

Learning Curve-1036

April 18, 2024

Appellant who has challenged the order on merits in which he has been unsuccessful, cannot be allowed to file an application to recall the order on the same ground on which the appeal was filed.

CASE TITLE	Adisri Commercial Pvt. Ltd. Vs. Reserve Bank of India & Ors.
CASE CITATION	Company Appeal (AT) (Ins) No. 1074 of 2023 & I.A. No. 4628 of 2023
DATE OF ORDER	April 04, 2024
COURT/ TRIBUNAL	NCLAT, New Delhi

BRIEF FACTS:

The AA admitted the applications filed u/s 227 by the RBI against SIFL and SEFL. The Appellant challenged the order of AA before NCLAT. NCLAT rejected the appeals. Appellant thereafter filed Civil Appeals. Hon'ble Supreme Court dismissed the civil appeals. Therefore, Appellant filed an application praying AA to recall the order in CIRP of the CD. The AA rejected the application. Aggrieved by the order Appellant filed appeal.

DECISION:

The Hon'ble NCLAT, New Delhi held that,

“The power of recall can be exercised if there is any procedural error committed by the Court or order was obtained by playing fraud on the Court. The present is not a case where any procedural error has been committed by the Adjudicating Authority by passing the order dated 08.10.2021. Counsel for the Appellant has advanced submission that order dated 08.10.2021 is in violation of principle of natural justice which submission is wholly unfounded...

The next submission which has been much pressed by the Appellant is bar of Section 10A. The submission is that the application was not maintainable under Section 10A on account of bar of Section 10A... Appellant by recall application is seeking to review the judgment on merits which is not the scope of a recall application.

The present is a case where Appellant exercised its right of appeal and failed. Appellant who have challenged the order on merits in which he has been unsuccessful, cannot be allowed to file an application to recall the order on the same ground on which the appeal was filed by the Appellant...

We, thus, are of the view that no error was committed by the Adjudicating Authority in rejecting recall applications being IA No. 391/KB/2023 and IA No. 389/KB/2023 filed by the Appellant. There is no merit in the Appeals. Appeals are dismissed.”