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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 262/2010

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Judgment dated 28.05.2012

PRAKASH CHAND SINGHAL ..... Plaintiff

Through: Mr. Atul Bandhu, Advocate

versus

M/S D.C.M LTD ..... Defendant

Through: Mr. Kirat Nagra, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

IA.Nos.1860/2010

1. Plaintiff has filed the present suit for recovery of Rs.30.0 lacs with pendent lite and future interest against the defendant. Along with the present suit, the plaintiff has filed the present application under Section 14 of the Limitation Act. As per the plaint in the year 1997 after retirement the plaintiff entered into a agreement thereby subscribing to a scheme (Scheme-B) of the defendant which carried cumulative interest @ 15% compounding monthly. In addition the defendant also used to give incentive @ 5% per annum in cash/ cheque while accepting fresh/renewal of deposits. Since defendant did not return the amounts deposited, nor paid the interest as per the scheme, the plaintiff was forced to approach the State Consumer Forum and the plaintiff filed a complaint on 04.09.1998. This complaint was allowed by an order dated 14.02.2006

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By:AMULYA

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compensation amounting to Rs.50,000/- and Rs.10,000/- was awarded towards costs. The plaintiff being aggrieved by the order of the State Commission, as according to the plaintiff, the State Commission did not award interest as per the scheme and agreement entered into between, the parties approached the National Commission. The National Consumer Forum allowed the appeal of the plaintiff and held that the State Commission could not have awarded lump sum amount of Rs.50,000/- as interest when parties had agreed that interest would be paid by the defendant @ 15%. The National commission awarded 15% simple interest to the plaintiff. The plaintiff was still unhappy with the finding of the National Commission, as according to him he was entitled to 15% compound interest and not simple interest. The plaintiff thereafter approached the Apex Court by filing Special Leave Petition, which was dismissed on 18.03.2009. In the meanwhile plaintiff also filed an application seeking modification of the order of the National Commission, which was dismissed on 17.04.2009. It is only thereafter the plaintiff has filed the present suit in the High Court with an application under Section 14 of the Limitation Act. The prayer in the present suit is as under:

“A. Decree of recovery of Rs.30,00,000/- only (Rs. Thirty Lacs in favour of the plaintiff and against the defendant under the agreement of FDs thereby directing the defendant to pay the money in terms of the agreement as per the contracted rate of interest with incentive i.e. cumulative interest @ 15.5% compoundable monthly and incentive @5% p.a. in cash/ cheque for the entire period i.e. from the due date to the date of actual payment.

B. Further a decree for intermediary profits (mesne profits) @ 15% as the defendants has used the money of the plaintiff for all this period;

C. Further decree of recovery of pendente lite interest @15% p.a. on the total amount recoverable; and also future interest @

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15% p.a. and costs of petition.”

2. Mr. Bandhu, counsel for the plaintiff submits that firstly the plaintiff filed a complaint before the State Commission, as the remedy available to him under the Consumer Protection Act, 1986 is not an alternate remedy and it is a remedy provided in addition to a remedy not in derogation to any of the other laws in force. Counsel has drawn attention of the Court to Section 3 of the Consumer Protection Act, which reads as under:

**“3. Act not in derogation of any other law.-** The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.”

3. Counsel for the plaintiff also submits that in any case neither the State Commission nor the National Commission could have awarded him the interest as the scope of the complaint before the State Commissioner was that the defendant was cheating the public at large, taking deposits and not making the payments in accordance with law. The second leg of his argument of counsel for the plaintiff is that he was diligently pursuing the remedy available to him as provided under the Consumer Protection Act. Counsel contends that the time spent before the State Commission, National Commission and before the Apex Court, should be excluded from the period of limitation as the plaintiff was proceeding before the said forum under the bona fide belief that the State Commission was the appropriate court of jurisdiction, not knowing that the State forum lacked jurisdiction in the matter.
4. Counsel for the defendant has vehemently opposed this application firstly on the ground that the plaintiff has exhausted the all remedies available to him and the present suit would be barred by limitation and by *res judicata*. He further submits that Section 14 of the Limitation Act, would not be applicable to the facts of the present case, as it cannot be said that

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either the plaintiff was pursuing alternative remedy diligently or that there was some inherent failure of jurisdiction in the proceedings initiated under the Consumer Protection Act. It is also contended that the plaintiff did not succeed due to the defect in jurisdiction, but on the merits of the matter.

5. Counsel for the defendant further submits that all prayers made by the plaintiff stand allowed by the State Commission and National Commission and that there was no prayer made with respect to deficiency of service. The only prayer made was return of amount with interest and the merits of the matter stands contested upto the Apex Court.
6. Counsel for the defendant has placed reliance in the case **Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and Ors.** (2008) 7 SCC 169 in support of his plea that the plaintiff has failed to satisfy the basic conditions before Section 14 of the Limitation Act can be provided. Paragraphs 21 and 22 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."

7. Counsel for the defendant submits that the application filed by the plaintiff has failed to satisfy the conditions as laid down under Section 14 of the Limitation Act, as it cannot be said that the plaintiff pursued the litigation before the State Commission, which forum lacked jurisdiction or that the complaint was dismissed due to defect of jurisdiction or any other

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cause of the like nature.

8. Admittedly, the plaintiff pursued the remedy under the Consumer Protection Act, to the very end.
9. I have heard counsel for the parties. The basic facts are not in dispute that the plaintiff had made a deposit with the defendant and as per the Agreement the plaintiff was entitled to interest @15% compounded. As the defendant failed to return the deposit or pay the interest the plaintiff filed a complaint before the State Commission. The State Commission directed the defendant to pay the principal amount along with compensation of 50% in lieu of interest and cost of litigation of Rs.10,000/- in view of the financial condition of the defendant. Aggrieved by the order of the State Commission, which partially allowed the complaint of the plaintiff, the plaintiff approached the National Consumer Disputes Redressal Commission. The appeal was allowed, impugned order was modified and the defendant was held liable to pay interest @15% per annum. On account of the fact that even the National Consumer disputes Redressal Commission did not award compound interest the plaintiff filed a Special Leave Petition which was dismissed by the Apex Court.
10. The sum and substance of the argument of learned counsel for the plaintiff is that firstly under Section 3 of Consumer Protection Act the remedy available to the plaintiff under the said Act was in addition to any other remedy available to the plaintiff as per law. There is no quarrel to this proposition, however, this submission of counsel for the plaintiff is no help to the plaintiff as the argument is diametrically opposite to the second argument, which is sought to be raised by learned counsel for the plaintiff, that the plaintiff was pursuing his complaint in a forum, which lacks jurisdiction and, thus, the present application be allowed. In case the

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submission of learned counsel for the plaintiff is to be allowed, it would only show that in addition to filing a civil suit he could have also filed a complaint under Consumer Protection Act in which case the plaintiff should have filed a civil suit simultaneously.

11. The second submission of learned counsel for the plaintiff is that the remedy sought under the Consumer Protection Act was that the defendant was cheating the public at large by taking deposits and not making the payments in accordance with law. The following prayer was made before the Commission:

“It is, therefore, most respectfully prayed that this Honorable court look into the matter sympathetically and issue necessary orders to respondent company to make immediate payment of Rupees 5,39,573/- along with interest @15% compounded on monthly interval till the date of release of cheque and damage worth Rupees 50,000/- for mental tension, harassment, hardship which the complainant suffered due to delayed non-payment of amount.”

12. A mere reading of the prayer would show that this submission is factually incorrect as the relief sought was payment of Rs.5,39,573 along with compound interest @15% and damages. The same prayer was pressed before the National Commission and also before the Apex Court. First para of the judgment rendered by the National Consumer Dispute Redressal Commission on 18.9.2009 reads as under:

“Order of the Delhi State Consumer Disputes Redressal Commission (in short ‘the State Commission) dated 14.2.06 passed in the complaint case No.252/98 as amended/corrected by order dated 2.06.06 is in question before us in this appeal. By the impugned order, the State Commission has partly allowed the complaint filed by the appellant herein with a direction to the respondent to pay the principal amount of Rs.1,83,243/- with compensation Rs.50,000/-, in lieu of interest and sum of Rs.10,000/- as cost of proceedings by observing “if we award interest compensation shall be much higher but in view of the financial condition of the OP we only award reasonable lump sum

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compensation. It is this observation and dispensation that has led the appellant to approach this Commission. It is not disputed that after passing the impugned order the respondent company has accepted the order and complied with the directions given in the order."

13. Since the National Commission did not award 15% compound interest the plaintiff filed a Special Leave Petition which was dismissed by the Apex Court. In the case of Consolidated Engineering Enterprises (supra) the Apex Court has laid down five broad conditions, which must be satisfied before Section 14 can be pressed into service. The short question, thus, comes for consideration before this Court is whether the plaintiff was pursuing a remedy in a forum where he could not succeed due to defect of jurisdiction.
14. A careful perusal of the order of the State Commission, National Commission and the Supreme Court, counsel for the plaintiff is satisfied that he could not succeed before the State Commission, National Commission and the Apex Court on the ground of lack of jurisdiction. In fact in the State Commission, the complaint was allowed and the plaintiff also succeeded before the National Commission. There is no observation by the State Commission or by the National Commission as compound interest could not be granted on account of lack of jurisdiction. In fact the National Commission has awarded 15% interest but not compound interest. Once the plaintiff has exhausted the remedies available to him the plaintiff is not entitled to have a second round of litigation by taking recourse to Section 14 of the Limitation Act. The aim and object of Section 14 is to afford protection to a litigant when he institutes a proceeding and does not succeed by reasons of some technical defect or in case the matter cannot be decided on merits and is dismissed.
15. In the case of *Deena (dead) through L.Rs. Vs. Bharat Singh (dead)*

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*through L.Rs. and Ors.*, reported at AIR 2002 SC 2768, it was held that Section 14 of Limitation Act would have no application where the matter has been adjudicated on merits and not because the Court was unable to entertain it. Paragraph 16 reads as under:

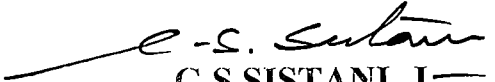
“16. The other expressions relevant to be construed in this regard are 'defect of jurisdiction' and 'or other cause of a like nature'. The expression 'defect of jurisdiction' on a plain reading means the Court must lack jurisdiction to entertain the suit or proceeding. The circumstances in which or the 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.”

16. In this case, the matter before the State Commission and National Commission has been decided on merits and not on account of lack of jurisdiction. It is not a case where the complaint of the plaintiff was not entertained by the State Commission or the National Commission or by the Apex Court on account of want of jurisdiction. Thus, the provisions of Section 14 of the Limitation Act cannot be attracted. The present suit is patently barred beyond the period of limitation and the same is accordingly dismissed.

**CS(OS) 262/2010 & I.A. 1862/2010**

17. In view of the fact that the application for condonation of delay already

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[IA.No.1860/2010] stands dismissed, the present suit [CS(OS) 262/2010]  
and the application [I.A. 1862/2010] stand dismissed, leaving the parties  
to bear their own costs.

  
G.S.SISTANI, J—

MAY 28, 2012  
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