

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

+ **CS(OS) NO.760/2008**

Date of Decision : 21.12.2010

M/s Chakradar Auto Udyog (P) Ltd. & Anr. Plaintiffs

Through: Mr.R.S.Parmar proxy
counsel.

Versus

Engineering Export Promotion Council Defendant

Through: Mr.Amit Chaddha,
Sr.Advocate with
Mr.Sandeep Mahapatra,
Advocate.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J.

IA No. 5046/2008

1. This order shall dispose of IA bearing no. 5046/2008 filed by the plaintiff under Section 14 of the Limitation Act, 1963 read with section 151 CPC for exclusion of time from 25.08.2003 to 27.02.2007 being reckoned towards the total period of limitation for filing the suit for recovery.
2. Briefly stated the facts of the case are that this is a suit for recovery of Rs.23,30,994/- along with the interest @ 10 % per annum from 05.10.1994 till the date of refund i.e. 26.10.2001. In the application under Section 14 of the

Limitation Act the total amount shown is Rs.58,09,488/-. It is alleged in the plaint that the plaintiff no. 2 who is the Director of the plaintiff no. 1 company was exporting auto parts to foreign country under the Import Export Policy of the Government of India in the year 1983. There was a scheme known as International Price Reimbursement Scheme under which the exporters were entitled to certain benefits by way of reimbursement for having exported the auto parts. It is alleged that the plaintiffs had earned and were paid an amount of Rs.1,05,47,320/- under the said scheme for the calendar year 1990-92. On 19.08.1994 a case bearing no. RC 3(S)/94/CBI/SB was registered against the plaintiff no. 2 under Section 420/468/471 read with Section 120 B IPC for having drawn a benefit of Rs.23,30,994/- to which allegedly he was not entitled. The plaintiff no. 2 was arrested. He was granted bail on the condition that he shall repay that alleged wrongful benefit of Rs.23,30,994/- having been drawn by him to the complainant. The plaintiff deposited a sum of Rs.23,30,994/- by way of installments, and accordingly, the plaintiff was released on regular bail on 12.10.1994. The plaintiff no. 2 underwent the trial and was acquitted on 22.06.2001. The CBI preferred an appeal against the judgment of acquittal dated 22.06.2001 which was also dismissed, and therefore, it is alleged that the judgment of acquittal dated 22.06.2001 attained finality.

3. The plaintiff no. 2 filed an application for the refund of the amount of Rs.23,30,994/- which was disposed of on 13.08.2001 by the learned Magistrate, directing the CBI to refund the aforesaid amount. It is observed that so far as the question of payment of interest on the said amount is concerned, the plaintiff no. 2 shall be at liberty to file a civil suit or take such other appropriate remedy as may be available. It is alleged that despite this order the amount was not refunded to him and he filed second application for the refund of the said amount. This was disposed of on 27.08.2001 by the Trial Court. Still the amount was not refunded to the plaintiff no. 2, as a consequence of which he was constrained to file a Civil Crl. (Main) 369/2001 in High Court which was allowed vide order dated 16.10.2001 with the direction to the CBI to refund that amount within two weeks. The cheque of Rs.23,30,994/- is stated to have been received by the plaintiff on 29.10.2001. Since the plaintiff had a grievance that he ought to have been given interest on the aforesaid amount, he gave a notice dated 07.03.2003, and thereafter, filed a writ on 25.08.2003. On 26.08.2003, the High Court issued a notice on the said writ petition limiting it to the question of maintainability. After the pleadings were completed, the writ petition was withdrawn by the plaintiff no. 2 on 27.02.2007 with liberty to take such recourse as may be available to him in law. Accordingly, the writ petition

was dismissed. It is after the dismissal of the writ petition that the plaintiffs have chosen to file the present suit for recovery of the aforesaid amount as interest calculated @ 10% from 1994 till 29.10.2001 when the amount was refunded to him along with the pendente lite and future interest. Along with the suit an application under Section 14 of the Limitation Act has been filed for excluding the period spent by the plaintiff from 25.08.2003 to 27.02.2007 from being taken into consideration from the total period of three years for filing the suit for recovery.

4. The application has been opposed by the defendant on the ground that the aforesaid period cannot be excluded under Section 14 of the Limitation Act because the ingredients of Section 14 are not satisfied as the plaintiff was not pursuing his remedy bonafide. It is contended that the plaintiff was specifically directed by the learned Magistrate vide order dated 13.08.2001 that the plaintiff may file a civil suit or may take such other remedy as may be permissible in law for the interest yet the plaintiff no. 2 chose to file a writ petition which clearly shows lack of bonafide on his part. It is also stated that even if the period of 25.08.2003 to 27.02.2007 is excluded still the suit of the plaintiff is hopelessly barred by time.
5. I have heard the learned counsel for the parties. The learned counsel for the plaintiff has placed reliance on the following

judgments in order to claim the benefit under Section 14 of the Limitation Act. **State of West Bengal Vs. Satyanarayan Rice Mill** AIR 1985 CAL 391, **Rameshwar Lal Vs. Municipal Council, Tonk & Ors.** (1996) 6 SCC 100, **Union of India Vs. West Coast Paper Mills Ltd. & Ors.** AIR 2004 SC 3079, **Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. & Ors.** Civil Appeal No. 2461/2008 @ SLP (C) No. 10311/2005 and **Shakti Tubes Ltd. Vs. State of Bihar & Ors.** (2009) 1 SCC 786.

6. The law regarding Section 14 of the Limitation Act has been subject matter of interpretation by the Apex Court in number of cases and the plaintiff no. 2 himself has cited **Consolidated Engg. Enterprises (Supra)** wherein it has been laid down in para 12 as under:

“ Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said Section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

- (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 in 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 latter proceeding must relate to the same matter in issue and;*

(5) Both the proceedings are in a court.

The policy of the Section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him such a trial, would not be applicable to an application filed under Section 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded.”

7. There is no dispute about the proposition which has been laid down by the Supreme Court in the judgment relied upon by the plaintiff but the question which arises for consideration is whether the time which is spent by the plaintiff in the instant case before a writ court, can be excluded from the total period of three years within which the suit for recovery has to be

filed. For this purpose, the plaintiff no. 2 has to show to the Court that the writ petition was being prosecuted by him with due diligence and in good faith. The writ petition filed by the plaintiff in the instant case was for recovery of interest, will be treated as a civil proceeding in terms of the judgment of **Satyanarayan Rice Mill (supra)** relied upon by the plaintiff.

8. An act is to be done in good faith, if it is done with due care and attention as is enunciated in Section 2(h) of the Limitation Act. The question which arises for consideration is whether the plaintiff had filed the writ petition with due care and attention and prosecuted the same with due diligence. The answer to this query, in my opinion in the light of averments and the orders which were passed by the Trial Court as well as in the Writ Court, is in negative. The plaintiff was not prosecuting his remedy with due diligence and also not in good faith. The plaintiff is in a way indulging in forum shopping. It is in this context that the order dated 13.08.2001 passed by the Magistrate on the application of the plaintiff no. 2 for refund of the amount deposited by him becomes important. The plaintiff of his own saying had filed an application for the refund of the amount of Rs.23,30,994/- along with the interest and the learned Magistrate vide order dated 13.08.2001 directed the refund of the amount and observed that so far as the interest is concerned, he ought to file a "Civil Suit" or such other proceedings as may be

permissible in law, therefore, there was absolutely no reason for the plaintiff no. 2 to have filed a writ petition when there was a specific observation that the plaintiff can file a civil suit.

9. If the submission of the plaintiff is accepted that he was well within his right to file the writ petition in terms of the judgment of Satyanarayan Rice Mill's case (supra) also as the writ petition has been held to be a civil proceeding, then he ought to have permitted the writ Court to decide the matter.
10. It may be pertinent here to mention that the plaintiff himself has annexed a copy of the order dated 31.01.2007 passed in the writ court wherein it has been noted by the learned Judge that the counsel for the respondent no. 1/Engineering Export Promotion Council, had observed that the question of grant of interest does not arise to the petitioner no. 2 as they themselves had not earned any interest on the amount deposited by the plaintiff no. 2 as a condition for grant of his bail. It was further stated by the learned counsel for the said respondent that the amount was kept as a security by them and that too in a current account which did not earn any interest. After this stand having come on record in the writ petition by way of a counter affidavit, the plaintiff no.2 on 19.02.2007 chose to withdraw the writ petition with liberty to take such recourse as may be permissible in law. It may be stated that the Court was not suffering from any defect of

jurisdiction to give the relief to the plaintiff no. 2 but the plaintiff no. 2 knew fully well that after the counter affidavit having come on record the Court would have in all probability dismissed his writ petition, and therefore, the best course for him was to withdraw the writ petition with liberty to take such appropriate measure as may be permissible in law and try his luck in a civil suit. This is the reason why the Court has observed that the plaintiff was doing forum shopping and was not either prosecuting his remedy with due diligence and there was a complete lack of good faith on his part, and therefore, he is not entitled to the benefit of Section 14 of the Limitation Act for exclusion of the time from 25.08.2003 to 27.02.2007 as is claimed by him. Nothing prevented the plaintiff in permitting the Court to decide the question of grant of money which was withdrawn.

11. Even if for the sake of arguments, the plaintiff is given the benefit of this exclusion even then the suit of the plaintiff is barred by limitation. This is on account of the following reasons. The cause of action clause as averred by the plaintiff read as under:-

“The plaintiffs state that cause of action for filing the present suit accrued in favour of the plaintiffs and against the defendant firstly in 1983 when the plaintiff no. 1 was registered with the defendant as a merchant exporter under the import and export policy of the Government of India. The cause of action again accrued between 1986 to 1996 when during the relevant period the plaintiff no. 1 was entitled to the benefits/incentives for export of automobile parts as a merchant under the IPRS. It

again accrued during the calendar years 1990-1992 when the plaintiff no. 1 had made exports and in fact the plaintiff no. 1 was paid a sum of Rs.1,05,47,320/- as benefit under IPRS. The cause of action also accrued on 19.08.1994 when the CBI arrested among other people the plaintiff no. 2 and filed a false case bearing R.C.3(S)/94-CBI/SEB, New Delhi. It again accrued on 22.08.1994 when Shri V. K. Jain, the learned M.M. as a condition of bail required certain amounts to be deposited with the defendant. It again accrued on 22.08.1994, 25.08.1994 and 05.10.1994 when the plaintiff deposited various sums as required as a condition of bail. It also accrued on 22.6.2001 when Sh.J.P.Narain, M.M. Karkardooma, Delhi acquitted the plaintiff no.2. it also accrued on 30.8.2001 when the Trial Court by its order directed the defendant to return a sum of `23,30,994/- to the plaintiff no.2 as regards interest it was noted that the plaintiff no.2 was at liberty to file Civil Sit or opt for any other remedy. It thereafter accrued on 27.8.2001 when the Trial Court disposed of the two applications filed by the plaintiff no.2 and the defendant. It again accrued on 16.10.2001 when this Hon'ble Court in Criminal Misc.(Main) No.369/2001 directed the defendant to refund the amount due to the plaintiff no.1. It is further accrued on 29.10.2001 when the principal sum of `23,30,994/- was paid by the defendant no.1 to the plaintiff no.2. It again accrued on 7.3.2003 when the plaintiff no.2 served a lega notice claiming the amounts as per the present suit. It again arose in August 2003 when the plaintiffs filed Civil Writ Petition No.5251/2003 before this Hon'ble Court. It lastly accrued on 27.2.2007 when the plaintiffs withdrew the aforementioned writ petition with liberty to take such recourse as may be available to him under the law. The cause of action is subsisting and no part of the claim is barred by the law of limitation.”

12. The plaintiff in this aforesaid para says that the cause of action accrued to the plaintiff to file the suit for recovery on 19.08.1994 when the CBI arrested him. If that be so, the period of limitation would start on 20.08.1994 and come to an end on 19.08.1997 because once the period of limitation

starts Section 9 comes into picture, the same has to run continuously unless and until some period has to be excluded under various statutory provisions like Section 12 or 14 of the Limitation Act or any other provision of the Act. But on 19.08.1994 when he was arrested by the CBI the cause of action certainly cannot be said to be accrued to the plaintiff because at the time of his arrest he had not deposited the amount of Rs.23,30,994/- as a condition of bail which was much later. The plaintiff no. 2 was acquitted on 22.06.2001 by Sh. J. P. Narian, the learned Metropolitan Magistrate, Karkardooma Courts, Delhi. Once the plaintiff no.2 is acquitted on 22.06.2001 the cause of action accrues to him on 23.06.2001 and even if the exclusion of time spent from 25.08.2003 to 27.02.2007 is taken into consideration, still the present suit having been filed on 04.04.2008 is beyond the period of three years within which the suit ought to have been filed.

13. This is on account of the following time period which may be calculated for the purpose of limitation:-

Suit barred by limitation	
22.06.2001	Date of acquittal
23.06.2001 to 22.06.2002	1 year
23.06.2002 to 22.06.2003	1 year
23.06.2003 to 24.08.2003	2 months 2 days (63 days)

28.02.2007 to 27.02.2008	1 year
11.04.2008	Date of filing of suit
28.02.2008 to 04.04.2008	1 month 5 days (36 days)
Total	3 years 3 months and 7 days

14. So far as the other judgments which have been relied upon by the plaintiff are concerned, although there is no doubt about the proposition laid down in the said judgments which have been broadly enunciated therein but the facts of the present case in the light of the reasons mentioned above do not persuade the Court to apply the said judgments to the facts of the present case.

15. For the reasons mentioned above, I am of the considered opinion that the plaintiff is not entitled to the benefit of exclusion of period of limitation under Section 14 of the Limitation Act as prayed for, and accordingly, the application is dismissed and even if a liberal interpretation is taken to give the benefit to the plaintiff even then the suit of the plaintiff is hopelessly barred by time, accordingly, the application is dismissed and the suit of the plaintiff is held barred by time.

V.K. SHALI, J.

December 21, 2010
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