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

+ CS(OS) 17/2011 & IA No.3262/2011

Judgment delivered on: 5.7.2012

JITENDER KUMAR GUPTA

..... Plaintiff

Through Mr. A.K. Singla, Sr. Adv
Mr. S.K. Chaudhary with
Mr. S.N. Choudhri and
Ms. Shruti Choudhri, Advs.

versus

SUKHBIR SINGH SAINI

..... Defendant

Through Mr. Praveen Mahajan, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. By this application filed under section 14 of the Limitation Act, 1963, the plaintiff seeks the deduction of period from 3.11.2006 to 8.11.2010 & 29.9.2006 till 22.1.2010 in computation of period of limitation for the purpose of filing the present suit.

2. A brief conspectus of facts which has led the plaintiff to file the present application is that the plaintiff has filed the

present suit for recovery of Rs.65,83,590 against the defendant on the basis of the acknowledgment of the defendant of the dues payable by him towards the plaintiff in the balance sheet of the proprietorship business of the defendant in the name and style of M/s Victoria Creations. There are three suits which lurk in the background and as per the plaintiff give him the edge to be entitled to the relief in the present application. The first suit is the suit filed by the plaintiff herein against one Shri Bal Krishan Saini, brother in law of the defendant and M/s Devred India Pvt.Ltd, for rendition of accounts on 30.5.2006. The plaintiff in the said suit filed an application under Order 1 rule 10 and order 6 rule 17 for the impleadment of the present defendant, Shri SS Saini on 3.11.2006 which was dismissed on 8.11.2010. The second suit was filed by the present defendant on 19.8.2006 against the plaintiff and his brother in law, Shri B.K Saini alleging them both to be tenants in his property and thus claiming recovery of rent. The third suit was filed by the present defendant on 29.9.2006 for declaration that he is not the proprietor of M/s Victoria Creations and instead the plaintiff and Shri BK Saini are the proprietors of the said firm. The said

suit was dismissed in default on 22.1.2010. Thereafter the present suit for recovery is filed by the plaintiff herein against the defendant on 3.1.2011 and the plaintiff claims in the application under consideration that the time spent in pursuing the application for impleadment of the defendant in the suit filed by him for rendition of accounts i.e. 3.11.2006 to 8.11.2010 be excluded for computing the period of limitation. The plaintiff has also claimed his entitlement for the exclusion of the period from 29.9.2006 till 22.1.2010, the time spent in the suit for declaration filed by the defendant and once either of the above period is excluded, the present suit would fall within the period of limitation.

3. Mr. Singla, learned Senior Advocate representing the plaintiff submitted that the plaintiff is entitled to exclusion of the period from 29.9.2006 till 22.01.2010 on account of the suit for declaration filed by the defendant against the present plaintiff being Suit No. 1353/2006 before the Civil Judge, Delhi. Counsel further submitted that in the said suit, the present defendant, who was the plaintiff therein claimed that he was the dummy proprietor and the brother-in-law of the defendant, Shri

Bal Kishan Saini, was the actual proprietor of the said firm M/s Victoria Creations. Counsel also submitted that the amount sought to be recovered in the present suit against the defendant is based on the acknowledgement of the amount made by the defendant in his balance sheet of the years ending on 31st March, 2004, 31st March, 2005 and finally vide reply dated 19th July, 2005 to the legal notice sent by the plaintiff. Mr. Singla also submitted that the plaintiff had filed a separate suit for rendition of accounts i.e. vide suit No. 55/2006 and the said suit was filed by the plaintiff against Shri Bal Kishan Saini. Counsel further submitted that in the said suit Shri Bal Kishan Saini in his written statement and reply took a stand that it is Shri Sukhbir Singh Saini, the actual proprietor of the said firm, who is the best person to give reply and based on such assertion of the defendant therein the plaintiff had moved an application under Order 6 Rule 17 read with Order 1 Rule 10 and Section 151 CPC to seek the impleadment of Shri Sukhbir Singh Saini as additional defendant in the said suit. Counsel further submitted that the said application moved by the plaintiff was dismissed by the Court vide order dated 8.11.2010 and that the

said order was not challenged by the plaintiff before any superior Court and that thereafter the plaintiff had filed the present suit on 3.01.2011. Counsel thus urged that the plaintiff is entitled to exclusion of the time as envisaged under Section 14 of the Limitation Act, 1963 by excluding the period consumed before the Trial Court either in the first suit i.e. Suit No. 1353/2006 or the second suit i.e. Suit No. 55/2006.

4. Opposing the present application, Mr. Praveen Mahajan, learned counsel representing the defendant submitted that in para 3 of the legal notice dated 17th June, 2005 sent by the plaintiff to the defendant he has clearly stated that there were business transactions between the parties since 1997 which continued till 31st March, 2002 and in such business transactions the defendant owed a sum of Rs.33,10,000/- to the plaintiff. Counsel further submitted that in the last para of the said legal notice the plaintiff had called upon the defendant to pay Rs. 52,96,700/- within a period of 15 days from the receipt of the said notice failing which the plaintiff was to initiate action against the defendant in the appropriate court of law. The contention raised by the counsel for the defendant was that

even as per own case of the plaintiff, the last business transaction entered between the parties was on 31st March, 2002 and if from the said date the period of three years is reckoned in terms of the Limitation Act, then the period to file the recovery suit came to an end on 30th March, 2005. Counsel also submitted that in fact the said legal notice itself was sent by the plaintiff after the expiry of the period of limitation on 17.6.2005. Counsel further submitted that the defendant had never acknowledged the said amount and in the reply dated 19th July, 2005 sent by the defendant to the said legal notice, a categorical stand was taken by the defendant in para 12 of the same that no amount was due and payable by the defendant to the plaintiff. Counsel for the defendant submitted that the plaintiff is not entitled to any exclusion of the period during which the defendant was pursuing his suit for declaration as filing of the said suit in no way could come in the way of the plaintiff to seek recovery of the present amount from the defendant as the amount of recovery claimed by the plaintiff in the present suit is totally unconnected with the said suit. Counsel further submitted that the matter in issue in the

present suit for the recovery of the amount was not before the Court in the said suit for declaration filed by the defendant and, therefore, the plaintiff is not entitled to take the benefit of exclusion of the period as envisaged under Section 14 of the Limitation Act. So far the filing of the second suit is concerned, counsel submitted that the said suit was filed by the plaintiff to seek rendition of accounts of M/s Devred (India) Pvt. Ltd. and, therefore, the relief sought by the plaintiff in the said suit has no relevance with the subject matter of the present suit. Counsel also submitted that filing of the application by the plaintiff under Order 6 Rule 17 read with Order 1 Rule 10 and Section 151 CPC would also not entitle the plaintiff to seek exclusion of the time period as was consumed in deciding the said application as in the said application the plaintiff merely sought the impleadment of the defendant with certain consequential amendments. The contention raised by the counsel for the defendant thus was that in any case the said application was dismissed by the Court and the same attained finality and therefore, also the period consumed in the decision of the said application cannot be excluded in terms of Section

14 of the Limitation Act. In support of his arguments, counsel for the defendant placed reliance on the judgment of the Apex Court in *Deena Vs. Bharat AIR 2002 SC 2768*.

5. I have heard learned counsel for the parties and given my anxious consideration to the arguments advanced by them.

6. Before proceeding to decide the present application, it would be relevant to reproduce Section 14 of the Limitation Act as under:

“Section 14

14. Exclusion of time of proceeding bonafide in court without jurisdiction.

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub- section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.”

As would be seen from the bare reading of the above provision, the followings conditions need to be satisfied before the said

section can come into play:

- 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 good faith;
- iii. The failure of the prior proceedings was due to defect of jurisdiction or other cause of like nature
- iv. The earlier proceeding and the later proceeding must relate to the same matter in issue and
- v. Both the proceedings are in a Court.

The principle underlying the said provision of Limitation Act is to offer protection to a litigant against the bar of limitation when he institutes any proceedings before a civil court and such proceedings by reason of defect of jurisdiction or other cause of like nature could not be entertained by such Court. It is not merely the prosecution of such proceedings before a court or the courts which lack jurisdiction but in order to attract the said provision, the plaintiff has to further satisfy the court that he was prosecuting the said remedy with due diligence and in good faith. The definition of 'good faith' envisaged under Section 2(h) of the Limitation Act defines 'good faith' as that *nothing shall be deemed to be in good*

faith which is not done with due care and attention. What amounts to good faith or due diligence on the part of the plaintiff will depend upon facts of each case and no hard and fast rule can be laid down for the same. In any event of the matter, the said provision of law will not help a party who is guilty of negligence, lapse or inaction and in a casual approach continues to pursue a remedy before a court of law where no prudent person after exercising reasonable care would invoke or continue to pursue such a remedy. In *Rabindra Nath Samuel Dawson Vs. Sivakami & Ors, AIR 1972 SC 730*, the judgment relied upon by the counsel for the plaintiff, the Hon'ble Apex Court was dealing with a case where despite objections being taken by the defendant on the non-maintainability of the suit in the absence of mandatory notice under Section 80 of the Code of Civil Procedure, the plaintiff persisted to continue the said suit which ultimately resulted in dismissal due to non-maintainability of the same. Thereafter, when a fresh suit was filed by such plaintiff after giving notice under Section 80 of Code of Civil Procedure and it was on the application moved under Section 14 of the Limitation Act, the

Apex Court in the following para held as under:

"The reason given by the High Court are in our view cogent. Section 14 of the repealed Limitation Act which is applicable to this case gives benefit to a party who has been prosecuting with due diligence another civil proceeding whether in a Court of first instance or in a Court of first appeal against the defendant, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which from the defect of jurisdiction or other cause of like nature is unable to entertain it. The appellant's advocate points out that under Section 2(7) nothing shall be deemed to be done in good faith which is not done with due care and attention and that in this case the appellant was bona fide in purchasing the suit properties from an auction purchaser who also purchased them in revenue sales bona fide and that without notice to either of them the same has been set aside which is totally without jurisdiction and injuriously affects the appellant. That the appellant was caught in this predicament may be unfortunate but in so far as the question whether he bona fide prosecuted the earlier suit and appeal there could be no two opinions on the undisputed facts which have been clearly and forcefully stated by the High Court. It is clear that no suit for declaration and possession could have been filed against the defendants in respect of the revenue sales which was set aside without impleading the Government. The objection as to the maintainability of the suit was taken at the very initial stage but that was resisted and the appellant invited a decision by the Distt. Munsif. Even at the stage of revision against that order in the High Court he took the risk of proceeding with the suit. This was, therefore, not a case of prosecuting the previous proceedings bona fide. But on the other hand, he deliberately did so may be for obvious reason that if he had to withdraw the suit he would have to give notice under S. 80 CPC to the Government, wait for the expiry of the period of notice of two months and thereafter file a fresh suit. To avoid this he thought he would take a chance but that chance boomeranged against him. It is not a case where he prosecuted due to ignorance of law or bona fide mistake nor can it be said that he had misconceived the suit. None of the cases cited by the learned Advocate can assist the appellant because in all of them it was either a case of mistake of law on a doubtful point such as in the case of Bishambhur Halder v. Bonomali Halder, (1899) ILR 26 Cal 414(FB), or ignorance of law.

5. We do not think, having regard to the facts and circumstances of this case, that there is any justification for the application of Section 14 of the Limitation Act and in this view the appeal is dismissed with costs."

Hence, it is evident that due care has to be taken while prosecuting the suit before a wrong forum and the plaintiff has

to satisfy that he has taken sufficient care as is expected of any prudent man in pursuing his remedy before a wrong forum to claim the benefit of Section 14 of the Limitation Act. Dealing with the expression of “good faith” and “defect of jurisdiction” as used in Section 14 of the Limitation Act, the Apex Court in the case of ***Deena Vs. Bharat Singh (supra)*** in the following para held as under:

"15. 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. vs Diwan Devi and Ors. AIR1985SC1669 observed :

"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."

16. 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."

The Apex Court in the case of ***Zafar Khan vs. Board of Revenue, U.P AIR1985SC39*** took a view that if a party seeking benefit of Section 14 fails to get the relief in earlier proceedings not due to anything connected with the jurisdiction of the court or some other defect of like nature then such a party would not be entitled to the benefit of the said section. Relevant paras of the said judgment are reproduced as under:

"16. The next limb of the submission was that as in the former proceeding restitution was refused on the ground that in the proceeding under the 1953 Act the land in dispute was allotted to the respondents and the allotment had become final, it can safely be said that the proceeding failed on account of a cause of like nature such as defect of jurisdiction and the appellants would be entitled to exclude the time spent in that proceeding while computing the period of limitation in the suit. It is true that where the expression as a whole reads 'from defect of jurisdiction or other cause of a like nature is unable to entertain it' the expression 'cause of a like nature' will have to be read ejusdem generis with the expression 'defect of jurisdiction'. So construed the expression 'other cause of a like nature' must be so interpreted as to convey something analogous to the preceding words 'from defect of jurisdiction'. The defect of jurisdiction goes to the root of the matter as the court is incompetent to entertain the proceeding. The proceeding may as well fail for some other defect. Not all such defects can be said to be analogous to defect of jurisdiction. Therefore the expression 'other cause of a like nature' on which some light is shed by the Explanation (C) to Section 14 which provides "misjoinder of parties or causes of action shall be deemed to be a cause of like nature with defect of jurisdiction", must take its colour and content from the just preceding expression, 'defect of jurisdiction'. Prime facie it appears that must be some preliminary objection which if it succeeds, the court would be incompetent to entertain the proceeding on merits, such defect could be

said to be 'of the like nature' as defect of jurisdiction. Conversely if the party seeking benefit of the provision of Section 14 failed to get the relief in earlier proceeding not with regard to anything connected with the jurisdiction of the court of some other defect of a like nature, it would not be entitled to the benefit of Section 14. Where, therefore, the party failed in the earlier proceeding on merits and not on defect of jurisdiction or other cause of a like nature, it would not be entitled to the benefit of Section 14 of the Limitation Act. (Sec India Electric Works Ltd. v. James Mantosh and Anr. : [1971]2SCR397 .

17. The appellants failed in the earlier proceeding not on the ground that the authority had no jurisdiction to entertain the application nor on the ground that there was any other defect of a like nature, but on merits in as much as the authorities and the High Court held that in view of the decision of the authorities under 1953 Act, the appellants are not entitled to restitution. That was the decision on merits of the dispute and the appellants' application was rejected. Therefore, the High Court rightly declined to grant benefit of the provision of Section 14 of the Limitation Act to the appellants."

It is also settled legal position that Section 14 has to be liberally construed and unless there is sufficient material on record to come to the conclusion that the plaintiff is dishonest and lacks good faith, he cannot be denied the benefit of Section 14 of the Limitation Act. This has been held by the Apex Court in the case of three bench decision in ***Consolidated Engg. Enterprises vs. Irrigation Department (2008)7SCC169*** wherein it was held as under:

"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. In the backdrop of the above enunciated legal position, the present application moved by the plaintiff requires consideration. The plaintiff has filed the present suit for recovery of amount of Rs.65,83,590/- on 3.1.2011 and the recovery of the said amount as claimed by the plaintiff is based on the alleged acknowledgment of the said amount in the balance sheets of the financial year ending on 31.3.2004 and 31.3.2005 and in the reply dated 19.7.2005 to the notice dated 17.6.2005 sent by the plaintiff and also based on the averments made by the defendant in his plaint in the suit no.1353/06 dated 29.9.2006. For recapitulation, as per the case set up by the plaintiff in his plaint, the plaintiff and one Mr. Bal

Kishan Saini started their own independent business of exporting leather garments. The plaintiff started his work in the name and style of M/s. Panky Exports while Mr. Bal Kishan Saini had started his business in the name of M/s. Balaji Eximp. It is also the case of the plaintiff that he was introduced to the defendant by Mr. Bal Kishan Saini and the defendant represented to him that he was running the business of manufacturing leather garments under the name and style of M/s. Victoria Creations. It is also the case of the plaintiff that he and the defendant had been maintaining their open, general and current accounts. It is also the case of the plaintiff that in June 1997 the plaintiff and Mr. Bal Kishan Saini had floated another company in the name and style of M/s. Devred (India) Pvt. Ltd. and they had suspended their own individual proprietorship businesses. It is also the case of the plaintiff that in June 1998 in accordance with the open general account the defendant was liable to pay a sum of Rs.33,10,000/- to the plaintiff and the said liability of the plaintiff was being acknowledged by the defendant in their balance sheets of the financial year

03-04 and 04-05. It is also the case of the plaintiff that the defendant started manufacturing the leather garments for M/s Devred India Pvt. Ltd and as per the transaction entered into between the defendant and the said company the said company became liable to pay a sum of Rs. 65,57,000/- to the firm of the defendant i.e. M/s. Victoria Creations. It is also the case of the plaintiff that since the plaintiff himself was a Director in the said Pvt. Ltd. Company, therefore he allowed the defendant to maintain the amount of Rs.33,10,000/- which was due and payable to him in the account of his proprietorship business of M/s. Panky Exports. It is also the case of the plaintiff that in April, 2003, dispute arose between him and Mr. Bal Kishan Saini and thereafter the plaintiff had asked the defendant to repay his outstanding amount of Rs.33,10,000/-. It is also the case of the plaintiff that Mr. Bal Kishan Saini had advanced an amount of Rs. 15,00,000/- to the HUF of the plaintiff and with the said amount the plaintiff had started the partnership business by floating another firm with the name of M/s. Joyful Furnishing at Gurgaon. It is also the case of the plaintiff that in or about February, 2004, it was

settled between him and Mr. Bal Kishan Saini that the plaintiff would resign from M/s. Devred India Pvt. Ltd. and Mr. Bal Kishan Saini will buy off the share holding of the plaintiff company. It is also the case of the plaintiff that the amount of Rs. 15,00,000/- which was taken by him as a loan amount from Mr. Bal Kishan Saini would be adjusted by him against the amount of Rs.33,10,000/- as was recoverable by the plaintiff from the defendant. It is also the case of the plaintiff that on 15.2.2005, the defendant had addressed a letter to the plaintiff to claim that the amount recoverable by the plaintiff stood adjusted and only book adjustments were to be carried out between the parties. It is also the case of the plaintiff that vide notice dated 17.6.2005 he called upon the defendant to pay outstanding amount of Rs.33,10,000/- along with up-to-date interest accrued thereon. It is also the case of the plaintiff that in reply to the said legal notice, the defendant had admitted the said amount of Rs.33,10,000/- but related the said liability with his outstanding against M/s Devred India Pvt. Ltd. It is also the case of the plaintiff that faced with such circumstances; the plaintiff was left with no

alternative but to file the suit of rendition of accounts against Mr.Bal Krishan Saini.

8. Now after the said suit was filed by the plaintiff for rendition of accounts against Mr.Bal Krishan Saini on 6.5.2006, an application for impleadment of the defendant was filed on 3.11.2006. However as per the plaintiff as the suit for declaration filed by the defendant was dismissed there arose the need to file a fresh application for amendment and impleadment which was filed on 8.2.2010. Vide order dated 9.3.2010, the earlier application was dismissed as withdrawn and the fresh application was put up for arguments and the same was dismissed vide order dated 8.11.2010. A bare perusal of the said order would clearly show that the application was dismissed after hearing arguments on merits. The learned judge observed that the defendant who was sought to be impleaded in the suit had only a monetary stake in M/s Devred India Pvt. Ltd. alike other creditors/debtors and the suit was filed by one director against the other director and the defendant is a stranger to the remedy of rendition of accounts as sought by the plaintiff. The court also observed that Shri Bal

Krishan had also alongwith the defendant filed a suit for recovery against the plaintiff. The plaintiff on the other hand had also filed a petition for winding up of M/s Devred India Pvt. Ltd. The gamut of the above facts in the present case establishes that there were money transactions between the three people and suits were filed by the three against each other. In such a convoluted backdrop the plaintiff claims the recovery of money from the defendant on the ground that he sought to implead the defendant in the earlier suit but to no avail and thus to exclude the period he spent in pursuing the said case. Admittedly, the said suit is still surviving and being contested by Mr. Bal Krishan Saini.

9. The foremost requirement to be fulfilled to bring section 14 of the limitation act into picture is that the earlier proceedings before another court failed due to defect of jurisdiction or cause of like nature. It cannot be lost sight of the fact as has been reiterated in the above cited case law that the expression *cause of like nature* has to be construed *ejusdem generis* and analogous to the defect of jurisdiction and not otherwise. However as to what are the causes of like nature are

not enumerated in the said section, they have to be decided from case to case. Admittedly, in the facts of the case at hand, the application for impleadment was dismissed on merits and it was not due to any other defect of jurisdiction or other cause of like nature that the court was not able to entertain the said application and hence the time spent by the plaintiff in pursuing the said application cannot be excluded for the purposes of limitation of the present suit.

10. The other requirement was that for the purpose of application of section 14 to the case, the plaintiff must have instituted the earlier proceedings in good faith. What is good faith as has been already discussed is the suit instituted with due care and attention under the bonafide belief and impression. For the purpose of the present case the plaintiff at the first instance filed a suit against Shri Bal Krishan alone for rendition of accounts and thereafter sought to implead the present defendant. It is not the case of the plaintiff that the proceedings initiated by him were in a wrong forum or before a court which did not have the power to entertain it under the bonafide mistake or in good faith but that as the application

was dismissed therefore the period spent by him in pursuing the same should be excluded. Thus the requirement of section 14 of that of good faith is not fulfilled in the present circumstances.

11. Another facet of the argument of the plaintiff was that the time spent in pursuing the suit for declaration filed by the defendant for declaration should be excluded. The said contention of the plaintiff is equally devoid of any merit as nothing prevented the plaintiff to seek his own legal remedy of filing a recovery suit even if he was contesting the suit for declaration filed by the defendant. Therefore, the plaintiff cannot be countenanced to contend that as he was pursuing the suit for declaration filed by the defendant, he could not have filed the suit for recovery against the defendant. What exacerbates this argument of the plaintiff is that he himself has in the application for impleadment stated that the defendant had filed a suit for recovery against the plaintiff. What had impeded or barricaded the plaintiff from filing a suit for recovery against the defendant has not been put forth by the plaintiff and what has been echoed from his application and the

plaint time and again is that he could not have filed the present suit till the time the fate of the application for impleadment or the suit for declaration could be known. This court however cannot appreciate such argument of the plaintiff as the same is bereft of any substance.

12. The object of Limitation Act is that there must be a quietus to the litigation between parties for resolving disputes within a narrowed down time frame. It is also of value that the parties preferring claims after a long time would do more injustice than justice as the evidence which is required to prove the case would be lost due to the passage of time. The often echoed maxim that law is with the vigilant is the grundnorm of the justice dispensation system. It is ingeminated that a litigant has to be not only vigilant for his right but he has to be vigilant to see that he takes legal recourse within the period of limitation and any laxity, pretermission or negligence in not taking steps to take legal recourse within the prescribed period of limitation would certainly be advantageous to the party in default.

13. In the light of the above discussion, the present case does

not deserve exercise of discretion by this Court in favour of the plaintiff. The plaintiff hence is not entitled to the exclusion of the period from 3.11.2006 to 8.11.2010 or 29.9.2006 till 22.1.2010 for computing the period of limitation for this suit.

14. There is no merit in the present application and the same is hereby dismissed.

KAILASH GAMBHIR, J

July 05, 2012