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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: January 06, 2009

Date of Order: January 14, 2010

+ CM(M) 1290/2008

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14.01.2010

Satnam Singh & Ors.

...Petitioners

Through: Mr. Harish Malhotra, Sr. Adv. with Mr. Praveen Kumar, Advocates

Versus

Pamela Manmohan Singh & Ors.

...Respondents

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr. Mahender Rana, Advocates

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

JUDGMENT

1. By this petition under Article 226 and 227 of the Constitution of India, the petitioners have assailed the order dated 29th September 2008 passed by learned Additional District Judge, Tis Hazari Courts in MCA No.2 of 2008 whereby he dismissed two applications made by the petitioners, one under Section 5 of the Limitation Act and another under Section 14 of the Limitation Act seeking condonation of delay in preferring an appeal and excluding the period from 18th May, 2007 to 5th May, 2008.

2. Brief facts relevant for the purpose of deciding this petition are that the petitioners predecessor in interest Ms. Harnam Kaur had preferred objections in execution no.3 of 1996 along with two other persons viz. Ms. Mahender Kaur and Mr. Jagjit Singh in March, 2000. These objections were dismissed by the learned Civil Judge by his order dated 30th March, 2006. Ms. Mahender Kaur and Mr. Jagjit Singh filed appeals against the order dated 30th March, 2006. However, the present

petitioners did not prefer an appeal within the period of limitation and preferred an appeal in the year 2007 being Execution FA No.5 of 2007 before this Court. When the matter was listed before this Court on 28th May, 2007, counsel for respondent brought it to the notice of the Court that the appeal would lie only before the District Judge and not before the High Court. The respondent also drew attention of the petitioner's counsel and Court to provisions of Section 39(1)(a)(iv) of Delhi High Court (Amendment) Act, 2003. This Court observed that the original value of the suit in this case was only Rs.1,01,030/- and, therefore, in terms of the provisions of the Delhi High Court (Amendment) Act, 2003, the appeal would not lie before this Court. However, the counsel for appellants therein (petitioners herein) wanted to go through the provisions of law. Ultimately, when the Execution FA No. 5 of 2007 came up for hearing on 24th April, 2008, this Court directed return of the appeal and other appeals preferred by other objectors on the ground that this Court had no jurisdiction, holding inter alia that the appeal should be preferred before the Court of competent jurisdiction. After return of the appeal, the present petitioners preferred an appeal before the learned District Judge along with applications under Section 5 and 14 of the Limitation Act. The application under Section 5 of the Limitation Act was filed as there was a delay in filing the appeal initially even before the High Court and condonation of delay was sought and the application under Section 14 of the Limitation Act was filed to exclude the period during which the appeal was pursued by the petitioners herein before this Court.

3. The learned ADJ in the impugned order extensively quoted the judgments relied upon by both the parties and then observed that the application under Section 5 made by the petitioners show that they did not wish to file a separate appeal and they relied upon the appeals filed by their objectors against the same order, although they had not joined them in the appeal. In the application under Section 5 of the Limitation Act the petitioners had taken a plea that the co-sharers i.e. the other two objectors (who had preferred an appeal within time) had assured them that they

would protect the interest of the petitioners but later on the petitioners were asked by them to join them in settlement. The petitioners then realized that they were least bothered about their interest. The trial court also observed that the appellants though may not have been served with the notice of the appeal preferred by other objectors, but the plea taken by the appellants in the execution itself shows that they were fully aware of the appeal preferred by other appellants. Their contention itself shows that despite being aware of the appeal, they did not pursue for their alleged right, thus there was no reasonable ground to condone the delay. The trial Court also observed that there was no provision under Section 14 of the Limitation Act for excluding the period of prosecuting an appeal before a wrong Court. The provisions of Section 14 of the Limitation Act were applicable only in respect of suits and applications and not in case of appeals. The trial Court also observed that a condonation of delay of 384 days was being sought by the petitioners on the ground of assurance given by their co-sharers namely Ms. Mahender Kaur and Mr. Jagjit Singh. The plea thus was not a convincing ground and a man of common prudence would not ignore his interest on such assurances. Similarly, the trial court observed that it was not a case of prosecuting an appeal with due diligence and good faith before another court. However, the trial court simultaneously observed that the petitioners were not protected either by Section 14 or by Section 5 of the Limitation Act and Section 5 & 14 would not apply to the provisions of Order 21 of CPC.

4. The impugned order has been assailed on the ground that the trial court grossly erred and failed to exercise its jurisdiction as per the law laid down by the Supreme Court in *Shaik, Saidulu Alias Saida vs. Chukka AIR 2002 SC 749* wherein it has been held that in absence of applicability of Section 5 of the Limitation Act, the rights of an aggrieved person intended to challenge an election, can be defeated by not appointing the Election Tribunal by the State. The other ground taken is that the trial court could not have rejected the application on the ground that Sections 5 & 14 of the Limitation Act were not applicable as Section 5 and 14 of the Limitation Act

both were applicable in case of appeals. The trial court should have exercised its discretion in granting condonation of delay. Wrong legal advice is always considered a good ground for condonation of delay. It is also urged that the word 'application' as it appears in Section 14 of the Limitation Act includes 'appeals'.

5. The present petition has been opposed by the respondent on the ground that it was meritless. Through, the learned trial court had observed that Section 5 and 14 do not apply to appeals under the provisions of Order 21 of Code of Civil Procedure but the trial court had considered the application on merits and found no substance in them. It is further submitted that the trial court had acted within its jurisdiction and Section 14 of the Limitation Act was actually not applicable in case of appeals. The provisions of Section 14 can be considered as a ground for condonation of delay by the Court while considering an application under Section 5 of the Limitation Act. It is submitted that although the trial Court held that Section 5 of the Limitation Act was not applicable to any of the provisions of Order 21 of CPC [AIR 1973 Calcutta 144] but even if it is considered that Section 5 was applicable the essential condition of condonation of delay under Section 5 was not fulfilled and the petitioner had miserably failed in showing any reasonable ground for condonation of delay. The trial court did consider the merits and found that the plea taken by the petitioner on relying on co-sharers assurances and later on saying that co-sharers were not taking care of petitioner's interest was not a reasonable ground.

6. A perusal of application under Section 5 of the Limitation Act filed by the petitioner herein would show that the petitioner was very well aware of his right to file an appeal within the period of limitation. The petitioner's contention in the application under Section 5 of the Limitation Act was that he was assured by other two co-sharers that they would take care of his interest. The petitioner relied upon their promises and assurances, and did not file a separate appeal. The petitioner was also relying on the fact that since he would be one of the respondents in the appeal

he would be served a notice and thereafter would have a right to file objections. Thus, the petitioner did not bother about filing an appeal and no notice was served on him so he could not file cross objections. It is on 25th April 2007 when other appellants called him on telephone demanding a sum of Rs.2.5 crore for payment to respondent no.1 which shook and surprised the present petitioner and then the petitioner realized that his interests were not being protected by other appellants and he then thought of preferring an appeal against the order and he preferred an appeal before this Court.

7. I consider that the trial court rightly came to conclusion that the petitioner had not desired to file an appeal and the excuse taken by the petitioner in condonation of delay application was not a genuine excuse much less a reasonable ground for condonation of delay. There was no jurisdictional error committed by the trial court, despite the fact that the trial court has observed that Section 5 of the Limitation Act was not applicable. Regarding applicability of Section 14 of the Limitation Act, counsel for the petitioner during arguments agreed that the provisions of Section 14 were not applicable independently but can be considered while deciding an application under Section 5 of the Limitation Act. He further submitted that the time spent before this Court, therefore, was excludable. This plea also must fail because due diligence means that you are not aware of jurisdiction of Court and you are pursuing an appeal because of ignorance in a Court of wrong jurisdiction. Here is a case where on the very first day, the opposite side informed the Court as well as the present petitioner that this was not the Court of appropriate jurisdiction and the Court of appropriate jurisdiction was the District Court. The counsel for respondent not only made this statement but also apprised the petitioner of the provisions under which this Court had no jurisdiction. Despite this appraisal of the relevant provisions of law, if the appeal was continued by the petitioner before this Court, it cannot be said that the appeal was continued by due diligence. Thus, the appeal was continued before wrong Court despite knowledge that this Court had no jurisdiction. Such a

delay which is on account of deliberate continuation of an appeal before the Court of no jurisdiction is not covered under Section 14 of the Limitation Act. Where a person is deliberately pursuing a remedy before a wrong court, the only inference can be drawn is that the intention of the person is to delay the proceedings. No inference can be drawn that he was diligently pursuing the remedy before a wrong court. Therefore, benefit of section 14 could not have been given by the trial court even under Section 5. I am supported in this regard by the judgment *Deena(dead through Lrs.) v. Bharat Singh(dead) through Lrs and others* AIR 2002 SC 2768 wherein the Supreme Court observed as under:

"14. 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.

18. The trial court and the first appellate court based their findings on the question of good faith on the evidence led by the parties and the law laid down by this Court in the case of Rabindra Nath Samuel Dawson (supra) in which it was held that a person who has registered the objection regarding non-joinder of parties at the initial stage and also at the revisional stage and taken the risk of proceeding with the suit without impleading the necessary parties cannot be said to have acted in good faith taking due care and attention; consequently, such person will not be entitled to benefit of section 14 of the Act for excluding the time spent by him in that proceeding in a fresh suit. In the present case concededly the objection regarding non impleadment of necessary party was taken in the written statement. Despite such

objection the plaintiffs chose to prosecute the suit. Indeed they succeeded in the trial court and the matter was pending before the first appellate court when the petition under Order XXIII seeking withdrawal of the suit with permission to file a fresh suit for the same relief was filed by them. Therefore, the trial court and the first appellate court were right in holding that the plaintiffs were not entitled to exclusion of the period between 21.3.1980 to 15.2.1982 under section 14 of the Limitation Act as claimed and that the suit was barred by limitation. The High Court in the impugned judgment has not discussed the materials on the basis of which the Courts below recorded the finding of fact relating to lack of good faith on the part of the plaintiffs. It has also not discussed the reason for taking a contrary view on that question. The concurrent decisions of the courts below have been reversed with a general observation that on the facts and circumstances of the case the plaintiffs were entitled to exclusion of the period under section 14 of the Limitation Act as claimed. Therefore, the judgment of the High Court is clearly unsustainable.”

(emphasis added)

8. I find no force in this petition. The petition is hereby dismissed.

January 14, 2010
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SHIV NARAYAN DHINGRA J.