

* **HIGH COURT OF DELHI : NEW DELHI**

+ **I.A No. 3129/2008 and I.A. No. 3130/2008
in CS (OS) No. 374/2008**

Reserved on: August 24, 2009

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Decided on: 2nd September, 2009

Dr. Samir Majumdar ...Plaintiff

Through : Mr. Y.P. Singh, Adv. with
Mrs. Prakriti Purnima and Mr. C.
Siddharth, Adv.

Versus

M/s Exxon Mobile Co. India (P) Ltd. & Anr. ...Defendants

Through : Mr. Darpan Wadhwa, Adv. with
Ms. Deepali Sharma, Mr. Abhishek
Roy, Mr. R.N. Karanjawala and
Ms. Lakshmi Ramachandran, Adv.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may
be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported
in the Digest? | Yes |

MANMOHAN SINGH, J.

1. I propose to dispose of two applications filed by the plaintiff being I.A. No. 3129/2008 and I.A. No. 3130/2008 for condonation of delay under Section 5 and Section 14 of the Limitation Act, 1963 respectively.

2. The plaintiff filed the present suit for recovery of Rs. 20,10,000/- and for direction to the defendant to reinstate the plaintiff in

its services or to grant reasonable damages if not ordered to be reinstated. The prayer sought by the plaintiff in the suit is as follows:-

- a) for recovery of an amount of Rs. 20,10,000/- from the defendant to the plaintiff;
- b) to direct the defendant to reinstate the plaintiff in his service, alternately, in case the court does not direct to reinstate the plaintiff in service he may be granted damages for his sufferings and for depriving him from service arbitrarily, illegally and by applying force;
- c) to grant reasonable damages to the plaintiff from the defendant.

3. The brief facts leading up to the present applications are that the plaintiff was appointed as 'Staff Technical Assistance Engineer' by the defendant no. 2 liaison office vide office letter dated 26th October, 1992. The plaintiff began his services thereat in Mumbai on 1st January, 1993. Certain terms of appointment along with an undertaking that all inventions made or discovered by the employee in the course of his employment would be the property of the company were signed by the plaintiff.

4. By letter dated 20th April, 1993 the plaintiff was transferred to Delhi. Vide several letters annexed by the plaintiff for perusal, allowances were revised, salary, car expenses and rent allowance were increased and by letter dated February 2, 1995 the plaintiff was promoted to the position of 'Senior Technical Service Manager'. The plaintiff's salary was further enhanced. By letter dated 4th December, 1997 defendant no. 2 awarded the plaintiff an 'incentive award' by way of 200 shares of Exxon Corporation as recognition of his contribution to

the company. The plaintiff's salary was further increased and he was promoted to the position of 'ATD Group Leader' w.e.f. 1st October, 1998 and transferred to Bangalore with a further increase in salary. A letter similar to the letter of 4th December, 1997 was issued to the plaintiff on 4th December, 1998 and he was given 200 shares of the Exxon Corporation by way of an 'incentive award'.

5. The plaintiff had invented a new product which was patented by the defendants on 26th March, 1997 and a congratulatory letter was sent to the plaintiff in this regard on 16th April, 2000. By letter dated 22nd December, 2000 the plaintiff was promoted to the position of 'Senior ATD Advisor' and his salary was increased twice thereafter.

6. Vide letter dated 30th June, 2003 the plaintiff was called by the Director of defendant no. 2 to the Mumbai office, where after reaching the plaintiff was asked to sign on a pre-typed resignation letter. As per the plaintiff, on questioning this act he was threatened etc. and not allowed to leave the room till he signed the papers. After signing the same, on questioning this act again the plaintiff was told that it was the decision of Exxon Mobile Corporation. The plaintiff was to get ex-gratia amount equivalent to three months salary but was not paid the two incentive awards of 1997 and 1998. The plaintiff's attempts at obtaining the awards were futile as on 17th August, 2005 he received an email from the defendant corporation stating that all his awards had been cancelled.

7. The plaintiff has filed present I.A. No. 3129/2008 for condonation of delay on the basis of the following facts. The plaintiff

appointed a legal counsel to represent him in the matter of his wrongful and unceremonious removal from the defendant no. 2 company and the said counsel verified and signed a writ which was filed on 10th March, 2006 being W.P. (C) No. 8986/2006. The said writ was dismissed on 29th May, 2006 and CS (OS) No. 1342/2006 was filed by the previous counsel on 29th June, 2006. The present counsel was engaged by the plaintiff who informed the plaintiff of the previous counsel's lack of diligence etc.

8. The present counsel then, acting on the plaintiff's behalf, withdrew CS (OS) No. 1342/2006 in accordance with order dated 9th October, 2007 with the liberty to file a fresh suit, the same being accordingly filed as the present suit on 27th November, 2007. The plaintiff has submitted that on the present counsel's advice he tried to obtain the original papers and files of the old suit and writ from the previous counsel, but the same has not been possible until very recently as the previous counsel was not sending over the said files and papers to the plaintiff, who was unable to procure them personally as he has been persistently ill and could not travel the distance from his residence to the counsel's office being Chandigarh to Delhi. The plaintiff has sought condonation of delay, if any, in filing of the present suit.

9. The submissions of the plaintiff in I.A. No. 3130/2008 are identical to those under the previously mentioned application.

10. In its reply, defendant no. 1 has submitted that the cause of action in the plaintiff's suit arose on 30th June, 2003 when his services

were allegedly unfairly terminated. As per the Limitation Act, 1963 the last date for filing a suit on this cause of action would be 1st July, 2006. The plaintiff's present suit has been filed on 27th November, 2007. It has also been submitted by defendant no. 1 that Section 5 of the Limitation Act, 1963 does not apply to suits but only to applications and appeals. Further, the liberty given by this court in order dated 9th October, 2007 was only to save the subsequent suit from being dismissed on the basis of res judicata and had nothing to do with the limitation period. It is also submitted that the plaintiff did not file the present suit on the next day of the withdrawal of the earlier suit but after 47 days of the same.

11. In its reply to the application of the plaintiff under Section 14 of the Limitation Act, 1963, defendant no. 1 has contended that none of the requirements of Section 14 have been met by the plaintiff's application, stating each requirement and elucidating therewith its absence in the plaintiff's contentions. Further, the plaintiff's application lacks several details necessary for determining whether the same should be allowed or not.

12. I have gone through the applications and their respective replies. On a bare perusal of Section 5 of the Limitation Act, 1963, it is amply clear that the plaintiff's application thereunder is not maintainable as condonation of delay in filing of a suit is not contemplated under the same.

13. The other application has been filed under Section 14 of the Limitation Act, 1963. The operation of Section 14 is that in order to

ascertain the date of expiration of the ‘prescribed period’, the days excluded from operating by way of limitation have to be added to what is primarily the period of limitation prescribed. Exclusion of time is mandatory under Section 14, provided that the requisite conditions are satisfied. As per well settled law, the five conditions to be satisfied for application of Section 14 are:-

- (i) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
- (ii) The prior proceeding had been prosecuted with due diligence and in good faith;
- (iii) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
- (iv) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
- (v) Both the proceedings are in a court.

14. I have gone through the records of the case. The plaintiff was allegedly forcibly made to resign on 30th June, 2003. On 17th August, 2005 an email was sent by an official of the defendants to the plaintiff refusing to pay the awarded stock amount to him as the same was cancelled on his resignation. The defendants received a legal notice from the plaintiff on 14th September, 2005 and replied to the same on 13th January, 2006. In his application, the plaintiff has stated that he remained “vigilant and cautious” in getting a writ filed by his counsel in this court on 10th March, 2006. Vide order dated 29th May, 2006 the said writ was dismissed as the court was not inclined to exercise its jurisdiction on account of inordinate laches and delay in the filing of the writ. However, the plaintiff was allowed to pursue other remedies available under law. Exactly a month after the writ’s dismissal – and one

day before the end of three years from the date of resignation, i.e. on 29th June, 2006 – CS (OS) No. 1342/2006 was filed by the plaintiff in this court. There seem to have been several discrepancies in the said suit, i.e. plaint had not been signed by the plaintiff, the suit had not been valued correctly for purposes of court fee and jurisdiction etc. and the plaintiff engaged a new counsel who withdrew the said suit in accordance with order dated 9th October, 2007 vide which the plaintiff was granted liberty to file a fresh suit. Thereafter, the present suit was filed on 27th November, 2007. The present application for exclusion of time under Section 14 was filed on 7th March, 2008.

15. The plaintiff has referred to **Union of India v. West Coast Paper Mills Ltd., (2004) 3 SCC 458 at page 463** wherein as regards the expression "other cause of like nature", the observations of the court in that case were as follows:

“14. In the submission of Mr Malhotra, placing reliance on *CST v. Parson Tools and Plants* to attract the applicability of Section 14 of the Limitation Act, the following requirements must be specified:

- “6. (1) both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
- (2) the prior proceedings had been prosecuted with due diligence and in good faith;
- (3) the failure of the prior proceedings was due to a defect of jurisdiction or other cause of a like nature;
- (4) both the proceedings are proceedings in a court.”

In the submission of the learned Senior Counsel, filing of civil writ petition claiming money relief cannot be said to be a proceeding instituted in good faith and secondly, dismissal of writ petition on the ground that it was not an appropriate remedy for seeking money relief

cannot be said to be “defect of jurisdiction or other cause of a like nature” within the meaning of Section 14 of the Limitation Act. It is true that the writ petition was not dismissed by the High Court on the ground of defect of jurisdiction. However, Section 14 of the Limitation Act is wide in its application, inasmuch as it is not confined in its applicability only to cases of defect of jurisdiction but it is applicable also to cases where the prior proceedings have failed on account of other causes of like nature. The expression “other cause of like nature” came up for the consideration of this Court in *Roshanlal Kuthalia v. R.B. Mohan Singh Oberoi* and it was held that Section 14 of the Limitation Act is wide enough to cover such cases where the defects are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any circumstance, legal or factual, which inhibits entertainment or consideration by the court of the dispute on the merits comes within the scope of the section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has a right.”

16. Learned Counsel for the plaintiff has also referred to **N. Balakrishnan v. M. Krishnamurthy, 1998 (7) SCC 123**. However, the said judgment does not come to the aid of the plaintiff as it pertains to Section 5 of the Limitation Act, and the same is not applicable to limitation as regards suits.

17. He has also referred to **TRAI Foods Ltd. v. National Insurance Co. and Ors., (2004) 13 SCC 656** wherein it was held as under:

“8. Accordingly, we dismiss the appeal. However, we make it clear that since the matter has been pursued before the National Commission and this Court and the matter has not been entertained because of the discretionary power not to exercise the Commission’s jurisdiction, we direct that in the event the appellant approached the civil court as directed by the National Commission, the period spent between the filing of the claim before the National Commission and the disposal

of the matter today by us will be excluded under Section 14 of the Limitation Act, 1963.”

18. Learned Counsel for the defendants, on the other hand, has referred to **Deena (Dead) Through Lrs. V. Bharat Singh (Dead) Through Lrs. and Ors., (2002) 6 SCC 336** in support of his submissions. The following observations have been made in this case:

“13. From the provisions it is clear that it is in the nature of a proviso to Order XXIII Rule 2. The non-obstante clause provides that notwithstanding anything contained in Sub-rule (2) of Order XXIII of the Code of Civil Procedure the provisions of Sub-section (1) of Section 14 shall apply in relation to a fresh suit instituted on permission granted by the court under Rule 1 of Order XXIII. For applicability of the provision in Sub-section (3) of Section 14 certain conditions are to be satisfied. Before Section 14 can be pressed into service the conditions to be satisfied are: (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party; (2) the prior proceeding had been prosecuted with due diligence and good faith; (3) the failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature; (4) the earlier proceeding and the later proceeding must relate to the same matter in issue, and (5) both the proceedings are in a court.

14. The main factor which would influence the Court in extending the benefit of Section 14 to a litigant is whether the prior proceeding had been prosecuted with due diligence and good faith. The party prosecuting the suit in good faith in the court having no jurisdiction is entitled to exclusion of that period. The expression 'good faith' as used in Section 14 means "exercise of due care and attention". In the context of Section 14 expression 'good faith' qualifies prosecuting the proceeding in the Court which ultimately is found to have no jurisdiction. The finding as to good faith or the absence of it is a finding of fact. This Court in the case of *Vijay Kumar Rampal and Ors. v. Diwan Devi and Ors.* observed: (AIR p. 1670, para 3)

"The expression good faith qualifies prosecuting the proceeding in the Court

which ultimately is found to have no jurisdiction. Failure to pay the requisite court fee found deficient on a contention being raised or the error of judgment in valuing a suit filed before a Court which was ultimately found to have no jurisdiction has absolutely nothing to do with the question of good faith in prosecuting the suit as provided in Section 14 of the Limitation Act."

15. The other expressions relevant to be construed in this regard are 'defect of jurisdiction' and "or other cause of a like nature'. The expression "defect of jurisdiction' on a plain reading means the Court must lack jurisdiction to entertain the suit or proceeding. The circumstances in which or the grounds on which, lack of jurisdiction of the Court may be found are not enumerated in the Section. It is to be kept in mind that there is a distinction between granting permission to the plaintiff to withdraw the suit with leave to file a fresh suit for the same relief under Order XXIII Rule 1 and exclusion of the period of pendency of that suit for the purpose of computation of limitation in the subsequent suit under Section 14 of the Limitation Act. The words "or other cause of a like nature" are to be construed ejusdem generis with the words 'defect of jurisdiction', that is to say, the defect must be of such a character as to make it impossible for the court to entertain the suit or application and to decide it on merits. Obviously Section 14 will have no application in a case where the suit is dismissed after adjudication on its merits and not because the Court was unable to entertain it."

19. The defendant has stated that the plaintiff's attempt to get the duration when CS (OS) No. 1342/2006 was pending and subsequently withdrawn excluded (i.e. one year, three months and 10 days) cannot be allowed as the mandatory conditions of Section 14 have not been complied with as the plaintiff has not pursued the said case with due diligence as is obvious from the fact that vide this court's order dated 4th July, 2006 it has been mentioned that neither has the plaint been signed

by the plaintiff nor has the suit been valued correctly for the purposes of court fee and jurisdiction.

20. The first civil suit being CS (OS) No. 1342/2006 was filed on 29th June, 2006 i.e. within the prescribed limitation period. It was withdrawn on 9th October, 2007. The withdrawal of the suit was not due to a jurisdictional defect or any other cause of like nature, but due to the plaintiff's lackadaisical attitude which is clearly reflected in the fact that the plaint was not even signed and the suit was improperly valued. Even after the said two errors were pointed out, the plaintiff did not correct them and after withdrawing the suit, filed it again after a gap of almost a year and a half. By no stretch of imagination can this be called 'due diligence' on the plaintiff's part.

21. Without going into more details of this entire issue, at the outset I find that even assuming that the plaintiff is allowed to get the time spent in pursuing the previous civil suit excluded, the present suit will not fall within the prescribed limitation period. If benefit is given to the plaintiff and the duration of one year, 3 months and 10 days is added to the original period of limitation, i.e. to 1st July, 2006, the last day of filing the present suit would be 11th October, 2007. The present suit was filed on 27th November, 2007 which, taking into account all of the afore-mentioned, is still barred by limitation.

22. For the reasons given above, both the applications are

dismissed and consequently, the suit of the plaintiff is also
dismissed without cost.

MANMOHAN SINGH, J.

SEPTEMBER 2, 2009

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