

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

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**Date of decision: 3<sup>rd</sup> December, 2013.**

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**RFA 269/2011**

**STATE FARMS CORPORATION OF  
INDIA LTD. & ANR.**

**..... Appellants**

Through: Mr. G. Joshi, Adv.

Versus

**DR. MAHENDRA SINGH**

**....Respondent**

Through: Respondent in person.

**AND**

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**RFA 371/2011**

**DR. MAHENDRA SINGH**

**.....Appellant**

Through: Appellant in person.

Versus

**UNION OF INDIA & ANR.**

**.....Respondents**

Through: Mr. G. Joshi, Adv.

***CORAM :-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**RAJIV SAHAI ENDLAW, J.**

1. Both appeals impugn the judgment and decree dated 03.02.2011 of the Court of Additional District Judge-07, Central, Tis Hazari Courts, Delhi in CS No.118/2008 (ID No.02401C5086002004) filed by the appellant in RFA No.371/2011 against the appellants in RFA No.269/2011. RFA

No.269/2011 filed by the judgment debtors in the suit was admitted for hearing and vide order dated 12.05.2011 the operation of the impugned judgment and decree stayed. RFA No.371/2011 was also admitted for hearing on 25.07.2011. On application of the appellant in RFA No.371/2011 that he is a senior citizen, hearing was expedited by placing both the RFAs in the category of Regular Matters of Senior Citizens.

2. The counsel for the appellants in RFA No.269/2011 and the appellant in person in RFA No.371/2011 have been heard.

3. The suit from which the appeals arise was instituted on 15.03.2004 by the appellant in RFA No.371/2011 (hereinafter referred to as the plaintiff) against the appellants in RFA No. 269/2011 State Farms Corporation of India Ltd. (SFCI) and Union of India (UOI) through the Secretary, Ministry of Agriculture (hereinafter together referred to as the defendants) for recovery of a principal sum of Rs.10,06,784/- and interest at the rate of 12.5% till the date of institution of the suit of Rs.5,65,014/- i.e. for a total sum of Rs.15,71,798, pleading:

- (i) that the plaintiff was employed as Professor, Soil Science as well as Controlling Officer of University Farms with the

Chaudhary Charan Singh Haryana Agricultural University from 12.06.1965 till 29.02.2000;

- (ii) that a post of Managing Director of the defendant SFCI was advertised by Public Enterprise Selection Board (PESB) for which the plaintiff applied through proper channel;
- (iii) that the plaintiff was appointed as the Managing Director of the defendant SFCI by the President of India vide appointment letter dated 27.04.1995, as per Article 50 of the Memorandum and Articles of Association of defendant SFCI;
- (iv) that the date of superannuation of the plaintiff was defined as 29.02.2000 in the letter dated 28.08.1997 of the defendant UOI as well as in the letter dated 01.09.1997 issued by PESB;
- (v) that the terms and conditions of service of the plaintiff during deputation as Managing Director of the defendant SFCI were contained in the Memorandum dated 11.01.1996 and letter dated 23.01.1996 of the defendant UOI to the defendant SFCI;

- (vi) that the service terms and conditions of the plaintiff were mandatory and the Board of the defendant SFCI could not interfere therewith;
- (vii) that though the plaintiff was also a Director on the Board of defendant SFCI but was not governed by the Rules and Regulations of the defendant SFCI and was governed by All India Services (Discipline and Appeal) Rules, 1969 and All India Services (Death-cum-Retirement Benefits) Rules, 1958 and the Board of Directors of the defendant SFCI had no power to take any action against the plaintiff or with respect to the service conditions of the plaintiff;
- (viii) that the plaintiff joined the defendant SFCI as Managing Director on 01.05.1995;
- (ix) that in the month of July, 1997, the defendant UOI proposed to repatriate the plaintiff prematurely without giving him any notice;

- (x) that the plaintiff challenged the said decision before this Court by filing CWP No.3679/1997 and in which vide interim order dated 08.09.1997 *status quo* was directed to be maintained;
- (xi) that notwithstanding the said interim order, the Board of Directors of the defendant SFCI vide decision taken in the meeting dated 30.09.1997 withdrew the powers of the plaintiff and stopped payment of his dues and allowances to which the plaintiff was entitled to as per his service conditions and which also was beyond the powers of the Board;
- (xii) that contempt of court proceedings were instituted by the plaintiff in this Court and though during the pendency thereof the counsel for defendant No.2 SFCI stated that an amount of Rs.6,00,000/- had been paid to the plaintiff but in fact was not paid;
- (xiii) that the contempt proceedings were finally decided on 26.03.2003 without any effective order as far as the payment of dues of the plaintiff was concerned, giving liberty to the plaintiff to institute proper proceedings therefor; and,

(xiv) that the following amounts were due to the plaintiff:

| Sl. No. | Heads                                                                  | Amount (Rs.)        |
|---------|------------------------------------------------------------------------|---------------------|
| 1       | Dues of salary under old scale from 01.04.1998 to 09.05.1999.          | 1,02,586.00         |
| 2       | Arrears of revised pay under option of Industrial Dearness Allowances. | 4,38,634.00         |
| 3       | Entertaining expenditure at residence of plaintiff.                    | 45,025.00           |
| 4       | Self lease as well as rent of Rs.10,500/-p.m.                          | 3,88,000.00         |
| 5       | Repairs and renovation of plaintiff's house                            | 40,000.00           |
| 6       | Newspaper charges                                                      | 375.50              |
| 7       | Taxi charges                                                           | 860.00              |
| 8       | Transfer travel allowance                                              | 26,985.00           |
| 9       | Excess expenditure                                                     | 1,600.00            |
|         | <b>Total</b>                                                           | <b>10,44,065.50</b> |

4. The defendant UOI contested the suit by filing the written statement, pleading:

(a) that the suit was barred by limitation; the plaintiff was repatriated to his parent department from the services of the defendant SFCI with effect from 07.05.1999 i.e. immediately after dismissal of his writ petition No.3679/1997 and consequent vacation of stay; that the plaintiff was claiming his

dues for the period up to 07.05.1999; however the suit was filed in March, 2004;

- (b) that the President of India is the sole shareholder of the defendant SFCI and the sole authority to constitute the Board of Directors of the defendant SFCI;
- (c) that the plaintiff was appointed as Managing Director of defendant SFCI with effect from 01.05.1995 to 29.02.2000 or till the date of his superannuation, on deputation basis; that the appointment was also terminable during the said period by either side;
- (d) that in view of the defendant SFCI's poor performance coupled with activities of the plaintiff, the defendant UOI started the process of prematurely repatriating the plaintiff to his parent department;
- (e) that however in view of the interim order of *status quo* in the writ petition filed by the plaintiff, the plaintiff could not be so repatriated till 07.05.1999 when the writ petition was disposed

of holding that the plaintiff was deemed to have been repatriated on his attaining the age of superannuation which then was 58 years in defendant SFCI;

- (f) that in view of misuse of powers by the plaintiff, the Board of Directors of defendant SFCI vide Resolution dated 30.09.1997 withdrew the executive powers earlier delegated to the plaintiff as Managing Director and re-vested the executive powers in the Board of Directors itself;
- (g) that the plaintiff filed another writ petition No.4710/1997 in this Court challenging the said action of the Board of Directors of defendant SFCI and which was also directed to be listed with writ petition No.3679/1997 filed by the plaintiff and disposed of along with writ petition No.3679/1997;
- (h) that the plaintiff filed civil contempt petition No.220/1998 in relation to CWP No.3679/1997 alleging violation of the order dated 08.09.1997 of *status quo* and stoppage of his salary and other allowances and demanding Rs.11,74,000/- towards principal and interest;

- (i) that the defendant SFCI in its reply to the contempt petition denied any liability and raised counter demand against the plaintiff;
- (j) that the contempt petition was disposed of on 26.03.2003 observing that no contempt had been committed and if the plaintiff had any grievance with regard to non payment of his dues, he may seek appropriate remedy in accordance with law;
- (k) denying that plaintiff was not governed by the Rules and Regulations of defendant SFCI; and,
- (l) that the plaintiff had drawn advances amounting to Rs.6,35,314.13p from defendant SFCI which were neither adjusted nor refunded and ordered to be recovered back from the plaintiff.

5. The defendant SFCI filed a separate written statement contesting the suit, in addition to the grounds in the written statement of the defendant UOI, on the grounds:

- (I) that this Court while disposing of the writ petitions filed by the plaintiff vide order dated 07.05.1999 had held that the plaintiff upon attaining the age of superannuation of 58 years prevalent in defendant SFCI could be repatriated to his parent department where the age of superannuation was 60 years;
- (II) denying that anything was due to the plaintiff;
- (III) that the salary for the period 01.04.1998 to 07.05.1999 in old scale amounting to Rs.97,054.50p along with Rs.2,900/- towards entertaining expenses for March, 1998 and Rs.375.50p towards newspaper bill for the periods January, 1999 to March, 1999 aggregating to Rs.1,00,330/- had been adjusted against the outstanding advances drawn by the plaintiff from the defendant SFCI;
- (IV) that the balance arrears of pay amounting to Rs.1,12,087.20p due to the plaintiff had also been adjusted against the outstanding dues from the plaintiff to the defendant SFCI;

- (V) that the plaintiff could not be granted pay scale under the Industrial Dearness Allowance (IDA) pattern at a later stage after his repatriation and after taking benefit of 5<sup>th</sup> Pay Commission with effect from 01.01.1996;
- (VI) that the claims of the plaintiff for reimbursement of entertainment expenditure incurred at his residence for the period April, 1998 to October, 1998 were submitted to the Board of Directors of defendant SFCI for approval which vide Resolution dated 28.09.1999 rejected the same;
- (VII) that during the period 30.09.1997 till repatriation, the plaintiff was not enjoying the powers of Managing Director because the same were withdrawn by the Board and the Board itself was exercising such powers;
- (VIII) that reimbursement of entertainment expenses was made to the plaintiff up to March, 1998 but the authenticity of subsequent claims was doubted and the same were rejected; the plea of the plaintiff that the Board of Directors had no power of rejection was baseless;

- (IX) that as per terms of appointment, the defendant SFCI could permit the plaintiff to opt for self-lease if he owns a house at the place of his posting and / or desirous of taking his own house on self-lease for his residential purpose; that the facility of residential accommodation was extended to the plaintiff by hiring a house for him for the period May, 1995 to May, 1996; the plaintiff vacated the hired accommodation on 12.05.1996 and shifted to his own house at Noida; that self-lease of house located in Uttar Pradesh was not admissible as the plaintiff was not staying at the place of posting at New Delhi; the plaintiff thus according to the terms of his appointment was only entitled to Rs.1,500/- per month without production of rent receipt and a sum of Rs.54,339/- only was due to the plaintiff on this count till the date of his repatriation to his parent department;
- (X) consequently, the plaintiff was also not entitled to the amount for repair / renovation of his house;

(XI) that the admissible amount due towards transferred travelling allowance if any will be adjusted against the outstanding advance against the plaintiff; and,

(XII) that no travelling allowance bill was submitted by the plaintiff.

6. The defendant SFCI also made a counter claim for recovery of Rs.6,35,314.13p with interest from the plaintiff.

7. It was *inter alia* the plea of the plaintiff in his replication / written statement to the counter claim, that the counter claim was barred by time.

8. The plaintiff, besides filing the written statement to the counter claim of the defendant SFCI, also applied for rejection under Order 7 Rule 11 of the CPC of the counter claim of the defendant SFCI as barred by time.

9. The learned Additional District Judge, vide order dated 25.07.2005, rejected the counter claim of the defendant SFCI as barred by time.

10. I am told that the said order of rejection of the counter claim of the defendant SFCI as barred by time was upheld right till the Supreme Court.

11. On the pleadings of the parties, the following Issues were framed in the suit on 20.05.2006:

- “1. Whether the present suit is barred by law of limitation? (OPD)*
- 2. Whether the executive powers of plaintiff were withdrawn by the Board of Directors on its 153<sup>rd</sup> Board meeting held on 30.09.1997 and whether these powers are reverted to the Board of Directors of defendant corporation? (OPD)*
- 3. Whether the plaintiff during his service as M.D. in the defendant corporation and his personal staff had withdrawn huge advances for expenses and these advances were not refunded nor accounted for? (OPD)*
- 4. Whether the Board of Directors of defendant corporation had directed the plaintiff to refund the said advances on several occasions? (OPD)*
- 5. Whether the Board of Directors of the defendant corporation had directed that if the said advances are not refunded or accounted for by the plaintiff by a specified date, such advances shall be adjusted*

*against the dues payable by the Corporation to the defendant? (OPD)*

6. *Whether the deputation rules as on Annexure 26 and reproduced in that Book for Central Government Employees were applicable to plaintiff? (OPD)*

7. *Whether the plaintiff is entitled to recover his salary, allowances and other dues including claims of IDA scale upto 09.05.1999 withheld by Corporation? (OPP)*

8. *Whether plaintiff is entitled for self lease of Rs.10,500/- per month for his NOIDA house? (OPP)*

9. *Whether plaintiff is entitled for proposed repair and renovation charges as per lease conditions? (OPP)*

10. *When President of India was sole authority, could corporation self assume presidential powers w.r.t. service conditions of plaintiff as M.D. and could claim even non ascertainable and non recoverable dues against plaintiff.*

11. *Relief.”*

12. The plaintiff besides himself examined five other witnesses. The defendants examined three witnesses.

13. The learned Additional District Judge has allowed the claims aforesaid of the plaintiff, except the claim for self-lease of his Noida accommodation and for repair and renovation thereof and for excess expenditure, finding/observing/ holding:

- (A) that it was the contention of the counsel for the plaintiff that as per Section 14 of the Limitation Act, 1963, the four years period during which the contempt petition filed by the plaintiff remained pending in the High Court claiming his unpaid salary and allowances, was to be excluded while considering the period of limitation for the suit;
- (B) that in case Section 14 of the Limitation Act was applied, the suit claim was within limitation;
- (C) that though the contempt petition was primarily not for recovery of money but intent behind it will have to be seen;
- (D) that the record revealed that the plaintiff was under a *bona fide* belief that he would be paid his dues in the civil contempt petition since he considered the act of defendant SFCI of

withholding his salary and allowances as a violation of the interim order of *status quo* in the writ petition;

- (E) that this Court also while disposing of the contempt petition had specifically mentioned that grievance qua non payment could be agitated separately in accordance with law; had there been no *bona fide* in the claim of the plaintiff therefor, this Court would not have made such an observation;
- (F) that Section 14 of the Limitation Act thus came to the rescue of the plaintiff;
- (G) the fact that the writ petitions filed by the plaintiff were ultimately dismissed would not justify denying the benefit of Section 14 of the Limitation Act to the plaintiff;
- (H) that the claim of the plaintiff was thus within time;
- (I) that the counsels had agreed that Issues No.2, 3 to 6 and 10 be dealt with along with each monetary claim of the plaintiff;

- (J) that there was no pleading in the plaint as to for what period the plaintiff was claiming Rs.3,88,000/- qua self-lease, house rent at Rs.10,500/- per month;
- (K) that the plaintiff did not make any attempt to bring the original lease on record even though as per him the original was lying with the defendant SFCI; however defendant SFCI denied that the original was ever submitted by the plaintiff;
- (L) that the plaintiff was residing in defendant SFCI's rented accommodation till 12.05.1996 when he shifted to his new house at Noida; as such the tenure for which the plaintiff was claiming HRA was from 12.05.1996 to 07.05.1999 i.e. for around 36 months;
- (M) that as per the Clause 6(c) of the terms and conditions of appointment of the plaintiff, the plaintiff was entitled to rent allowance as per self-lease subject to maximum of Rs.8,400/- per month; the claim of the plaintiff at the rate of Rs.10,500/- per month was on the basis of Memorandum issued by the Department of Public Enterprises on 03.03.1992 empowering

the Board of Directors of a Public Sector Enterprise to enhance monthly rent beyond sealing by 25%;

- (N) that the photocopy of the self-lease produced by the plaintiff was inadmissible as the original thereof was not registered;
- (O) hence the plaintiff was not entitled to the sum of Rs.3,88,000/- towards self-lease or the sum of Rs.40,000/- towards repairs and renovation of the said house;
- (P) that the only defence of the defendant SFCI to the claim of the plaintiff for newspaper charges of Rs.375.50p and taxi charges of Rs.860/- was the adjustment thereof against the outstanding dues from the plaintiff; however no such adjustment had been proved; thus the plaintiff was entitled to the said amount;
- (Q) that similarly the only defence to the claim of the plaintiff for Rs.26,985/- towards Transfer Travel Allowance was of adjustment which had not been proved; accordingly, the plaintiff was entitled to the said amount also;

- (R) that the plaintiff had conceded having not proved the claim for Rs.1,600/- towards excess expenditure and which was accordingly declined;
- (S) that the only defence of the defendant SFCI to the claim of the plaintiff for Rs.45,025/- towards entertainment expenditure for the period of 01.03.1998 to 09.05.1999 at the residence of the plaintiff was rejection thereof by the Board of Directors though the plaintiff had placed the requisite vouchers before the Board of Directors;
- (T) that the reason given by the Board of Directors for rejection of the said claim of the plaintiff was incorrect as once the *status quo* order was passed by this Court on 08.09.1997 and which continued till 07.05.1999, the Board of Directors of defendant SFCI was not justified in law to reject the entertainment allowance of the plaintiff for the said period; thus the plaintiff was held entitled to the said amount;
- (U) that the plaintiff on 27.05.1995 was appointed as Managing Director under the IDA pattern at Rs.7500-200-8500;

subsequently, vide letter dated 23.01.1996 upon the plaintiff exercising option to get his payment converted to Central Dearness Allowance (CDA) pattern, the plaintiff started drawing salary under the pay scale of Rs.4500-7300 and which was as per the CDA pattern;

- (V) that the CDA pattern was revised retrospectively on 01.01.1996 under the 5<sup>th</sup> Pay Commission whereunder the plaintiff was given an opportunity to exercise an option to either continue to draw benefits under the CDA pattern prospectively or under the IDA pattern retrospectively;
- (W) that the plaintiff exercised option and requested for being paid as per IDA pattern;
- (X) however the needful was not done and as such the dues of the plaintiff remained unpaid;
- (Y) that the contention of the defendant SFCI that the plaintiff having himself opted for CDA pattern was not entitled to get the same changed to IDA was in contravention of Chapter-IV

qua Deputation, of Swami's Fundamental Rules and Service Rules which permitted such change even on deputation;

(Z) that the plaintiff was thus entitled to get his pay revised and get it fixed as per IDA pattern from 02.01.1996 till 07.05.1999 when he was repatriated;

(AA) that the defendants had not controverted the calculation done by the plaintiff of Rs.4,38,634/- being due to him on this account; thus the plaintiff was entitled thereto;

(BB) that the claim of the plaintiff of Rs.1,02,586/- towards dues of salary under the old scale from 01.04.1998 to 09.05.1999 had been admitted in the written statement of the defendant SFCI and the only defence thereto was of adjustment in the outstandings from the ex-PA of the plaintiff to the defendant SFCI;

(CC) that it had however not been shown as to how the dues to the plaintiff could be adjusted against the outstandings from the ex-PA of the plaintiff; and,

(DD) the said adjustment thus could not be allowed and resultantly the plaintiff was entitled to the said sum of Rs.1,02,586/-.

14. The counsel for the defendants, in RFA No.269/2011 has argued only with respect to the finding of the learned Additional District Judge on the aspect of the claim of the plaintiff being within time. He has otherwise not made any submissions qua the merits of the claim except for stating that he supports the judgment insofar as denying the two claims of the plaintiff and challenges the same insofar as allowing the remaining claims of the plaintiff. The challenge to the finding of the learned Additional District Judge of the claim of the plaintiff being within time is made by contending that the learned Additional District Judge has wrongly given the benefit of Section 14 of the Limitation Act to the plaintiff. It is further contended,

- (I) that under Section 14 of the Limitation Act, time spent in prosecuting with due diligence only another civil proceeding can be excluded;
- (II) contempt proceedings, exclusion of time spent in pursuing which has been allowed, are not civil proceedings;

- (III) contempt proceedings are not *inter se* parties but are between Court and the alleged contemnor;
- (IV) reliance in this regard is placed on *Supreme Court Bar Association Vs. Union of India* (1998) 4 SCC 409, *State of Maharashtra Vs. Mahboob S. Allibhoy* (1996) 4 SCC 411, *B.K. Savithri Vs. B.V.S. Anand* (2005) 10 SCC 207 and *Annu alias Kallappa Vs. Sheshu Gundappa* AIR 1970 Mysore 318;
- (V) that the prayer of the plaintiff in the contempt proceedings was for punishment of the Directors of the defendant SFCI; and,
- (VI) that the principles of limitation, as applicable to the counter claim made by the defendant SFCI against the plaintiff and which was held to be time barred, are applicable to the claim of the plaintiff also and on the same parity, the claim of the plaintiff also should have been dismissed.

15. Per contra, the plaintiff appearing in person has contended:

- (i) that he had in the contempt petition, besides the relief of punishment, also sought a direction for restoration of his salary

and Entertainment Allowance which had been denied to him and for such orders as may be deemed fit to meet the ends of justice; it thus cannot be said that the issue of his dues was not the subject matter of the contempt petition;

- (ii) that he was repatriated to his parent department only vide order dated 07.05.1999 and was thus entitled to all his dues as Managing Director of defendant SFCI till that date;
- (iii) that his appointment and terms of appointment were by the hand of the President of India and only the President of India could have repatriated him and not the Board of Directors; reliance in this regard is placed on Memorandum and Articles of Association of the defendant SFCI and the letter dated 04.07.1997 issued on behalf of the President of India of his appointment as the Managing Director of defendant SFCI and on Section 2(26) of the Companies Act, 1956 defining the Managing Director;
- (iv) Reliance is placed on *Om Prakash Jaiswal Vs. D.K. Mittal* AIR 2000 SC 1136 laying down that filing of an application or

petition by a private party for initiating contempt proceedings does not amount to initiating of contempt proceedings by the Court and the contempt proceedings are not initiated even when notice of such application / petition is issued or reply thereto is called and contempt proceedings are initiated only when the Court applies its mind to the facts and issues a notice calling upon the alleged contemnor to show cause as to why contempt proceedings be not initiated against him and it is argued that no such notice was ever issued in the contempt petition filed by the plaintiff till the same was disposed of and the said proceedings thus cannot be called contempt proceedings and retained the character of a civil proceeding;

- (v) that once this Court itself had permitted the plaintiff to institute appropriate proceedings for recovery of his dues, the plea that Section 14 of the Limitation Act is not applicable is not available to the defendants;

- (vi) Reliance is placed on ***United Bank of India Vs. Naresh Kumar*** AIR 1997 SC 3 laying down that just causes should not be permitted to be denied on the technicalities of limitation;
- (vii) Reliance is placed on ***Vaditho Anantharao Naik Vs. Bhoomisetty Rajaiah*** 1994 (2) Current Civil Cases 45 (AP) permitting the application of the principle of Section 14 of the Limitation Act but which is not found to be applicable to the facts of the case; and,
- (viii) that the claims of the plaintiff in the plaint had not been controverted in the written statement.

16. RFA No.269/2011 has been preferred impugning the judgment and decree to the extent, in the sum of Rs.6,14,465.50 paise with costs and interest against the defendant SFCI. RFA No.371/2011 has been filed by the plaintiff to the extent, it decides Issue No.8 & 9 against the plaintiff and declines the plaintiff the reliefs *inter alia* towards house rent as claimed in the suit.

17. The counsel for the defendant SFCI having argued on the aspect of limitation only, there is no need to adjudicate the merits of the decree insofar as against the defendant SFCI. The outcome of RFA No.371/2011 is also dependant upon the finding on the said aspect of limitation. The question of deciding RFA No.371/2011 on merits will arise only if the claim is found to be within limitation.

18. The claim of the plaintiff, as aforesaid, was for dues against salary and other emoluments for the period till 7<sup>th</sup> May, 1999. The applicable Article of the Schedule to the Limitation Act would be Article 7 i.e. a suit for wages, the limitation of three years prescribed wherefor commences from the date when the wages accrue due. It is not the case of the plaintiff that the wages accrued due on any date other than the date when the wages fell due i.e. by the end of the month or the next English Calendar Month. The suit instituted on 15<sup>th</sup> March, 2004 was definitely beyond three years from even the last date for which wages are claimed to be due i.e. 9<sup>th</sup> May, 1999.

19. The plaintiff also during arguments has not pegged his case on the suit for recovery of the said wages being within the prescribed period of time but has pegged his case on Section 14 of the Limitation Act.

20. However, as would be obvious from the narrative above, the plaintiff neither pleaded Section 14 of the Limitation Act or ingredients thereof nor was the plaint accompanied by any application under Section 14 of the Limitation Act. Rather, the plaintiff in the cause of action paragraph in the plaint pleaded, the cause of action to have accrued on 26<sup>th</sup> March, 2003 when the contempt petition filed by the plaintiff was dismissed. Even in the replication to the paragraph of the written statement containing the plea of the claim in suit being barred by time, Section 14 of the Limitation Act or its ingredients were not pleaded. The plaintiff rather proceeded on the premise that since he had been permitted vide the order dismissing his contempt petition to take appropriate remedies, the cause of action for the suit accrued on that date only.

21. I may at the outset state that the order dated 26<sup>th</sup> March, 2003 in the contempt petition, being C.C.P. No.220/1998 in Civil Writ No.3679/1997, the relevant part whereof is as under:

*“By order dated 8<sup>th</sup> September, 1997 this Court directed the parties to maintain status quo in relation to aforesaid prayers of the petitioner. The petition was dismissed on 7<sup>th</sup> May, 1999. This Court held that the petitioner was deemed to have been repatriated on administrative grounds and as per the terms of appointment, he was repatriated on his attaining the*

*age of superannuation. The order of repatriation was sustained.*

*During the pendency of the aforesaid writ petition, the petitioner also filed another writ petition being CW. 4710/97 inter alia praying therein that respondent No.1 be restrained from interfering with the powers of Managing Director. This petition was also dismissed on 7<sup>th</sup> May, 1999.*

*The grievance of the petitioner is that despite having worked till 7<sup>th</sup> September, 1999, the respondents have not paid him salary with effect from 1<sup>st</sup> April, 1998. Counsel for the respondents states that interim orders passed by Court were to the effect that he be not repatriated. The orders have been duly complied with. Counsel for the petitioner confirms the statement of counsel for the respondents.*

*In light of the aforesaid position, I am satisfied that orders of this Court have been complied with. If the petitioner has grievance with regard to non payment of salary, he may seek appropriate remedy in accordance with law. No further orders are called for.*

*The petition is disposed of. Notice is discharged.”*

can by no stretch of imagination be said to be dealing with the aspect of limitation. Rather, a perusal of the memorandum of parties in the C.C.P. No.220/1998 shows that the defendant SFCI was not a party thereto and only the Chairman of Board of Directors and three of the then Directors of the defendant SFCI were impleaded as parties thereto.

22. For Section 14 of the Limitation Act to apply, pleading and proof of good faith is essential. The Division Bench of this Court in ***Debjoyti Gupta***

***Vs. Indiabulls Securities Ltd.*** 202 (2013) DLT 563 has held that if a party seeks the benefit of exclusion which is permissible in accordance with any law akin to Section 14 of the Limitation Act, the onus is upon such party to clearly plead and prove the attendant facts and circumstances and in the absence of any pleading, argument is without force. Reference in this regard may also be made to ***Nina Garments Pvt. Ltd. Vs. Unitech Ltd.*** 196 (2013) DLT 57, ***Alliance Paints & Varnish Works Pvt. Ltd. Vs. Hari Kishan Gupta*** 168 (2010) DLT 591 and ***Susanne Lenatz Vs. C.J. International Hotels Ltd.*** MANU/DE/8192/2007 where it was held that it is obligatory under Order VI Rule 7 of the CPC for a plaintiff to specifically plead such an exemption in the plaint and in the absence thereof, the Court under Section 3 of the Limitation Act, would be required to dismiss/reject the suit, if otherwise barred by time. In ***Paras Ram Vs. Sheoji Ram*** MANU/DE/1282/2010, this Court has held that a separate application under Section 14 of the Limitation Act is not mandatory to avail the benefit thereunder. Though some of the High Courts in ***Binodilal Vs. Satyendra Singh*** AIR 1956 MP 57, ***Patel Babu Lal Pranlal Brothers Vs. Pameric Export International, Cochin*** AIR 1999 Kerala 355 and ***Union Bank of India Vs. Suresh Bhailal Mehta*** AIR 1997 Gujarat 48 appear to have taken

a different view but in the light of the judgments aforesaid of this Court, I am bound thereby though may observe that if the essential ingredients of Section 14 are found to be pleaded whether in the plaint or by way of a separate application, mere non reference thereto would not come in the way of the Court giving the relief thereunder.

23. Not only has the plaintiff in the present case not made any pleading of the ingredients of Section 14 of the Limitation Act but a perusal of the affidavit by way of examination-in-chief of the plaintiff reveals the same also to be lacking therein; in fact, the affidavit is merely a repetition of the contents of the plaint just by changing the narrative in the third person to first person.

24. Section 14 of the Limitation Act empowers the Court, in computing the period of limitation for any suit, to exclude therefrom 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, 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 like nature, is unable to entertain it. Thus, for Section 14 to apply, the plaintiff has to prove:

- (i) that he was prosecuting with due diligence;
- (ii) another civil proceeding against the defendant;
- (iii) relating to the same matter in issue;
- (iv) in good faith; and,
- (v) that Court from defect of jurisdiction or other cause of a like nature, was unable to entertain the said proceeding.

Reference in this regard can be made to *Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department* (2008) 7 SCC 169.

25. Though it may be possible for a Court where Section 14 of the Limitation Act is invoked, to gauge from the orders in the previous proceedings, the nature thereof and the reason for which the relief in that proceeding was not granted to the plaintiff but good faith and due diligence, in the absence of any plea and proof, cannot be presumed. As aforesaid,

there is no pleading or proof of due diligence or good faith on the part of the plaintiff in prosecuting the contempt petition on the basis of which exclusion is sought. The Supreme Court in *Madhavrao Narayanrao Patwardhan Vs/ Ram Krishna Govind Bhanu* AIR 1958 SC 767 has held that the burden to prove good faith and due diligence to avail benefit of Section 14, is on the plaintiff.

26. The plaintiff on the other had proceeded not on the premise of Section 14 of the Limitation Act but on the basis of the order dismissing the contempt petition furnishing a cause of action for the suit and which is not tenable in law. Orders of the Court do not ordinarily/normally furnish cause of action save for preferring a remedy thereagainst (See *Union of India Vs. M.K. Sarkar* (2010) 2 SCC 59). All that the Court in the present case did while dismissing the contempt petition filed by the plaintiff, was to state that if the plaintiff was entitled to the relief of recovery of monies, for payment of which direction was sought in the contempt petition, he should take appropriate remedy therefor. It is not as if the right to the wages/emoluments claimed in the suit accrued to the plaintiff by passing of the said order. The said right had accrued as aforesaid, when the wages became due and from which date the limitation commenced running.

Section 14 of the Limitation Act is not a causus provision but an exclusion provision which applies only to exclude the time specified therein, which otherwise continues running from the accrual of cause of action. Thus, the pleading of the plaintiff, of the cause of action having accrued on dismissal of the contempt petition, cannot be construed as a pleading for exclusion of time under Section 14 of the Limitation Act. It has been so held in ***Consolidated Engineering Enterprises*** supra.

27. Next is the question, whether the contempt proceedings can be said to be civil proceedings for Section 14 of the Limitation Act to apply with respect thereto. The reliance placed by the plaintiff on ***Om Prakash Jaiswal*** supra in this regard is misconceived, having been overruled in ***Pallav Sheth Vs. Custodian*** (2001) 7 SCC 549. The judgments of the Supreme Court relied upon by the counsel for the defendant SFCI in this regard, though not in relation to Section 14 of the limitation Act, lay down that an action of contempt of Court, is not *stricto sensu* a cause or a matter between the parties *inter se* and is primarily between the Court and the person who is alleged to have committed the contempt of Court and for this reason no impleadment even can be permitted thereunder.

28. Though, I have also not been able to find any judgment directly on the interplay of contempt proceedings and Section 14 of the Limitation Act but as far back as in ***Yeswant Deorao Deshmukh Vs. Walchand Ramchand Kothari*** AIR 1951 SC 16, it was held that there could be no exclusion of time occupied by insolvency proceedings which clearly was not for the purpose of obtaining the same relief. It was held that the relief sought in insolvency is different from the relief sought (in a suit for recovery of money); in insolvency proceedings an adjudication of the debtor as insolvent is sought with the vesting of all his estate and administration of it by the Official Receiver for the benefit of all the creditors; it may be that ultimately in insolvency proceedings (the petitioner) may be able to realize his debt wholly or in part but this is a mere consequence or result; not only is the relief of a different nature in the two proceedings but the procedure is also widely divergent.

29. This Court in ***Anil Pratap Singh Chauhan Vs. Onida Savak Ltd.*** AIR 2003 Delhi 252, relying on the aforesaid and considering a plethora of other judgments applied the principle to also proceedings for winding up of a company which were held to be akin to insolvency proceedings.

30. In my view, the said principle will apply equally to contempt proceedings. Merely because in contempt proceedings a direction for payment of monies may also be issued, if deemed necessary to restore the position as had been directed to be maintained, is not reason enough to held the contempt proceedings to be a civil proceeding relating to the same matter in issue so as to invite applicability of Section 14 of the Limitation Act. They were also, as aforesaid, not between the same parties. The exclusion of the time spent in a proceeding for partition under the Land Reform Act was in ***Jai Prakash Vs. Satnarain Singh*** 1994 Supp. (1) SCC 153 held to be not permissible in a suit for possession filed before the Civil Court.

31. Not only so, the argument of the plaintiff loses sight of another essential ingredient of Section 14 of the Limitation Act. It is not as if the Court was unable to entertain the contempt proceedings owing to a defect of jurisdiction or other cause of a like nature. “Other cause of a like nature” has in ***Zafar Khan Vs. Board of Revenue, U.P.*** 1984 (Supp.) SCC 505 been held to be *ejusdem generis* to “defect of jurisdiction”. A bare perusal of the order in the contempt proceeding shows the same to have been disposed of not by expressing any inability owing to defect of jurisdiction but on a finding of no contempt having been committed. The Supreme Court in

***Bakhtawar Singh Vs. Sada Kaur*** (1996) 11 SCC 167 held that where the order in the earlier proceeding did not show the same to have been not entertained for defect of jurisdiction or other cause of like nature, the benefit of Section 14 cannot be legitimately extended to the subsequent suit.

32. The only other argument of the plaintiff on the aspect of limitation is on the basis of the judgment in ***United Bank of India*** supra. It was a case of a failure of the plaintiff Union Bank of India in that case to have proved institution of the suit and signing and verification of the plaint by a duly authorized person on behalf of the plaintiff Union Bank of India. That case was not concerned with the aspect of limitation. It was in such situation and finding public monies at stake that the Supreme Court held that such technical defects could not be allowed to come in the way of recovery of public dues, particularly in the light of interpretation of Order XXIX of the CPC. The said judgment has been distinguished by this Court in ***Birla D/W Ltd. Vs. Prem Engineering Works*** 77 (1999) DLT 171 (DB).

33. Notice may however be taken of the judgment in ***Madras Port Trust Vs. Hymanshu International*** (1979) 4 SCC 176 where the Supreme Court, finding the claim to be barred by time, to be just one and supported by recommendations of the Assistant Collector of Customs also, in exercise of

discretion under Article 136 of the Constitution of India directed payment thereof. However, subsequently in *Krishna Gopal Kakani Vs. Bank of Baroda* (2008) 13 SCC 485, the argument (on the basis of *Madras Port Trust* supra) that it is inappropriate for a Public Sector Undertaking to raise a plea of limitation when the amount was due, was not accepted. In the present case, the defendant SFCI has disputed the claim of the plaintiff not only on the aspect of limitation but also on merits as well. Thus, the suit of the plaintiff has to be necessarily held to be barred by time. The learned Additional District Judge has dealt with the issue of limitation cursorily and not in the correct perspective.

34. I find it unfortunate that while the counter-claim of the defendant SFCI against the plaintiff, arising from the same set of facts, was dismissed as barred by time without any trial, the claim of the plaintiff was unnecessarily put to trial even though the benefit of Section 14 of the Limitation Act was not claimed by the plaintiff as well.

35. Once, the claim of the plaintiff is found to be barred by time, no purpose would be served in dealing with the merits of the claims which have been denied to the plaintiff and against which denial RFA No.371/2011 has been preferred.

36. Resultantly, RFA No.269/2011 is allowed and RFA No.371/2011 is dismissed. However, in the facts, no costs.

Decree sheet be drawn up.

**DECEMBER 3<sup>rd</sup>, 2013**  
'gsr/bs'

**RAJIV SAHAI ENDLAW, J.**