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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 1869/2011

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Judgment dated 25.05.2012

AHALAVATH ORGNICS LTD

..... Plaintiff

Through: Mr.Vipul Goel and Mr.C.Siddharth, Adv

versus

STATE BANK OF MYSORE

..... Defendant

Through: Mr.S.L. Gupta and Mr.Ram Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

I.A. No.13516/2011 (for Condonation of 929 days delay)

1. Plaintiff has filed the present suit for recovery of Rs.27,10,215/- against the defendant Bank. Along with the present suit the plaintiff has filed an application under Section 14 of Limitation Act, 1963.
2. As per the plaint, the defendant bank has wrongly debited a sum of Rs.6,56,765/- and Rs.6,00,000/-, on 19.11.2005 which were received in the account of the plaintiff and adjusted against the overdraft in the account of the plaintiff. As per the plaintiff, debt of Rs.12,56,765/- is the bone of contention between the parties. The plaintiff issued a legal notice to the defendant bank on 16.3.2006, however, no response to this legal notice was received. Accordingly, the plaintiff filed a complaint with the Banking Ombudsman, Jeevan Bharti Building, New Delhi, on 26.4.2006. The Ombudsman thereafter referred the complaint of the plaintiff to the Reserve Bank of India, Department of Banking Supervision. As per this

application, number of meetings and discussions were held before the competent officer of RBI and letters were exchanged between the parties from 16.6.2006 till the year 2009 but no speaking order was passed by the Reserve Bank of India. This forced the petitioner to approach the High Court by filing a writ petition, being W.P.(C)1143/2009, which was disposed of by the High Court by an order dated 1.12.2009, by which a direction was issued to the Reserve Bank of India to pass a speaking order in the matter. A speaking order was passed by the Reserve Bank of India on 18.3.2011. The plaintiff thereafter filed the present suit on 9.8.2011.

3. By the present application, the plaintiff has prayed that the plaintiff was diligently pursuing the matter with the defendant Bank as a legal notice was issued to the bank as early as on 16.3.2006 thereafter the petitioner approached the Ombudsman and was pursuing the matter with the Reserve Bank of India and thereafter a writ petition was filed praying that the Reserve Bank of India should pass a speaking order in the matter.
4. Learned counsel for the plaintiff submits that the speaking order was passed only on 18.3.2011 and thereafter the present suit was filed on 9.8.2011. Counsel for the plaintiff has relied upon (2004) 13 SCC 656 and also (2004) 3 SCC 458 in support of his plea that since the plaintiff was pursuing a wrong remedy by approaching the bank, time spent in making a complaint to ombudsman and facts of writ petition be excluded from the period of limitation.
5. Counsel for the plaintiff has relied upon *Union of India And Ors. Vs. West Coast Paper Mills Ltd. & Anr.* 2004 vol. 3 SCC 458 and more particularly paragraph 14, in support of his submission that section 14 of the Limitation Act is to be liberally interpreted and a person should not be deprived of the remedy in case he has a right.

6. Reliance has also been placed on *N.Balakrishnan Vs. M. Krishnamurthy* (1998) 7 SCC 123, wherein the Apex Court has held that the object of Limitation Act is not meant to destroy the rights of the parties as it is founded on public policy fixing a life span for the legal remedy is for the general welfare. In support of his argument that the provisions of Sections 5 and 14 of the Limitation Act are alike and should be applied in a broad based manner, counsel for the plaintiff has placed reliance in the case of *J. Kumaradasan Nair & Anr. Vs. IRIC Sohan & Ors.* 2009 (2) scale page 544. It is also contended that only because a mistake has been committed by the plaintiff by not approaching the appropriate forum for ventilating his grievance, section 14 of the Limitation Act would squarely apply. To the same effect reliance is placed in the case of *Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation, Department and Ors.* (2008) 7 SCC page 169, in support of his plea that the equity underlying Section 14 should be applied to the fullest extent.
7. Learned counsel for the defendant has vehemently opposed the present application primarily on the ground that the period of limitation in filing the present suit expired prior to the plaintiff approaching the High Court by filing a writ petition. Even otherwise, in the writ petition the relief claimed by the plaintiff was that the Reserve Bank of India should be directed to pass a speaking order in the matter and, thus, it cannot be said that the subject matter of the writ petition and the present suit is the same. Counsel further submits that even by the time the writ petition was filed the period of limitation had come to an end and thus Section 14 of Limitation Act would not be applicable. Counsel next contends that time spent in approaching the bank, Reserve Bank of India and Ombudsman cannot be excluded as the Reserve Bank of India is not a Court within the definition of a court and thus the time spent in correspondence or

approaching any Government Department cannot be excluded from the period of limitation.

8. Mr.Gupta, counsel for the defendant submits that since the bank had received the cheque duly signed by the authorized signatory of the plaintiff, the cheques were encashed on the basis of other cheques which were available with the bank and the encashment thereof was in the pipeline. It is also submitted that this was done as the plaintiffs were their regular customer and it is a common practice. It is submitted that even otherwise the present suit is only a fallout of the disputes between the authorized signatory of the cheque and the plaintiff company. Counsel for the defendant further submits that after the amounts were deducted from the account of the plaintiff, the plaintiff made a complaint to the Ombudsman, but did not seek recovery of the said amount. Subsequently, the plaintiff filed a Writ Petition (Civil) No.11423/2009 wherein at the final hearing of the matter only relief which was pressed was that the Reserve Bank of India should pass a speaking order in the matter.
9. It is next contended that the Ombudsman is not a judicial forum, as the Ombudsman is not a creation of any statute and pendency of proceedings before Ombudsman and thereafter before Reserve Bank of India cannot extend the period of limitation.
10. In support of his argument that the writ petition which was filed was disposed of not on account of the fact that the court lacks jurisdiction, but on merits of the matter and a direction was issued to the Reserve Bank of India, as prayed for by the plaintiff. Mr.Gupta also submits that the plaintiff was satisfied with the order passed in the writ petition, which is evident from the fact that no appeal against the final order passed in the writ petition, filed.
11. Counsel for the defendant has placed reliance in the case of *Deena (dead)*

through L.Rs. Vs. Bharat Singh (dead) through L.Rs. and Ors. AIR 2002 SC 2768. Paragraph 16 of the said decision reads as under:

“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.”(emphasis added).

12. In support of his plea that the proceedings before Ombudsman cannot be treated proceedings before any Court, as the Ombudsman by no stretch of imagination can be treated as a Court. Reliance is also placed on the headnote of the case *Diwan Chand Kapoor Vs. New Rialto Cinema Pvt. Ltd.* 1985 (28) DLT 310, wherein it was held that time spent in pursuing a remedy by filing a winding up petition was not a forum for adjudication of disputes nor an ordinary forum for recovery of money.

“Limitation Act, 1963 -- Section 14 -- Applicability of -- Time spent in winding up petition, exclusion of, impermissibility -- Petitions by creditors for winding up of several companies on ground of inability of company to pay debts which was barred by time under Companies Act, 1956 -- Whether petitioner would be entitled to exclusion of time spent during the present proceedings in computing the period of limitation u/s. 14 of the Limitation Act?

No -- Filing of a winding up petition is not analogous to filing a suit -- Section 14 of Limitation Act would also be of no assistance to the petitioners because petitions for winding up and the eventual suit for which the exclusion may be claimed could not be said to “relate to the same matter in issue” – Winding up petition is not a forum for the adjudication of dispute between the parties nor it is an ordinary mode of recovery of money --- Other conditions of section 14(1) with regard to “difficulty of jurisdiction” would also not be satisfied --- Therefore section 14 of the Act inapplicable in deciding the question if the claim has become barred by time.”

13. Reliance is also placed in the case of *Management of Messers Associated Industries (Assam) Ltd. Vs. Bipin Behari Singh & Anr.* AIR 1972 Assam and Nagaland 31 (V. 59 C 12) and more particularly paragraph 4, which reads as under:

4. Before we look at the provisions of the Act, we may quote Section 14(2) of the Limitation Act, which is material for the present purpose:

“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.”

Before we construe Section 14(2), we have to see the nature of the proceeding, out of which the appeal arose. The appeal is against an order in a proceeding before a certifying officer under Section 5 of the Act. That proceeding is not a civil proceeding inasmuch as an order in such a proceeding does not relate at that stage to any civil rights of the parties as such, or to any infraction of such rights. The Act requires employers to precisely define the conditions of

employment and to make the same known to workmen. The conditions are to be certified by a certifying officer under Section 5(3) after hearing the parties and making appropriate orders, if any, under Section 5(2) of the Act. The conditions for certification of Standing Orders are that provision has been made therein for every matter set out in the Schedule to the Act as applicable to the industrial establishment, the standing orders are otherwise in conformity with the provisions of the Act and that the provisions of the standing orders are fair or reasonable.

It is true that under Section 11 every certifying officer and appellate authority have all the powers of a civil court for certain specified purposes mentioned therein and shall be deemed to be a civil court for the purposes of Sections 480 and 482 of the Code of Criminal Procedure. This circumstance, by itself with nothing more, will not convert a certifying officer to a 'Court', nor the proceeding before it to a 'civil proceeding'. If, as we have held, the proceeding before the certifying officer is not a civil proceeding, it will not change its character when taken in appeal before the appellate authority, which, in this particular case, was taken to the Labour Court, and admittedly a wrong forum. Section 14 can be invoked only if the earlier proceeding had been a 'civil proceeding' and had been 'prosecuted ... in a court'. Section 14(1) refers in terms to the 'period of limitation for any suit' and 'whether in a court of first instance or of appeal or revision.' These expressions clearly refer to a civil suit prosecuted in a civil court. When we come to Section 14(2), the reference is to 'any application'. But the expression 'civil proceeding' 'whether in a court of first instance or of appeal or revision', and 'prosecuted ... in court' are repeated. When these expressions are used in the same section, it is difficult to give a different meaning to the word 'Court' and include a tribunal or a labour court with the trappings of a court within the terra. In our opinion, the Labour Court, whether wrongly or rightly, exercising the power of the appellate authority under Section 6 of the Act, is not a 'court' for the purpose of Section 14 of the Limitation Act. If prosecution before the Labour Court was not in a 'civil proceeding', nor in a 'court', the fact that the matter was later agitated on the writ side of the High Court against the order of the Labour Court does not make the earlier proceedings before the Labour Court a civil proceeding in a court.”

14. Counsel for the plaintiff submits that on the merits of the matter the order passed by the Reserve Bank of India would show that the bank has no authority to debit the account of the plaintiff.
15. I have heard learned counsel for the parties and also considered their rival contentions. As per the plaint, the defendant had debited a sum of Rs.12,56,765/- on 19.11.2005 from the current account of the plaintiff. The Bank statement was received on 2.3.2006. Present suit has been instituted on 18.7.2011 together with an application under Section 14 of Limitation Act. It is prayed that the time spent by the plaintiff in approaching the bank, the ombudsman, Reserve Bank of India and in writ proceedings be excluded from the period of limitation.
16. Learned counsel for the plaintiff has contended that the remedy before the ombudsman, Reserve Bank of India and the writ court was being pursued diligently and in good faith, and on account of a bona fide belief that it was the appropriate remedy. While learned counsel for the defendant non-applicant has submitted that the plaintiff cannot derive benefit of Section 14 of Limitation Act as the time spent in agitating the matter either with the Bank or before the Reserve Bank of India cannot be deducted from the period of limitation. It is further submitted that the plaintiff filed a writ petition in the month of September, 2009, when the period of limitation had already lapsed. It has also been argued by counsel for the defendant that the only relief which was pressed before the High Court was that a direction be issued to the Reserve Bank of India to pass a speaking order on the complaint of the plaintiff. Thus, it cannot be said that the subject matter of the present suit and the writ petition was the same. It has also been argued that plaintiff was satisfied with the order passed by the High Court as no appeal was filed against the order of the High Court dated

1.12.2009.

17. As per Black's Law Dictionary, Eighth Edition, "Ombudsman is (1) an official appointed to receive, investigate, and report on private citizens' complaints about the government, (2) a similar appointee in a non-governmental organization (such as a company or university) – Often shortened to ombuds.

"An ombudsman serves as an alternative to the adversary system for resolving disputes, especially between citizens and government agencies....An ombudsman is (1) an independent and nonpartisan office of the legislature who supervises the administration; (2) one who deals with specific complaints from the public against administrative injustice and maladministration; and (3) one who has the power to investigate, criticize and publicize but not to reverse administration action. 4 Am. Jur. 2d Alternative Dispute Resolution 23(1995)"

18. It would be useful to reproduce the guidelines laid down by the Apex Court in the case of **Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and Ors.** (2008) 7 SCC 169, which read as under:

"21. 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.

22. 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.”

19. The aforesaid guidelines are to be read along with the provisions of Section 14 of the Limitation Act which also stands reproduced above. In order to attract the provisions of Section 14 of the Limitation Act, the applicant must show that he was pursuing a remedy in a court without jurisdiction in a bona fide manner and with due diligence. This section includes the court of first instance or appeal or revision and the remedy should be against the same party. Section 14 of the Limitation Act makes it clear that the court in which the matter was being pursued should be unable to grant relief on account of defect of jurisdiction or any other

cause of a like nature.

20. In the present matter, by issuing a notice to the bank and thereafter pursuing the matter before the Reserve Bank of India by no stretch of imagination can be said that the plaintiff was pursuing his relief against any court as neither the defendant nor Reserve Bank of India would fall in the definition of a court. Thus, Section 14 of the Limitation Act cannot be attracted to the facts of the present case.
21. Another aspect of the matter, which cannot go unnoticed, is that a writ petition was filed in the Delhi High Court in which the only relief which was pressed was that a direction be issued to the Reserve Bank of India to pass a speaking order. This is evident from the order which has been passed and also evident from the fact that the order in the writ petition has attained finality, as no appeal has been filed against the said order, which would mean that the plaintiff was satisfied with the relief granted and consequently it cannot be said that the writ petition failed.
22. In the case of Deena (dead) through L.Rs. (supra), it has been categorically held that Section 14 will have no application in a case where suit is dismissed after adjudication on its merits and not because the Court was unable to entertain it.
23. The High Court did not dismiss the writ petition but allowed it and thus it cannot be said that the High Court lacked jurisdiction. Since the plaintiff is unable to satisfy the two basic ingredients, as set out in Section 14 of the Limitation Act and the guidelines laid down by the Supreme Court, the present application cannot be entertained. The same is dismissed.

G.S.SISTANI, J

MAY 25, 2012
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