

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

+ **RFA 567/2011**

% **1st March, 2012**
ANIL BHAMBRI Appellant

Through : Mr. Bhagabati Prasad Padhy,
Advocate.

versus

NORTH DELHI POWER LTD Respondent
Through : Mr. Manish Srivastava, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J. (ORAL)

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the Trial Court dated 15.11.2011 rejecting the plaint under Order 7 Rule 11 CPC by holding that the suit was barred by limitation. The Trial Court refused to give the benefit of Section 14 of the Limitation Act, 1963 for the period spent by the appellant/plaintiff in pursuing the proceedings for similar relief in the Consumer Forum, Delhi. The subject suit was filed for declaration, challenging the electricity bill issued by the respondent/defendant for ₹8,27,760/- in respect of K No. 33400951708 located at 18A/2, Industrial Area, Phase-II, Naraina, New

Delhi.

2. The appellant/plaintiff had approached the District Consumer Forum in New Delhi to challenge the bill where he has deposited a sum of ₹2,50,000/-, however, the Consumer Forum dismissed the petition as withdrawn because the appellant/plaintiff was found not to be a 'consumer' under the Consumer Protection Act, 1986.

3. The Trial Court has observed as under for denying the benefit of Section 14 of the Limitation Act to the appellant/plaintiff:-

“11. To get the exclusion of time u/s 14 of the Limitation Act one should be prosecuting the lis with due diligence and must be in good faith. In my considered opinion the word 'due diligence' u/s 14 of the Limitation Act covers the knowledge of relevant legal provisions. In the year 1993 and 2002, section 2 of the Consumer Protection Act was amended and by the said amendments the persons who avail goods/services for any commercial purposes were excluded from the definition of consumer. The plaintiff raised the dispute in the year 2007 before the consumer forum. Simple reading of the definition of the word 'consumer' is sufficient to understand that if a person is availing services for commercial purposes then he is not entitled to get any relief from the consumer forum. The plaintiff did not raise dispute before the forum established u/s 42(5) of the Electricity Act, which is created exclusively for the purpose of redressal of grievances pertaining to billing disputes amongst others for the reasons best known to him.

12. As discussed hereinabove, a bare reading of section 2(d) of the Consumer Protection Act makes it

clear that a person who is availing services for commercial purposes is not a consumer under the Consumer Protection Act. The amendments to the section 2(d) of Consumer Protection Act were made in the year 1993 and 2002 and the complaint was filed the plaintiff in the year 2007. Plaintiff cannot plead the ignorance of law by merely saying that his complaint was entertained by the District Consumer Forum and interim relief was also granted. The contention of the plaintiff that the defendant did not prefer any appeal or revision against the proceedings before the District Consumer Forum is also not acceptable on simple ground that the conduct of the defendant before the forum does not change or alter the law of limitation. The compliance of interim order of the forum by the defendant can only be considered as an act of propriety by the defendant. Apart from that the word 'good faith' in section 14 of the Limitation Act is also important to get the benefit of exclusion of time under the said section. It was well within the knowledge of the plaintiff that there is a forum established u/s 4295) of the Electricity Act by notification dated 11.03.04 to resolve the billing disputes. The plaintiff did not even choose to approach the Forum under the Electricity Act despite the fact that the dispute between the plaintiff and the defendant is essentially a billing dispute. The conduct of the plaintiff in approaching the District Consumer Dispute Redressal Forum cannot therefore be termed as an act done in good faith.

13. In view of the above, I am of the considered opinion that the plaintiff is not entitled to get the benefit of exclusion of time u/s 14 of the Limitation Act. Admittedly, the dispute arose between the plaintiff and the defendant on 31.08.07 when an amount of ₹ 7,88,018.68/- was added to the bill bearing no. 0708550708 dated 31.08.07. The limitation as provided under article 58 in part III of Schedule appended to Limitation Act, 1963 to seek declaration is three years which starts when the right to

sue first accrues. The plaintiff ought to have filed a suit within three years, i.e., on or before 31.08.2010. Present suit is filed on 22.07.2011 which is obviously beyond the period of 3 years which is a valid ground u/o 7 Rule 11(d) of CPC for rejection of the plaint. Even otherwise, section 3 of the Limitation Act mandates that every suit instituted after the prescribed period shall be dismissed even though expiry of limitation has not been raised as defence.”

4. Surely, an impression with respect to definition of a person being or not being a consumer is a legal issue and if there is a particular opinion of a legal issue there cannot be said to be any lack of bonafides for denying the benefit of Section 14 of the Limitation Act, 1963 to the appellant/plaintiff. Once a plaintiff pursues, in bonafide manner, a claim in wrong forum which did not have jurisdiction, such a plaintiff is entitled to the benefit of exclusion of the period under Section 14 of the Limitation Act, 1963 spent in the wrong forum.

5. In view of the aforesaid facts, counsel for the respondent/defendant did not seriously contest the setting aside of the impugned order and for giving the benefit of Section 14 of the Limitation Act, 1963 to the appellant/plaintiff.

6. In view of the above, the appeal is accepted. Impugned judgment dated 15.11.2011 is set aside. The appellant/plaintiff will be entitled to exclusion of the period spent before the Consumer Forum, Delhi under

Section 14 of the Limitation Act, 1963. As admitted by both the counsel before me, once this period is excluded, the suit then will be within the limitation. It is, therefore, held that the suit filed by the appellant/plaintiff is within limitation.

7. Nothing contained in the present order is a reflection on merits of case of either of the parties, and the Trial Court will hear and dispose of the suit in accordance with law.

8. Parties to appear before the District Judge, Dwarka Courts, New Delhi on 27th March, 2012, on which date, the District Judge will mark the suit for disposal before the competent forum in accordance with law.

9. Parties are left to bear their own costs.

10. Interim order passed by this Court will continue till the disposal of the application of the appellant/plaintiff filed under Order 39 Rule 1 & 2 CPC, however, continuation of the interim order is no reflection on the entitlement or disentitlement to the interim relief as asked for by the appellant/plaintiff.

11. Appeal is disposed of with the aforesaid observations and directions. Trial Court record be sent back.

VALMIKI J. MEHTA, J.

MARCH 01, 2012

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