

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No.4283 OF 2019
(Arising out of S.L.P.(C) No.2348 of 2018)**

M/s Trimex Sands Pvt. Limited
& Anr.

....Appellant(s)

VERSUS

Union of India & Ors.

....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. Leave granted.
2. This appeal is directed against the final judgment and order dated 09.11.2017 passed by the High Court of Delhi at New Delhi in Writ Petition (C) No.5734 of 2016 whereby the High Court disposed of the said writ petition filed by respondent No.3 herein (original writ petitioner before the High Court) against respondent Nos.1

and 2 herein (Union of India and another) and set aside the order dated 30.06.2016(notified on 06.07.2016).

3. Heard learned counsel on IA No.16352 of 2018.

4. This is an application made by the Union of India through the Under Secretary, Ministry of Mines for appropriate directions and for disposal of the appeal.

5. A few facts need mention for the disposal of the said application so also the appeal, which involves a short point.

6. By impugned order, the High Court disposed of writ petition No.5734 of 2016 filed by respondent No.3 herein (original writ petitioner before the High Court) against respondent Nos.1 and 2 herein (Union of India and another).

7. The challenge in the said writ petition was to an order dated 30.06.2016 (notified on 06.07.2016)

issued by the respondents of the writ petition, i.e., Union of India through its concerned Ministry.

8. It is not in dispute that the High Court by impugned order dated 09.11.2017 disposed of the writ petition and set aside the order dated 30.06.2016 which was impugned in the writ petition on the basis of statement made by the learned counsel appearing for the Union of India.

9. In other words, the High Court did not consider necessary to decide the writ petition on the merits of the controversy in the light of the statement made by the learned counsel, who appeared for the Union of India. It is clear from Paras 9 and 10 of the impugned order quoted *infra*:

“9. In view of his aforesaid statement, the impugned order dated 30.06.2016 notified on 06.07.2016 is set aside. The respondents would take further steps to process the grant of Exploration License pursuant to the order dated 05.04.2011 in accordance with law.

10. It is clarified that this Court has not expressed an opinion on the merits of the

dispute between the parties and the above order has been passed solely on the basis of the statement made on behalf of respondents.”

10. It is this order, which is now impugned by the appellant by filing the present special leave to appeal. Since the appellants were not parties to the writ petition, they sought leave to file the present special leave to appeal to question the legality and correctness of the impugned order in the present appeal.

11. It is brought to the notice of the Court in the application under consideration (IA No.16352/2018) that the Union of India (respondents of the writ petition) have filed a review petition (103/2018) in the High Court against the impugned order dated 09.11.2017 passed in writ petition No.5734/2016, which is now the subject matter of the present special leave to appeal, praying therein to recall the

order dated 09.11.2017. The review petition is pending.

12. During the course of submissions, it has also been pointed out that in another batch of petitions led by W.P. No.7537 of 2018 (**M/s Standard Metalloys Pvt. Ltd. vs. Union of India**), the High Court passed a detailed order on 06.02.2019 and set aside the impugned order dated 30.06.2016 on merits. Be that as it may, we need not enter into any other aspect of the matter because herein, the recall is sought essentially on the ground that an incorrect statement was made by the learned counsel, who appeared for the Union of India in the said writ petition, which led for its disposal wrongly. It is stated therein that the statement was made by the learned counsel on the basis of incorrect/wrong briefing made to him by the concerned official.

13. A prayer is, therefore, made that because during the pendency of the appeal and subsequent

to passing of the impugned order, certain events have also taken place, therefore, this appeal can be disposed of accordingly keeping in view the subsequent events which have occurred.

14. Though the learned counsel for the parties and specially the learned counsel for the original writ petitioner (respondent No.3 herein) opposed the application under consideration and urged the issues arising in the writ petition on merits, but having heard the learned counsel for the parties and on perusal of the entire record of the case, we are inclined to allow this appeal, set aside the impugned order and restore Writ Petition No.5734 of 2016 to its original number before the High Court for its fresh disposal in accordance with law on merits.

15. In our opinion, keeping in view the grounds now raised by the Union of India and further the fact that the High Court did not decide the writ petition on merits but disposed it of on the

statement made by the learned counsel for the Union of India, which was based on incorrect briefing, we consider it just and proper and in the interest of all the parties concerned that the writ petition is heard afresh and is disposed of on its merits in accordance with law by the High Court.

16. In view of the foregoing discussion, the application made by the Union of India (IA No.163521 of 2018) is allowed. As a consequence, the appeal succeeds and is accordingly allowed. The impugned order is set aside. The writ petition (No.5734 of 2016) filed by respondent No.3 herein before the High Court, out of which this appeal arises, is restored to its original number before the High Court.

17. In the light of this order, the review petition filed by the Union of India (No.103/2018) stands disposed of.

18. All the parties are granted liberty to amend their respective pleadings before the High Court in the aforementioned writ petition to enable the High Court to dispose of the writ petition on merits in accordance with law.

19. We, however, make it clear that we have not examined the case of the parties on merits having formed an opinion to remand the case to the High Court on the grounds mentioned above and, therefore, the High Court will decide the writ petition without being influenced by any observations made this Court on merit in this order.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[DINESH MAHESHWARI]

New Delhi;
April 25, 2019.