

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

% **Date of decision: 20th December, 2013.**

+ **RFA 345/2013 & CM No.11394/2013 (for stay)**

HARBANS SINGH

..... Appellant

Through: Mr. Yakesh Anand, Mr. Murari
Kumar, Mr. Nimit Mathur & Ms.
Sonam Anand, Advs.

Versus

M/S JUGGAT PHARMA

..... Respondent

Through: Mr. Y. Hari Prasad & Ms. K.V.
Bharathi Upadaya, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the judgment and decree (dated 18th April, 2013 of the Court of the Additional District Judge (ADJ)-06, West District, Tis Hazari Courts, Delhi) of dismissal of CS No.453/2012 filed by the appellant consequent to rejection of the plaint on the ground of the suit claim being barred by time and the benefit of Section 14 of the Limitation Act, 1963 being not available to the appellant/plaintiff; it was also observed that the suit was barred by *res judicata*.

2. The appellant/plaintiff had in or about September, 2010 instituted the suit from which this appeal arises for the reliefs of, (i) declaration that the

termination dated 26th September, 1996 of his services by the respondent/defendant was illegal and wrong; (ii) recovery of an amount of Rs.11 lakhs from the respondent/defendant on account of damages and compensation for illegal termination dated 26th September, 1996; (iii) recovery of Rs.5 lakhs from the respondent/defendant towards legal expenses incurred by the appellant/plaintiff; and (iv) direction to the respondent/defendant to pay to the appellant/plaintiff the amounts due to the appellant/plaintiff towards provident fund, performance linked bonus etc.

3. The respondent/defendant filed an application under Order VII Rule 11 of the Civil Procedure Code (CPC), 1908 on the ground of the said claim being barred by time and the benefit of Section 14 of the Limitation Act claimed by the appellant/plaintiff in the plaint being not available to the appellant/plaintiff.

4. It was *inter alia* the case of the appellant/plaintiff, (i) that since the respondent/defendant inspite of his legal notice refused to reinstate him into service, the appellant/plaintiff on 17th March, 1997 initiated conciliation proceedings by raising an industrial dispute before the Conciliation Officer; (ii) that the Conciliation Officer could not reconcile due to adamant and vindictive attitude of the respondent/defendant; (iii) the conciliation thus

failed and the following reference was made to the Labour Court:

“Whether services of Shri Harbans Singh had been terminated illegally and/or unjustifiably by the management, if so, what relief is he entitled and what directions are necessary in this respect.”

(iv) the said reference was vide Award dated 25th April, 2009 of the Labour Court decided against the appellant/plaintiff, holding that the appellant/plaintiff was not a workman and the appellant/plaintiff had accepted the full and final settlement from the respondent/defendant and had been beneficially employed elsewhere and thus it could not be said that his services have been terminated illegally or unjustifiably and the appellant/plaintiff was estopped from challenging the termination of his services by the respondent/defendant as illegal or unjustified; (v) that the appellant/plaintiff challenged the said award of the Labour Court by filing W.P. No.11649/2009 in this Court but which was also dismissed *in limine* on 14th September, 2009; (vi) LPA No.560/2009 preferred thereagainst was also dismissed on 16th November, 2009; and, (vii) SLP (Civil) No.8241/2012 was also dismissed on 6th July, 2010.

5. The appellant/plaintiff thus in the plaint itself, pleaded that the time spent by him in prosecuting his claim before the Conciliation Officer and thereafter before the Labour Court and this Court and the Supreme Court is

liable to be excluded while computing the period of limitation for filing the suit and the suit, by excluding the said time, is well within the period of limitation.

6. The learned ADJ has rejected the plaint, finding/observing/holding:

(i) that the reference of the industrial dispute raised by the appellant/plaintiff was adjudicated by the Labour Court on merits and had become final and operates as *res judicata* and the appellant/plaintiff cannot re-agitate the same issue again and again;

(ii) that the limitation for filing a suit for compensation for breach of contract, as provided under Article 78 of the Limitation Act, is of one year and the period of limitation begins to run from the date when the breach of contract takes place; the services of the appellant/plaintiff having been terminated vide order dated 26th September, 1996, the suit filed by in the year 2010 was hopelessly barred by limitation;

(iii) that the benefit of Section 14 of the Limitation Act claimed by the appellant/plaintiff is not available to the appellant/plaintiff because Section 14 is not applicable when the earlier case has been decided after adjudication on its merits, as was done by the Labour

Court in the award which was confirmed till the Supreme Court; reliance in this regard was placed on *Deena Vs. Bharat Singh* AIR 2002 SC 2768 and *Corporation of Calcutta Vs. Pulin Chandra Daw* AIR 1977 Calcutta 443;

(iv) that Section 14 of the Limitation Act is applicable only when the previous Court is unable to entertain the case due to defect of jurisdiction or other cause of like nature; however the claim of the appellant/plaintiff was not rejected by the Labour Court for lack of jurisdiction but was adjudicated on merits; hence the appellant/plaintiff cannot take benefit of provisions of Section 14 of the Limitation Act;

(v) that one of the essential requirements for application of Section 14 of the Limitation Act as spell out in *Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department* (2008) 7 SCC 169 is that the earlier proceedings and the later proceeding must relate to the same matter in issue; however the appellant/plaintiff himself, in reply to para 2 of the preliminary objections, in his replication, had pleaded that the issue involved in the suit is entirely different from that before the Labour Court—that the issue involved

in the suit was with respect to the compensation and damages whereas the issue before the Labour Court was whether the appellant/plaintiff was a workman or not and if yes, then the effect thereof on the termination of his services; thus the benefit of Section 14 of the Limitation Act is not available to the appellant/plaintiff.

7. The appeal came up before this Court first on 29th July, 2013, when notice of the appeal was issued being *prima facie* of the opinion that once the Labour Court had held that the appellant/plaintiff was not a workman, it lacked jurisdiction and its findings on other issues would not constitute *res judicata*. The Trial Court record was also requisitioned. The counsels have been heard.

8. The question for adjudication, is twofold. Firstly, whether the suit could be said to be barred by *res judicata* ; and, Secondly whether in the facts and circumstances, the benefit of Section 14 of the Limitation Act was available to the appellant/plaintiff or not. It is not in dispute that if the said benefit were to be available, then the suit was within time.

9. As far as the aspect of *res judicata* is concerned, though the Labour Court, whose award was upheld till the Supreme Court, while answering the reference in the industrial dispute raised by the appellant/plaintiff, besides

holding the appellant/plaintiff to be not a workman, also held that the termination by the respondent/defendant of the services of the appellant/plaintiff was not illegal and unjustified for the reason of the appellant/plaintiff having accepted full and final settlement of his accounts from the respondent/defendant and the appellant/plaintiff thus being estopped from challenging the termination, but the question which arises and which has not been addressed by the learned ADJ and not raised by the counsel for the appellant/plaintiff in the memorandum of appeal also, is, whether the finding of the Labour Court of the appellant/plaintiff having accepted full and final settlement of accounts from the respondent/defendant and being thus estopped from challenging the termination of his employment, can constitute *res judicata*, once it had been held that the Labour Court had no jurisdiction for the reason of the appellant/plaintiff being not a workman. It needs no elaboration that the Labour Court has jurisdiction only over the disputes between workman and the employer and not if the employee is not a workman within the meaning of the Industrial Disputes Act, 1947.

10. The question is no longer *res integra*. Reference in this regard can be made to:

- (a) *Shankarlal Patwari Vs. Hiralal Murarka* AIR1950 PC 80;
- (b) *Mangharam Chuhamal Vs. B.C. Patel* AIR 1972 Bombay 46;
- (c) *Ram Kishan Vs. Bharat Bhushan* 1979 FLR 194;
- (d) *UOI Vs. Ranchi Municipal Corporation, Ranchi* (1996) 7 SCC 542;
- (e) *Rajinder Parshad Jain Vs. Bal Gopal Das* 77 (1999) DLT 478 (DB);
- (f) *Savitri Devi Vs. Fashion Linkers* 95 (2002) DLT 893;
- (g) *Nirmal Jeet Singh Hoon Vs. Irtiza Hussain* (2010) 14 SCC 564; and,
- (h) *Fida Hussain Vs. Moradabad Development Authority* (2011) 12 SCC 615 holding that where the previous proceeding is dismissed as not maintainable, any observations on merits of the controversy are not *res judicata*.

11. It thus has but to be held that once the Labour Court had come to the conclusion that the appellant/plaintiff was not a workman and the Labour Court thus had no jurisdiction over the dispute between the

appellant/plaintiff and his employer i.e. the respondent/defendant, the findings given by the Labour Court on merits *inter se* the dispute between the appellant/plaintiff and the respondent/defendant cannot be *res judicata* in the claim of the appellant/plaintiff against the respondent/defendant before the appropriate fora.

12. It may be noticed that the award of the Labour Court being subject to judicial review by this Court, the Labour Court could not have after holding the appellant/plaintiff to be not a workman and consequently the Labour Court having no jurisdiction refused to decide the reference. The Supreme Court in ***D.P. Maheshwari Vs. Delhi Administration*** (1983) 4 SCC 293 and in ***M/s Cipla Ltd. Vs. Ripu Daman Bhanot*** (1999) 4 SCC 188 and this Court in ***Ram Avtar Vs. Delhi Flour Mills Co. Ltd.*** MANU/DE/8820/2007 have held that the Courts/Tribunals particularly those adjudicating labour disputes ought to decide all the issues at the same time without trying some of them as preliminary issues so that in the event of the finding on the preliminary/jurisdictional issue being interfered with in appeal/judicial review, there is no need to remand the matter for adjudication on merits.

13. That brings me to the second aspect, of the applicability of Section 14 of the Limitation Act. The same, in computing the period of limitation for

any suit, allows to be excluded 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 shall be excluded, 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 a like nature, is unable to entertain it.

14. The first question which arises is whether the proceeding before the Labour Court will qualify as a civil proceeding and whether the Labour Court will qualify as a Court. I find the said question also to be no longer *res integra*. The Supreme Court in ***P. Sarathy Vs. State Bank of India*** (2000) 5 SCC 355 was concerned with a civil suit for declaration that the removal of the plaintiff from service was illegal, *ultra vires* and invalid and for a direction for reinstatement with consequential benefits. The period during which the plaintiff was challenging his removal before the Local Board of the Bank and in appeal under the Tamil Nadu Shops and Establishments Act, 1948 was sought to be excluded in computing the period of limitation in such a suit. It was the contention of the employer that the benefit of Section 14 of the Limitation Act can be given only if the proceedings were civil proceedings and were pending in a Court; it was

further contended that an Authority under the Shops Act was not a Court and therefore the benefit of Section 14 could not be given to the plaintiff. The Supreme Court, finding that the Authority constituted under the Shops Act had the jurisdiction to adjudicate whether the order of dismissal passed by the employer is valid or not and that the order passed by the said Authority is binding on the employer as well as the employee, held that the said Authority though may not be a “Civil Court” within the meaning of CPC but is definitely a “Court”. It was noticed that Section 14 of the Limitation Act does not speak of a “Civil Court” but speaks only of a “Court”. It was held that any Authority or Tribunal having the trappings a Court would be a Court within the meaning of Section 14. Further, finding that the Authority under the Shops Act had dismissed the claim of the plaintiff for the reason of the Shops Act being not applicable to Nationalized Banks, it was held that the time spent by the plaintiff before the Authority under the Shops Act will have to be excluded as the proceedings before the said Authority were civil proceedings.

15. Though the aforesaid judgment is in the context of the Shops and Establishments Act but the position of the Labour Court is the same, if not identical.

16. Once it is found that the Labour Court, notwithstanding having found that it had no jurisdiction, owing to the appellant/plaintiff being not a workman, was required to render findings on merits as per the dicta aforesaid, it cannot be said that the Labour Court was not unable to entertain the proceedings for the reason of defect of jurisdiction. Merely because the Labour Court also returned findings on merits, would not dilute the said aspect.

17. As far as the learned ADJ has relied upon the admission of the appellant/plaintiff in replication in reply to para 2 of the preliminary objections, a careful perusal of the reply to para 2 of the preliminary objections shows that what the appellant/plaintiff pleaded was that since he in the suit had also claimed damages for harassment and mental agony subsequent to termination, the issue involved in the suit was different from that before the Labour Court. Moreover, the question, whether the proceedings before the Labour Court and in the instant suit relate to the same matter in issue, is not a question that can be decided on the averments of the parties or on admissions but has to be adjudicated by the Court after pursuing the pleadings in the two proceedings. There can be no doubt that the proceedings relate to the same matter in issue i.e. the legality and

validity of the termination of the services of appellant/plaintiff by the respondent/defendant. The appellant/plaintiff in the suit from which this appeal arises has claimed damages/compensation for wrongful termination of his employment. The controversy before the Labour Court also was of legality/validity of termination of employment and in which proceedings the Labour Court, if had jurisdiction, could have, if had found the termination to be illegal, granted relief either of reinstatement or of compensation.

18. I am therefore not able to agree with the reasoning of the learned ADJ. The suit filed by the appellant/plaintiff cannot be said to be barred by the principles of *res judicata* or being barred by time if the benefit of Section 14 of the Limitation Act is to be given to the appellant/plaintiff.

19. I may also notice that the learned ADJ has wrongly relied on Article 78 of the Schedule to the Limitation Act which provides limitation of one year for a suit for compensation for inducing a person to break a contract with the plaintiff, commencing from the date of the breach. The case of the appellant/plaintiff is not of anyone having induced the respondent/defendant to terminate the services of the appellant/plaintiff. The limitation for the suit filed by the appellant/plaintiff would be, as held by the Supreme Court in *P. Sarathy* supra, of three years.

20. However, this order should not be understood as *ipso facto* entitling the appellant/plaintiff to the benefit of Section 14 of the Limitation Act. To be entitled to the said benefit, the appellant/plaintiff has also to establish and prove that he was prosecuting the proceedings before the Labour Court with due diligence and in good faith. The said questions of due diligence and good faith cannot be decided without evidence. If after trial, it is held that the appellant/plaintiff was so prosecuting the proceedings, the appellant/plaintiff would be entitled to the benefit and not otherwise.

21. Before parting with the judgment, notice may be taken of the following judgments referred to by the counsel for the respondent/defendant and against each of which, I have given my reasons for the same, either being not applicable or not relevant at this stage:

(I) ***Deena Vs. Bharat Singh*** AIR 2002 SC 2768. In this case, Section 14 was held to have no application because the suit was found to have been dismissed on its merits and not because the Court was unable to entertain it. Such is not the position here.

(II) ***M/s. Jupiter Chit Fund (P) Ltd. Vs. Sri Shiv Narain Mehta*** AIR 2000 SC 1295. In this case exclusion under Section 14 of the Limitation Act of time spent in an arbitration was held to be not

applicable owing to the specific language of Section 37 of the Arbitration Act, 1940 and on a finding that the arbitration had not been commenced as provided in the said Section 37. On the contrary, in the present case, on industrial dispute being raised by the appellant/plaintiff, reference was made by the State Government and which reference was decided after full trial. This has no applicability.

(III) *Corporation of Calcutta Vs. Pulin Chandra Daw* AIR 1977 Calcutta 443, *Zafar Khan Vs. Board of Revenue, U.P.* AIR 1985 SC 39. Both on, the words “or other cause of a like nature” in Section 14 being required to be read *ejusdem generis* to the preceding words “from defect of jurisdiction”. The same are not applicable.

(IV) *S.M. Iqbal Vs. Firdous Ahmad Shah* AIR 1994 J&K 83, on what is due diligence and good faith and holding that action of taking recourse to review petition and special leave petition, despite it being held that the proceeding was not maintainable, shows lack of due diligence and good faith. The stage to determine this will come after trial.

(V) *Ajab Enterprises Vs. Jayant Vegoiles and Chemicals Pvt. Ltd.* AIR 1991 Bombay 35, where time spent in a winding up petition was

held not liable to be excluded in a subsequent suit for recovery of money. This has no applicability to the present situation.

(VI) *Gajadhar Shaw Vs. Union of India* AIR 1959 Calcutta 21, holding that where the initial filing is attributable to carelessness—subsequent prosecution cannot be said to be in good faith. The stage for determining this will arise after trial.

(VII) *Madhavrao Narayanrao Patwardhan Vs. Ram Krishna Govind Bhanu* AIR 1958 SC 767, laying down that the burden of proof to show good faith is on the party claiming benefit of Section 14 of the Limitation Act; and,

(VIII) *Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department* (2008) 7 SCC 169, again on the aspect of good faith and due diligence.

22. The appeal thus succeeds; the judgment and decree of dismissal of the suit and the order of rejection of the plaint is set aside. The suit is remanded back to the Trial Court for adjudication further in accordance with law.

23. The parties to appear before the learned ADJ-06 and/or District Judge, West District, on 27th January, 2014.

24. The Trial Court file requisitioned to this Court be returned forthwith.

No costs. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

DECEMBER 20, 2013

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