effective and efficacious drug delivery."

19. It is thus contended that the Hon'ble Supreme Court was expressly seized of the issue pertaining to trade margin.

20. Learned counsel appearing for the Private Parties have specifically contended that the two issues sought to be reopened in the present proceedings were expressly raised as grounds in the Special Leave Petition/ Civil Appeal preferred by the Union of India. It has been submitted that the Hon'ble Supreme Court rendered its Judgment after considering the entire conspectus of facts and submissions placed before it. Since these issues formed an integral part of the grounds of challenge, it has been contended, that there arises no occasion or justification for this Court to undertake a re-examination or re-consideration of the same.

21. After the conclusion of the hearing in these Appeals, we requested learned counsel appearing for both sides to place on record copies of the Special Leave Petition/Civil Appeal, as well as the Review and the Curative Petitions that were subsequently filed. Upon a careful perusal thereof, we have verified that the issues in question did indeed form part of the pleadings and were specifically raised in those proceedings.

22. We deem it appropriate to advert to paragraph 13 of the Judgment of the Hon'ble Supreme Court in ***T.C. Healthcare*** *(supra)*, wherein the Hon'ble Supreme Court, while expressly affirming the decision of the High Court, categorically observed that *"…. this Court, therefore, sees no reason to differ from the conclusions and findings of the High Court*." Paragraph 13 of the Hon'ble Supreme Court's Judgment reads as follows:

> "**13.** According to pharmacopoeias and the US Food and Drug Administration's definitions, modifications in drug release are often desirable to increase the stability, safety and efficacy of the drug, to improve the therapeutic outcome of the drug treatment and/or to increase patient compliance and convenience of administration. In that context, the use of the term "sustained release" denotes the systems that maintain the rate of drug release over a sustained period. For example, if the release of the drug from the dosage form is sustained such that the release takes place throughout the entire gastrointestinal tract, one could prolong the time interval of drug concentration in the therapeutic range. This in turn may reduce the frequency of dosing, for example from three times a day to once a day. Sustained release dosage forms achieve this mostly by the use of suitable polymers, used either to coat granules or tablets (reservoir systems) or to form a matrix in which the drug is dissolved or dispersed (matrix systems). Controlled release systems are drug delivery systems in which the drug is released in a predetermined pattern over a fixed period of time. Therefore, the materials on the record show that the DPCO was aware of the existence of different systems of drug delivery; it specifically talked of sustained release. If the appellants wished to say that the systems used by them were unique or different, it was open for them to have so demonstrated. Their omission to do so,

> did not in any way affect their obligation to follow the pricing norms and ceiling prices fixed by the impugned notifications. This Court, therefore, sees no reason to differ from the conclusions and findings of the High Court."
>
> ***(emphasis supplied)***

23. We are, therefore, of the considered view that once the Hon'ble Supreme Court has consciously and comprehensively affirmed the Judgment of the Allahabad High Court in its entirety, without any qualification or caveat, and bearing in mind that the grounds relating to the present issues were expressly raised before the Apex Court in the Special Leave Petition/Civil Appeal as well as in the Review Petition, the Judgment of the Hon'ble Supreme Court would conclusively and comprehensively govern the field. Consequently, the issues as decided by the Allahabad High Court, and as affirmed by the Hon'ble Supreme Court, stand settled in their entirety. Accordingly, the issues raised in the present matters stand conclusively adjudicated, and the Judgment of the Allahabad High Court is applicable and binding in the present case.

24. The applicability, contours, and legal consequences of the *doctrine of merger* stand authoritatively and conclusively settled by the Hon'ble Supreme Court through a long and consistent line of decisions. Of particular significance is the decision of a three-Judge Bench in ***Kunhayammed*** *(supra)*, which has been expressly affirmed, explained, and reiterated by another three-Judge Bench in ***Khoday Distilleries Ltd.*** *(supra)*.

25. The Judgment in ***Khoday Distilleries Ltd.*** *(supra)* undertakes an exhaustive analysis of the jurisprudence on the subject and delineates, with precision, the circumstances in which the *doctrine of merger* would and would not apply. The relevant portion of ***Khoday***

Distilleries *(supra)*, which reproduces and affirms the conclusions drawn in ***Kunhayammed*** *(supra)*, is reproduced hereunder for ready reference:

> "**23.** After elaborate discourse on almost all the aspects, the Court gave its conclusions and also summed up the legal position from paras 39 to 44. We reproduce the same hereunder: (***Kunhayammed* v. *State of Kerala*, (2000) 6 SCC 359**, SCC pp. 382-84)
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> > "***39.*** We have catalogued and dealt with all the available decisions of this Court brought to our notice on the point at issue. It is clear that as amongst the several two-Judge Bench decisions there is a conflict of opinion and needs to be set at rest. The source of power conferring binding efficacy on decisions of this Court is not uniform in all such decisions. Reference is found having been made to (*i*) Article 141 of the Constitution, (*ii*) doctrine of merger, (*iii*) res judicata, and (*iv*) rule of discipline flowing from this Court being the highest court of the land.
> >
> > ***40.*** A petition seeking grant of special leave to appeal may be rejected for several reasons. For example, it may be rejected (*i*) as barred by time, or (*ii*) being a defective presentation, (*iii*) the petitioner having no locus standi to file the petition, (*iv*) the conduct of the petitioner disentitling him to any indulgence by the court, (*v*) the question raised by the petitioner for consideration by this Court being not fit for consideration or deserving being dealt with by the Apex Court of the country and so on. The expressions often employed by this Court while disposing of such petitions are — "heard and dismissed", "dismissed", "dismissed as barred by time" and so on. May be that at the admission stage itself the opposite party appears on caveat or on notice and offers contest to the maintainability of the petition. The Court may apply its mind to the meritworthiness of the petitioner's prayer seeking leave to file an appeal and having formed an opinion may say "dismissed on merits". Such an order may be passed even ex parte, that is, in the absence of the opposite party. In any case, the dismissal would remain a dismissal by a non-speaking order where no reasons have been assigned and no law has been declared by the Supreme Court. The dismissal is not of the appeal but of the special leave petition. Even if the merits have been gone into, they are the merits of the special leave petition only. In our opinion neither doctrine of merger nor Article 141 of the Constitution is attracted to such an order. Grounds entitling exercise of review jurisdiction conferred

by Order 47 Rule 1 CPC or any other statutory provision or allowing review of an order passed in exercise of writ or supervisory jurisdiction of the High Court (where also the principles underlying or emerging from Order 47 Rule 1 CPC act as guidelines) are not necessarily the same on which this Court exercises discretion to grant or not to grant special leave to appeal while disposing of a petition for the purpose. Mere rejection of a special leave petition does not take away the jurisdiction of the court, tribunal or forum whose order forms the subject-matter of petition for special leave to review its own order if grounds for exercise of review jurisdiction are shown to exist. Where the order rejecting an SLP is a speaking order, that is, where reasons have been assigned by this Court for rejecting the petition for special leave and are stated in the order still the order remains the one rejecting prayer for the grant of leave to appeal. The petitioner has been turned away at the threshold without having been allowed to enter in the appellate jurisdiction of this Court. Here also the doctrine of merger would not apply. But the law stated or declared by this Court in its order shall attract applicability of Article 141 of the Constitution. The reasons assigned by this Court in its order expressing its adjudication (expressly or by necessary implication) on point of fact or law shall take away the jurisdiction of any other court, tribunal or authority to express any opinion in conflict with or in departure from the view taken by this Court because permitting to do so would be subversive of judicial discipline and an affront to the order of this Court. However this would be so not by reference to the doctrine of merger.

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.)

43. We may look at the issue from another angle. The Supreme Court cannot and does not reverse or modify the decree or order appealed against while deciding a petition for special leave to appeal. What is impugned before the Supreme Court can be reversed or modified only after granting leave to appeal and then assuming appellate jurisdiction over it. If the order impugned before the Supreme Court cannot be reversed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage.

44. To sum up, our conclusions are:

(*i*) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of the law.

(*ii*) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is up to the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(*iii*) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment, decree or order appealed against while exercising its appellate jurisdiction and not while

exercising the discretionary jurisdiction disposing of the petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(*iv*) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(*v*) If the order refusing leave to appeal is a speaking order i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(*vi*) Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(*vii*) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC."

24. Having noted the aforesaid two judgments and particularly the fact that the earlier judgment in ***Abbai Maligai Partnership Firm* v. *K. Santhakumaran,* (1998) 7 SCC 386** is duly taken cognizance of and explained in the latter judgment, we are of the view that there is no conflict insofar as ratio of the two cases is concerned. Moreover, ***Abbai Maligai Partnership Firm* v. *K. Santhakumaran,* (1998) 7 SCC 386** was decided on its peculiar facts, with no discussion on any principle of law, whereas ***Kunhayammed* v. *State of Kerala,* (2000) 6 SCC 359** is an elaborate discourse based on well-accepted propositions of law which are applicable for such an issue. We are, therefore, of the

view that detailed judgment in ***Kunhayammed* v. *State of Kerala*, (2000) 6 SCC 359** lays down the correct law and there is no need to refer the cases to larger Bench, as was contended by the counsel for the appellant.

25. While taking this view, we may also point out that even in ***K. Rajamouli* v. *A.V.K.N. Swamy*, (2001) 5 SCC 37** this Court took note of both these judgments and explained the principle of res judicata in the following manner: (SCC p. 41, para 4)

> "***4.*** Following the decision **in *Kunhayammed* v. *State of Kerala*, (2000) 6 SCC 359** 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 an abuse of the process of the law. We are in agreement with the view taken in ***Abbai Maligai Partnership Firm* v. *K. Santhakumaran*, (1998) 7 SCC 386** that if the High Court allows the review petition filed after the special leave petition was dismissed after condoning the delay, it would be treated as an affront to the order of the Supreme Court. But this is not the case here. In the present case, the 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, overrule the preliminary objection of the counsel for the respondent and hold that this appeal arising out of the special leave petition is maintainable."

26. From a cumulative reading of the various judgments, we sum up the legal position as under:

26.1. The conclusions rendered by the three-Judge Bench of this Court in ***Kunhayammed* v. *State of Kerala*, (2000) 6 SCC 359** and summed up in para 44 are affirmed and reiterated.

26.2. We reiterate the conclusions relevant for these cases as under: (***Kunhayammed* v. *State of Kerala*, (2000) 6 SCC 359**, SCC p. 384)

> "**(*iv*)** An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the

Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(*v*) If the order refusing leave to appeal is a speaking order i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(*vi*) Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(*vii*) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC."

26.3. Once we hold that the law laid down **in *Kunhayammed* v. *State of Kerala,* (2000) 6 SCC 359** is to be followed, it will not make any difference whether the review petition was filed before the filing of special leave petition or was filed after the dismissal of special leave petition. Such a situation is covered in para 37 **of *Kunhayammed* v. *State of Kerala,* (2000) 6 SCC 359.**"

(*emphasis supplied*)

26. Similarly, another three-Judge Bench of the Hon'ble Supreme Court in ***Vishnu Vardhan v. State of U.P.***[12] has once again examined the *doctrine of merger* in depth, drawing upon both Indian and English jurisprudence, and reiterating that the doctrine is neither rigid nor of universal application but is fundamentally dependent upon the

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nature of jurisdiction exercised by the superior court and the scope of the appellate or revisional power invoked. The relevant extract from ***Vishnu Vardhan*** (*supra*) is reproduced hereinbelow:

> "**MERGER**
>
> *****
>
> **91.** Since arguments in extenso were advanced on the aspect of non-applicability/applicability of the doctrine of merger, we need to notice what it means, how this Court has applied it or declined to apply it to the cases before it, and finally how relevant it is to the present exercise.
>
> **92.** As per Black's Law Dictionary (10th Edition), 'merger' means "the act or an instance of combining or uniting; Civil Procedure. the effect of a judgment for the plaintiff, which absorbs any claim that was the subject of the lawsuit into the judgment, so that the plaintiff's rights are confined to enforcing the judgment".
>
> **93.** A brief overview of English law on the doctrine of merger by judgment reveals that when an action prevails, the cause of action, along with all attendant rights emanating from it, merge into the judgment and thereby stand extinguished.
>
> **94.** To trace the origin of the doctrine of merger in English law, we must journey back to the nineteenth century. Almost two centuries ago, the Court of Exchequer Chamber, in the case of ***King v. Hoare***[67], articulated the following principles:
>
> > If there be a breach of contract, or wrong done, or any other cause of action by one against another, and judgment be recovered in a court of record, the judgment is a bar to the original cause of action, because it is thereby reduced to a certainty, and the object of the suit attained, so far as it can be at that stage; and it would be useless and vexatious to subject the defendant to another suit for the purpose of obtaining the same result. Hence the legal maxim, 'transit in rem judicatam'—the cause of action is changed into matter of record, which is of a higher nature, and the inferior remedy is merged in the higher.
>
> **95.** Similarly, in ***Kendall v. Hamilton***[68], the House of Lords, endorsing the decision in Hoare (supra), stated thus:
>
> > The doctrine of merger is quite intelligible. Where a security of one kind or nature has been superseded by another of a higher kind or nature, it is reasonable to insist that the party seeking redress should rest only upon the latter. So when what was once a mere right of action has become a judgment of a court of record, the judgment is a bar to the original cause of action.
>
> **96.** In ***Virgin Atlantic Airways Ltd. v. Zodiac Seats UK Ltd.***[69], the Supreme Court of the United Kingdom, summarised the doctrine of merger as follows:

> 17. […] [Merger] treats a cause of action as extinguished once judgment has been given upon it, and the claimant's sole right as being a right upon the judgment. Although this produces the same effect as the second principle, it is in reality a substantive rule about the legal effect of an English judgment, which is regarded as 'of a higher nature' and therefore as superseding the underlying cause of action: see King v. Hoare […].

97. Perhaps one of the earliest Indian decisions exploring the doctrine of merger is that of the ***High Court of Bombay in Commissioner of Income-Tax v. Tejaji Farasram Kharawalla***[70] wherein a Division Bench held thus:

> It is a well-established principle of law that when an appeal is provided from a decision of a Tribunal and the appeal Court after hearing the appeal passes an order, the order of the original Court ceases to exist and is merged in the order of the appeal Court and although the appeal Court may merely confirm the order of the trial Court, the order that stands and is operative is not the order of the trial Court but the order of the appeal Court.

98. A three-Judge Bench of this Court in ***Natvarlal Punjabhai v. Dadubhai Manubhai***[71], laid down that the English doctrine of merger, while it might have influenced certain judicial pronouncements in our country, it essentially has no relevance to a Hindu widow's estate.

99. In ***State of Madras v. Madurai Mills Co. Ltd.***[72], another three-Judge Bench observed that the application of the doctrine of merger depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring the appellate or revisional jurisdiction. It was observed thus:

> 5. […] But the doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that wherever there are two orders, one by the inferior Tribunal and the other by a superior Tribunal, passed in an appeal on revision, there is a fusion of merger of two orders irrespective of the subject matter of the appellate or revisional order and scope of the appeal or revision contemplated by the particular statute.

100. The question arising for decision before a Constitution Bench of five-Judges of this Court in ***Collector of Customs, Calcutta v. East India Commercial Co. Ltd.***[73] was whether the order of the original authority merged in the order of the Appellate Authority even where the Appellate Authority merely dismissed the appeal without any modification of the order of the original authority. Answering the question posed before it, the Bench observed thus:

> **4.** [..] It is obvious that when an appeal is made, the Appellate Authority can do one of three things, namely, (i)

> it may reverse the order under appeal, (ii) it may modify that order, and (iii) it may merely dismiss the appeal and thus confirm the order without any modification. It is not disputed that in the first two cases where the order of the original authority is either reversed or modified it is the order of the Appellate Authority which is the operative order and if the High Court has no jurisdiction to issue a writ to the Appellate Authority it cannot issue a writ to the original authority. The question therefore is whether there is any difference between these two cases and the third case where the Appellate Authority dismisses the appeal and thus confirms the order of the original authority. It seems to us that on principle it is difficult to draw a distinction between the first two kinds of orders passed by the Appellate Authority and the third kind of order passed by it. In all these three cases after the Appellate Authority has disposed of the appeal, the operative order is the order of the Appellate Authority whether it has reversed the original order or modified it or confirmed it. In law, the appellate order of confirmation is quite as efficacious as an operative order as an appellate order of reversal or modification.
>
> (emphasis ours)"
> ***(emphasis supplied)***

27. In the present case, the Hon'ble Supreme Court has "affirmed" the Judgment of the Allahabad High Court in its entirety without any caveats or reservations. Resultantly, the Judgment of the Allahabad High Court, upon affirmation by the Hon'ble Supreme Court, stands merged into the Judgment of the Hon'ble Supreme Court, meaning thereby that the said Judgment would have to be treated as having become a part of the Judgment of the Hon'ble Supreme Court on all the issues as had been raised before the Allahabad High Court and the findings thereof would stand covered by the act of affirmation by the Hon'ble Supreme Court.

28. Though, in the common parlance in which the *doctrine of merger* is understood, the judgment of the court below stands extinguished upon the pronouncement of the subsequent judgment and

is deemed to have merged into the same. However, in the present case, the doctrine operates in a specific manner. The effect of the merger here is that, upon the Hon'ble Supreme Court expressly adopting the judgment of the Allahabad High Court, a *fortiori*, the reasoning and conclusions contained therein stand incorporated and constitute an integral part of the judgment of the Hon'ble Supreme Court itself.

29. Turning now to the submissions advanced on the *doctrine of sub silentio*, we find ourselves unable to accept the contention urged by the learned counsel appearing for the Union of India that the issues in question were decided *sub silentio* on the premise that no determination on merits was rendered by the Hon'ble Supreme Court in ***T.C. Healthcare*** *(supra)*, and that, consequently, the said decision does not constitute "law declared" within the meaning of Article 141 of the Constitution so as to bind this Court.

30. This contention on behalf of the Union of India proceeds on a complete misapprehension of both the *doctrine of sub silentio* and the manner in which the Hon'ble Supreme Court exercised its jurisdiction in the said matter. The *doctrine of sub silentio* has been authoritatively explained and narrowly circumscribed by the Hon'ble Supreme Court. In ***Delhi Airtech Services (P) Ltd. v. State of U.P.***[13], the Hon'ble Supreme Court succinctly summarised the scope and application of the doctrine in the following terms:

> **"42.** It has been held in the decision of this Court in ***MCD* v. *Gurnam Kaur*** **[(1989) 1 SCC 101 : AIR 1989 SC 38]** that when a point does not fall for decision of a court but incidentally arises for its consideration and is not necessary to be decided for the ultimate decision of the case, such a decision does not form a part of the ratio of the case but the same is treated as a decision passed sub silentio.

[13] (2011) 9 SCC 354

43. The concept of "sub silentio" has been explained by *Salmond on Jurisprudence*, 12th Edn. as follows: (***Gurnam Kaur case*** **[(1989) 1 SCC 101: AIR 1989 SC 38]**, SCC pp. 110-11, para 11)

> "***11.*** …'A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one party because of Point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided Point B in his favour; but Point B was not argued or considered by the Court. In such circumstances, although Point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on Point B. Point B is said to pass sub silentio.'" (AIR p. 43, para 11)

44. The aforesaid passage has been quoted with approval by the three-Judge Bench in ***Gurnam Kaur*** **[(1989) 1 SCC 101]**. This Court in ***Gurnam Kaur*** **[(1989) 1 SCC 101]**, in order to illustrate the aforesaid proposition further relied on the decision of the English Court in ***Gerard*** **v.** ***Worth of Paris Ltd.*** **[(1936) 2 All ER 905 (CA)]** In ***Gerard*** **[(1936) 2 All ER 905 (CA)]**, the only point argued was on the question of priority of the claimant's debt. The Court found that no consideration was given to the question whether a garnishee order could be passed. Therefore, a point in respect of which no argument was advanced and no citation of authority was made is not binding and would not be followed. This Court held that such decisions, which are treated having been passed sub silentio and without argument, are of no moment. The Court further explained the position by saying that one of the chief reasons behind the doctrine of precedent is that once a matter is fully argued and decided the same should not be reopened and mere casual expressions carry no weight."

31. The contours of the doctrine were earlier examined in detail by a three-Judge Bench of the Hon'ble Supreme Court in ***MCD v. Gurnam Kaur***[14], wherein the Apex Court clarified that only those determinations which are rendered without argument, without consideration of the relevant statutory provisions, and without citation

[14] (1989) 1 SCC 101

of authority may legitimately be regarded as having been decided *sub silentio*. The relevant extract is reproduced hereinbelow:

> "**11.** Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in ***Jamna Das case*** [Writ Petitions Nos. 981-82 of 1984] and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the *Salmond on Jurisprudence*, 12th Edn. explains the concept of *sub silentio* at p. 153 in these words:
>
> > A decision passes *sub silentio*, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.
>
> **12.** In ***Gerard* v. *Worth of Paris Ltd.* (*k*). [(1936) 2 All ER 905 (CA)]**, the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in *Lancaster* ***Motor Co.* (*London*) *Ltd.* v. *Bremith Ltd.* [(1941) 1 KB 675]**, the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that

> the point now raised had been deliberately passed *sub silentio* by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents *sub silentio* and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an *ex cathedra* statement, having the weight of authority."

32. Tested on the anvil of the aforesaid settled principles, the submission advanced by the Union of India is wholly untenable. As already noticed hereinabove, the Judgment of the Allahabad High Court in ***T.C. Healthcare*** *(supra)*, together with the issues arising therefrom, was carried in appeals before the Hon'ble Supreme Court, where leave was expressly granted and the matter was examined in the exercise of appellate jurisdiction. The issues were consciously considered in the Civil Appeals and were thereafter subjected to further scrutiny in Review as well as Curative proceedings, both of which came to be dismissed.

33. In these circumstances, it is wholly impermissible to contend that the issues were incidental, unargued, or not present to the mind of the Hon'ble Supreme Court. The adjudication cannot, by any stretch of reasoning, be characterised as one rendered *sub silentio*. The repeated and multi-tiered consideration of the matter by the Hon'ble Supreme Court completely forecloses any such argument. Consequently, the invocation of the *doctrine of sub silentio* does not advance the case of the Union of India and stands rejected.

34. Viewed in this settled legal backdrop, there arises no occasion whatsoever for this Court to exercise jurisdiction to re-examine or re-adjudicate the issues sought to be raised herein. Any such exercise would inevitably amount to a re-appreciation of issues that stand conclusively examined and affirmed by the Hon'ble Supreme Court in the exercise of its appellate jurisdiction. Judicial discipline and the binding force of precedent mandate that this Court refrain from embarking upon such an impermissible exercise. Accordingly, in our considered opinion, the issues stand foreclosed, leaving no scope for further consideration by this Court. Such an exercise would translate into an exercise of re-appreciating issues that stand comprehensively affirmed by the Hon'ble Supreme Court.

DECISION:

35. In view of the foregoing discussion and the conclusions arrived at hereinabove, the present challenge, insofar as it is confined to the two issues set out and adjudicated upon above, is devoid of merit and accordingly stands rejected.

36. We may also note that although certain additional grounds were pleaded in support of the present Appeals, the same were neither pressed nor urged during the course of oral arguments. The learned counsel consciously confined the scope of their challenge before this Court to the two issues which have been examined and decided hereinabove.

37. In these circumstances, and in order to lend finality to the proceedings, all remaining grounds and issues, apart from the two specifically raised and adjudicated upon, also stand disposed of.

38. The present Appeals, along with pending Application(s), if any, shall stand disposed of in the aforesaid terms.

39. No Order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

DECEMBER 19, 2025/v/sm/va