

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

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Date of decision: 5th July, 2013

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RFA 131/2013

REKHA DUA

..... Appellant

Through: Ms. Savita Aggarwal, Adv.

versus

YOGINDER CHAUHAN & ANR.

..... Respondents

Through: Mr. Kamal Mehta, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

CM No.4177/2013 (of the appellant for condonation of two days delay in preferring the appeal).

1. The counsel for both the respondents has fairly stated that he has no objection.
2. For the reasons stated in the application, the delay in preferring the appeal is condoned and the application is disposed of.

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3. Issue notice. Notice is accepted by the counsel for the respondents.
4. Admit.
5. Though the Trial Court record has not been requisitioned as yet and is not available but on the statement of both the counsels that since the appeal is against the judgment and decree of dismissal without recording any evidence of the suit filed by the appellant as barred by time and rejecting the plea of the appellant under Section 14 of the Limitation Act, 1963, the

records are not necessary and the material available on paper book is sufficient, the appeal has been heard.

5. The appellant instituted the suit from which this appeal arises for recovery from the two respondents, a sum of Rs.20,00,000/- with interest. It was the pleading of the appellant in the plaint; (i) that the appellant is an NRI and the respondent no.1 was training the children of the appellant in Karate; (ii) that the appellant, on the representations of the respondent no.1 and his wife respondent no.2 that they will form an education society and make the appellant the Chairman thereof if the appellant invested money therein, between 18th September, 2004 and August, 2008 extracted a sum of Rs.16,00,000/- from the appellant; (iii) that the ulterior motives of the respondents were exposed when the appellant arrived in India on 30.03.2008 and sought accounts of the Society and the respondents refused to oblige; (iv) that with the intervention of the friends, the respondents agreed to refund the sum of Rs.16,00,000/- to the appellant and executed an undertaking dated 26.07.2008 to pay the said amount by 30.09.2008; (v) that the respondents however failed to pay any amount; (vi) that since beginning of 2009, the appellant lodged several police complaints and approached various investigation agencies and filed applications under Section 156(3) Cr.P.C. before the learned MM, Delhi but no action was taken; and, (vii) that the appellant's application before the MM was still pending consideration. The appellant, besides Rs.16,00,000/-, also claimed damages of Rs.4,00,000/- towards interest on Rs.16,00,000/-.

6. The plaint was accompanied with an application under Section 14 of the Limitation Act in which the appellant admitted that the plaint was

presented after the limitation period of three years but pleaded that since the appellant is an NRI and had been prosecuting other remedies before the criminal Courts and because the respondents “had induced” the said money from the appellant by playing a fraud and subsequently prevented the appellant from access to vital documents of the Society / School, the delay in presentation of the plaint was neither deliberate nor intentional and sought condonation of 222 days delay in institution of suit.

7. The respondents filed a reply to the said application under Section 14 of the Limitation Act pleading that Section 14 was not attracted to the proceedings / remedies before the criminal Court.

8. The appellant filed a rejoinder to the said reply pleading that the allegations levelled in the complaint before the Magistrate were purely civil in nature and no cognizable offence had been found to be committed and the appellant had been advised to file recovery suit. The counsel for the appellant however today states that in one of the complaints filed of offence under Section 420 of the IPC, the respondents have been summoned and have been released on bail.

9. The learned Additional District Judge in the impugned order dated 27th November, 2012 has held that the cause of action as per the plaint also accrued on 01.10.2008 but the suit had been filed after more than three years therefrom on 26.05.2012; that the complaints filed by the appellant with the Police were not before the Court in terms of Section 14 of the Limitation Act; that neither the said police complaints nor the proceedings by the investigative / enforcement agency were civil proceedings and Section 14 was thus not available. Accordingly, the plaint has been rejected as barred

by time.

10. The counsel for the appellant has before this Court also relied on the same judgments as cited before the Trial Court. However, ***Brajnandan Sinha Vs. Jyoti Narain*** AIR 1956 SC 66 does not decide as to what are civil proceedings and merely is on the definition of Court in the Contempt of Courts Act, 1952. Similarly, ***P. Sarathy Vs. State Bank of India*** AIR 2000 SC 2023 merely lays down that proceedings before the Authority under the Tamil Nadu Shops & Establishments Act and before the Labour Court are civil proceedings and does not hold the complaints before Magistrates of offence committed to be civil proceedings. The said judgments thus have no application.

11. The counsel for the respondents has referred to ***The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur*** AIR 1975 SC 1039 to contend that for Section 14 to apply, the following conditions have to be satisfied:

- “(1) both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;*
- (2) the prior proceedings had been prosecuted with due diligence and in good faith;*
- (3) the failure of the prior proceedings was due to a defect of jurisdiction or other cause of a like nature;*
- (4) both the proceedings are proceedings in a court.”*

It is contended that the complaints filed by the appellant before the Court of the Magistrate are not civil proceedings. Attention is also invited to ***C. Venkataseeramarkrishna Rao Vs. J.L. Narasimha Rao*** MANU/AP/0480/2010 holding that Section 14 has no application to prosecution of criminal proceedings even in respect of the same transaction.

12. Faced therewith, the counsel for the appellant has sought to invoke Section 17 of the Limitation Act even though the same was not urged before the Trial Court. The said provision provides as under:

“17. Effect of fraud or mistake.-(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act, -
(a) *the suit or application is based upon the fraud of the defendant or respondent or his agent; or*
(b) *the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or*
(c) *the suit or application is for relief from the consequences of a mistake; or*
(d) *where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him, the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production*

13. Thus though there are no pleadings of the ingredients of Section 17 and reference thereto admitted to have been made for the first time only in the memorandum of appeal but I am of the view that the same also will have no application. According to the plaintiff herself she discovered the fraud played by the respondents upon her during her visit in March, 2008 and when she obtained the undertaking dated 26.07.2008 from the respondents to pay the amount by 30.09.2008. The period of limitation, even if the case of the plaintiff were to be believed, would begin to run at least on 01.10.2008 but the suit has been filed beyond three years therefrom also.

14. Thus the question of applicability, neither of Section 14 nor of Section 17 arises. Even otherwise, the plaintiff appears to be under misconception

that the said provisions are of condonation of delay. The said provisions are not of condonation of delay but of suspension of the period of limitation.

15. As far as the claim for damages of Rs.4,00,000/- is concerned, the cause of action therefor also arose at the same time and what has been discussed hereinabove with respect to suit for recovery of Rs.16,00,000/- applies thereto also.

16. There is thus no merit in the appeal which is dismissed. However in the facts no costs. Decree sheet be drawn up.

17. At this stage, the counsel for the appellant states that she withdraws the appeal and the court fees paid on the appeal be refunded.

18. The appellant having consumed the time of this Court, though is permitted to withdraw the appeal but in exercise of powers as held by the Division bench of this Court in *Aya Singh Tirlok Singh Vs. Munshi Ram Atma Ram* AIR 1968 Delhi 249 is found entitled to refund only of 50% of the court fees paid on the memo of appeal.

19. The appeal is accordingly dismissed as withdrawn. The Registry is directed to issue a certificate enabling the appellant to obtain refund from the Collector, Delhi of 50% of the court fees paid on the appeal.

RAJIV SAHAI ENDLAW, J

JULY 5, 2013

‘gsr’..