

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 2875 of 2012 (O&M)

Date of Decision: August 24, 2016

Dharam Pal

.....Appellant

Vs.

Subhash and another

.....Respondents

CR No. 5804 of 2013

Dharam Pal

.....Petitioner

VS.

Nand Lal and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Harsh Kinra, Advocate,
for the appellant in RSA and
for the petitioner in CR.

Mr. Ramesh Goyat, Advocate,
for respondent No. 1 in RSA and
for respondent No. 2 in CR.

Mr. M.S. Kathuria, Advocate, for
Mr. Rakesh Nehra, Advocate,
for respondent No. 2 in RSA and
for respondent No. 1 in CR.

AMOL RATTAN SINGH, J.

The present Regular Second Appeal No. 2875 of 2012
as well as Civil Revision No. 5804 of 2013 are being decided

together as both matters pertain to the same suit property and were ordered to be heard together, vide order dated 07.07.2014.

2. The appellant-plaintiff has come in RSA against the judgment and decree dated 24.04.2012, passed by the learned Additional District Judge, Fast Track Court, Rohtak, whereby his appeal against the judgment and decree of the learned Additional Civil Judge (Senior Division), Meham, dated 07.10.2009, was dismissed.

The civil revision has been filed by him against the order of the same Court, dated 13.03.2013, dismissing the application filed under Sections 5 and 14 of the Limitation Act, seeking condonation of a delay of 1030 days in filing the appeal against another decree passed consequent upon the same judgment of the learned Additional Civil Judge.

3. The facts of the case, as taken from the judgment of the learned Additional Civil Judge, are that the plaintiff, Dharam Pal, filed a suit for possession of the suit property, bearing No.B-IV-78, Meham. It was stated in the plaint that the said property had been purchased by Chaman Lal son of Ganga Ram vide a certificate of sale issued by the Managing Officer (Sales) of the Department of Rehabilitation, (then Punjab), dated 30.04.1965, "Benami", inasmuch as, actually it was purchased by Chaman Lal in the name of his brother, Nand Lal, with the total sale price being Rs.6219/-, of which Rs.4924/- were towards the adjustment of the claim (of property left behind in Pakistan) and the remaining Rs.1276/- was paid towards such total consideration.

It was further averred in the plaint that thereafter house tax was paid regularly and Nand Lal had treated Chaman Lal as the owner of the property, even as per a family settlement.

It was also contended that Chaman Lal had sold the property to the appellant-plaintiff vide a sale deed dated 14.03.1995 and since then the plaintiff was the owner thereof, but the defendant, Subhash son of Ved Parkash, had taken illegal possession of the same about two years prior to the filing of the suit (on 10.09.1997). Consequently, upon Subhash refusing to vacate the property, the suit was filed, initially impleading only the aforesaid Subhash as the defendant.

4. Upon notice issued to him, the said defendant had taken usual preliminary objections of maintainability etc. and on merits had stated that Chaman Lal was not the owner of the property and it was actually Nand Lal himself who was the owner but he was not in possession thereof, with "one Ved Parkash" (actually the defendants' father), being in possession for more than 40 years. It was further contended that he (Subhash) had no concern with the suit property (a shop).

The sale deed dated 14.03.1995 was denied, stating that it was a bogus and fictitious document, not binding on the rights of the defendant in any case.

Pleas with regard to locus standi of the plaintiff and non-maintainability of the suit in view of Section 4 of the Benami Transactions (Prohibition) Act 1988, were also taken by the defendant.

Yet further, it was contended that Ved Parkash was occupant of the property since 1957 in his own right, as the owner thereof and had been carrying on the business of a General Merchant and had also obtained an electricity connection in the year 1963. Thus, it was actually contended that the possession of Ved Parkash over the suit property was adverse to the true owner, being continuous, uninterrupted, hostile, open and mischievous, for more than 40 years.

5. Vide an order dated 15.03.2002, the aforesaid Nand Lal son of Ganga Ram was also impleaded as a defendant by the learned Civil Judge. He filed a written statement alongwith a counter-claim, also stating that actually the suit was not maintainable under the aforesaid Act of 1988 and that the sale deed in favour of the plaintiff, by Chaman Lal, was a forged and fabricated document.

It was admitted that the suit property was purchased vide a sale certificate dated 30.04.1965, but the property was under the tenancy of Tara Chand, grand-father of defendant No.1 (father of Ved Parkash), under the Custodian/the Department of Rehabilitation. Ved Parkash succeeded to the tenancy and had thereafter died on 05.03.2000, leaving behind his LRs including defendant No.1, Subhash.

It was further contended that there was a relationship of landlord and tenant between defendant No.2 and the LRs of Ved Parkash.

Payment of house tax by Chaman Lal was denied by

defendant No.2, as it had been also denied by defendant No.1. It was also contended that no family settlement took place qua the suit property, between Chaman Lal and defendant No.2, Nand Lal.

6. In the counter claim (which was numbered as a separate suit), Nand Lal sought a decree of declaration to the effect that he is the owner of the suit property and that the sale deed dated 14.03.1995, be declared to be null and void.

7. Defendant No.1, Subhash filed a written statement to the counter claim, stating that it was not maintainable, was bad for mis-joinder and non-joinder etc.

On merits, he took the same stand as was taken by him in reply to the suit of plaintiff Dharam Pal, to the effect that the title of Ved Parkash had ripened into one of perfection, by way of adverse possession.

Plaintiff Dharam Pal filed a replication to the written statement and also a reply to the counter claim, in terms of his plaint.

8. Yet another suit was filed by Ved Parkash son of Tara Chand (father of defendant No.1 Subhash) on 15.10.1998, impleading therein Dharam Pal and Nand Lal as defendants, seeking permanent injunction against them and "a consequential relief of declaration".

In the said suit, the same stand was taken by Ved Parkash as was taken by Subhash (his son) in the written statement filed in reply to the suit filed by Dharam Pal.

It was further stated that Nand Lal had filed an

ejectment petition (before the Rent Controller) against him (Ved Parkash), stating therein that he was paying a monthly rent of Rs.2000/- to Nand Lal but was in arrears of rent. The said rent petition was stated to be pending at the time of the filing of the suit by Ved Parkash.

It was further contended that as a matter of fact, Nand Lal had neither accepted Ved Parkash, nor his father Tara Chand, as tenants, but had always treated them as trespassers and that no rent had ever been paid. Consequently, the relationship of landlord and tenant was denied in Ved Parkashs' suit, reiterating his and his fathers' possession over the suit property for more than 40 years, open and hostile to the true owner, Nand Lal.

Collusion between Dharam Pal and Nand Lal was also alleged in the said suit. Upon notice issued, Dharam Pal and Nand Lal filed their respective written statements, denying the plea of adverse possession and otherwise essentially taking the same stand as was taken by them in their pleadings in the suit filed by Dharam Pal.

9. Vide an order dated 11.04.2003, all the three suits (i.e. including the counter claim), were ordered to be consolidated in Suit No.389 of 1997 filed by Dharam Pal. The following issues were thereafter framed by the learned Additional Civil Judge:-

- "1. Whether the plaintiff is the owner of the suit property as pleaded in the plaint? OP Dharam Pal
2. If issue No.1 is proved, whether the plaintiff is entitled to a decree of possession of the suit property against the Subhash? OP Dharm Pal

3. Whether the Chaman Lal purchased the property No.B-IV 78 in the Benami name of Nand Lal, if so to what effect? OP Dharam Pal
4. Whether Subhash defendant is in illegal possession of the shop in dispute, since when? OP Dharam Pal
5. Whether the suit of the plaintiff is not properly valued for the purpose of court fees and jurisdiction? OP Subhash
6. Whether the suit is bad for misjoinder and non-joinder of party as pleaded, if so to what effect? OP Subhash
7. Whether there was any relationship of landlord and tenant between the Nand Lal and Tara Chand, thereafter Ved Parkash and now his LRs as pleaded? OP Nand Lal
8. Whether the sale deed dated 14.03.1995 is liable to be declared as null and void as pleaded in the counter claim? OP Nand Lal
9. Whether Ved Parkash is entitled to a decree for permanent injunction restraining regarding suit property by adverse possession as pleaded in the civil suit titled as "Ved Parkash Vs. Nand Lal and another? Ved Parkash
10. Relief."

10. Plaintiff Dharam Pal examined himself and Chaman Lal as PWs1 and 2 and again examined himself as PW5 He also examined two Draftsmen and a handwriting and finger print expert, other than tendering the following documents in evidence.

Certificate of Sale	Ex. P1
Agreement in Urdu	Ex. P2
Hindi translation of Ex. P2	Ex. P3/A
Agreement in Urdu	Ex. P3

Hindi translation of Ex. P3	Ex. P4
Agreement to sell	Ex. P5
Site plan	Ex. P6
Affidavit	Ex. P6/A
Report of handwriting and finger print expert	Ex. P6/B to Ex. P6/P
House tax receipts	Ex. P7 and P8
Certificate of sale	Ex. P9
Copy of sale deed	Ex. P10
Registered	Ex. P11
Form No. 32	Ex. P12
Letter to the Assistant Settlement Commissioner	Ex. P13 and Ex. P14
Judgment dated 05.02.2000	Ex. P15
Judgment dated 17.08.2006	Ex. P16

He further tendered a letter in Urdu, which remained an unexhibited document, Mark-C.

11. The defendants in Dharam Pals' suit examined the Tehsildar (Sales), a Clerk in the office of the Municipality, Nand Lal himself, as also one Ramesh Kumar, Ishwar Singh, R.P.Gupta, K.D. Malhotra, Ram Niwas, Kamal Kant Khandelwal and defendant No.1 Subhash Chand himself, by way of oral evidence (10 witnesses). They tendered the following documentary evidence:-

Rent register	Ex. D1 and Ex. D2
Receipts	Ex. D3 to Ex. D6
Copy of notice	Ex. DW6/AA
Letter in Urdu	Ex. D7/A and Ex. D7/B
Receipt	Ex. D8
Copies of STA from	Ex. DW8/1 to EX. DW8/9
Acknowledgment letter	Ex. DW8/10
Copy of STA Form	Ex. DW8/11

Copy of form	Ex. DW8/12 and Ex. DW8/13
Bill	Ex. DW8/14
Copy of Complaint	Ex. DW8/15
Copy of amended complaint	Ex. DW8/16
Receipts	Ex. DW8/17 to Ex. DW8/27
Copy of register of evacuee property	Ex. DW8/28
Receipts	Ex. D9 and Ex. D10
Photo enlargement	Ex. DW10/1 to Ex. DW10/11
Negative	Ex. DW10/12
Report of finger print expert	Ex. DW10/13
Receipts	Ex. D11 to Ex. D20
Copy of assessment register	Ex. D21 to D27

No rebuttal evidence was led.

12. Upon appraising the aforesaid evidence, the learned Additional Civil Judge found that Nand Lal had established his case as regards the ownership of the suit property, on the basis of the sale certificate (Ex.P9) dated 30.04.1965, which was duly proved by the witness from the Department of Rehabilitation. It was also established that the suit property was actually in the possession of the Tara Chand, grand-father of defendant No.1 Subhash Chand (and father of Ved Parkash-plaintiff in Civil Suit No.223 of 1998/2000), who was running his business as a General Merchant and after his death, Ved Parkash came into possession thereof.

13. As regards Dharam Pals' contention that the suit property was purchased actually by his father, Chaman Lal, in the name of Nand Lal as a 'Benamidar', it was held that any such transaction would be hit by Section 4 of the Act of 1988, which reads as under:-

“4. Prohibition of the right to recover property held *benami*.- (1) No suit, claim or action to enforce any right in respect of any property held *benami* against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property. (2) No defence based on any right in respect of any property held *benami*, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property. (3) Nothing in this section shall apply,-

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.”

It was held by the learned Additional Civil Judge that in view of the above, it could not be held that Chaman Lal was the actual owner of the suit property and therefore, Nand Lal was entitled to a declaration that he was the owner thereof.

Consequently, it was also held that Chaman Lal not being the owner of the property, he could not pass on its title to plaintiff Dharam Pal, who was the actually his son but which fact Dharam Pal had tried to conceal in his suit, by showing himself as the son of Chaman Lal Khurana, while naming the actual owner of

the property, in the plaint, to be Chaman Lal, not stating that he was actually his father.

Hence, the sale deed dated 14.03.1995 was “nothing but a waste paper”.

14. As regards the contention of the plaintiff that Nand Lal had recognised Chaman Lal as the owner of the property by way of a family settlement, it was further held that this was a contradictory plea and in any case, the agreement (Ex.P3) showing Nand Lal to have abandoned his right in favour of Chaman Lal, was beyond the pleadings, as there was no mention of any agreement or General Power of Attorney in the pleadings, though there was a mention of a family settlement.

In regard to this document, it was further held that the original document was in Urdu (Persian) script , which was Ex.P3, the Hindi translation of which was Ex.P4. However, its correctness and authenticity was not established as it was mere a photocopy, with nobody testifying to its correctness.

15. On the house tax paid, it was found that the receipt that had been placed on record as Ex.P7, was actually issued in favour of Nand Lal, with the tax having been shown to be paid through Nand Lal (actually through Chaman Lal, as contended), but in any case, simply by payment of house tax on behalf of Nand Lal, Chaman Lal could not be declared to be the owner of the property. Another house tax receipt, Ex.P8, showed that it had been paid by Nand Lal himself, in addition to other receipts Exs.D11 to D20, issued in favour of Nand Lal, on payment of

house tax by him.

16. Thus, finally it was held that the suit property having been initially in the ownership of the Custodian/the Department of Rehabilitation, it was sold to Nand Lal by the said Department, vide the sale certificate Ex.P9, thereby making him the owner of the property. Consequently, his counter-claim was decreed in his favour, declaring him to be such owner.

17. As regards the possession of Ved Parkash over the suit property, he was found to be in possession thereof, prior to him his father Tara Chand being in such possession, with even Rs.7/- paid to the Department of Rehabilitation for use and occupation of the property by Tara Chand. It was, therefore, held that the occupation of Tara Chand was permissive qua the Rehabilitation Department and after the purchase of the said property by Nand Lal, he had stepped into the shoes of the Department and continued to enjoy the rights of a owner.

18. Citing the judgment of the Supreme Court in **State of Rajasthan v. Har Phool Singh** (2000 (2) Judicial Reports (Civil & Rent) 435 (SC)), and a Full Bench of this Court in **Ganda Singh and another v. Ram Narain Singh** 1959 PLR 374, it was held by the learned Additional Civil Judge that plaintiff Ved Parkash (in Civil Suit No.223/1998/2000) could not prove that his possession had ever become hostile to the true owner, i.e. Nand Lal. As a matter of fact, he himself had placed on record the receipts in favour of the Department of Rehabilitation, which proved that the possession was actually permissive and at no

stage thereafter, even after Nand Lal stepped into the shoes of the Department, was any act of hostility shown, by which the possession became adverse. Thus, even though Ved Parkashs' possession was continuous and uninterrupted, it was not proved to be adverse to Nand Lal, i.e. the true owner of the property.

Yet, since he was in continuous possession of the property, he was entitled to a decree of permanent injunction in his favour, so as to not to be dispossessed or such possession interfered with, except in due course of law.

The factum of the pendency of the rent petition filed by Nand Lal was again noticed by the learned Additional Civil Judge.

19. Consequently, the suit of plaintiff Dharam Pal (bearing No.389/1997/2000) was dismissed with costs; the counter claim of defendant No.2, Nand Lal, as already noticed, (registered as civil suit no. 43/2003) was decreed with costs, with a declaration to the effect that Nand Lal was the owner of the suit property by way of sale certificate dated 30.04.1965, and that the sale deed dated 14.03.1995, executed by Chaman Lal in favour of plaintiff Dharam Pal, was null and void and not binding on the rights of the owner.

The suit filed by Ved Parkash was partly decreed to the extent of a decree of permanent injunction in his favour as noticed above, though no costs were awarded to Ved Parkash.

Separate decree sheets were ordered to be prepared in respect of the three suits, i.e. the one filed by Dharam Pal, the counter claim by Nand Lal and the suit filed by Ved Parkash.

20. Before the learned first Appellate Court, the plaintiff in Civil Suit No.389/1997/2000, i.e. Dharam Pal, appealed against the judgment in the said civil suit and the decree dated 07.10.2009, "whereby the suit of the plaintiff/appellant has been dismissed and counter claim filed by defendant No.2 has been decreed and the suit of defendant No.1 has been partly decreed".

Thus, the claim in appeal was to set aside the judgment and decree and for dismissal of the counter claim of defendant Nand Lal.

Though on a reading of the above, it would appear that the appeal was filed against all three decrees issued by the learned Civil Judge, however as discussed by the learned first Appellate Court, factually, the appeal was filed only against the decree passed in Civil Suit No.389/1997/2000, i.e. the civil suit filed by Dharam Pal seeking possession of the suit property.

Consequently, after discussing the facts of the case, and the evidence led before the Civil Judge, it was held by the first Appellate Court that non-filing of an appeal against the decree in favour of defendant-counter claimant Nand Lal, as also the decree of permanent injunction in favour of plaintiff Ved Parkash in his suit, would operate as *res judicata* in the appeal filed against dismissal of appellant Dharam Pals' own suit.

21. Though, before that Court, counsel for the appellant Dharam Pal had relied upon a judgment of the Karnataka High Court in **Clifford George Pinto v. M.R. Shenava and others** AIR 2005 Karnataka 167, to submit that where proceedings have

been consolidated, a single appeal against the common judgment was maintainable, it was held to the contrary by the lower Appellate Court, citing the judgment of the Delhi High Court in **M/s Sir Sobha Singh and Sons Ltd. v. M/s Beharilal Beni Pershad** 1997(1) Civil Court Cases 16.

That judgment had referred to a judgment of the Supreme Court in **Premier Tyre Limited v. Kerala State Road Transport Corporation**, 1993 Supp(2) SCC 146, to eventually hold that unless the decree in a connected suit is challenged, it would become final and consequently, the bar under Section 11 of the Code of Civil Procedure, would operate.

22. Following the ratio of the judgment in the aforesaid judgment, the learned first Appellate Court declined to go into the merits of the appeal and dismissed it, on the ground that non-filing of an appeal against the decree allowing the counter claim of defendant Nand Lal operated as *res judicata* against appellant-plaintiff Dharam Pal.

23. Thereafter, appellant Dharam Pal filed the present second appeal (RSA 2875 of 2012) before this Court.

About 3½ months after this appeal was filed, on 29.05.2012, Dharam Pal also filed an appeal before the first appellate Court, on 10.09.2012, against the decree passed in counter claim No.43/2003 in favour of defendant No.2-counter claimant Nand Lal, alongwith an application seeking condonation of a delay of 1030 days, as already noticed at the beginning of this judgment.

In the said application, the reason for the delay was given that a single appeal had been filed earlier (bearing CA No.80 of 2009/2011) before the learned Additional District Judge, challenging the entire judgment of the learned Civil Judge dated 07.10.2009, but challenging only the decree passed in Civil Suit No.389/1997/2000, on erroneous advice given by counsel for the appellant.

Therefore, it was contended that since a wrong remedy had been availed of under the impression that only a single appeal had to be filed against the composite judgment, even though three separate decrees were passed, the delay in filing the appeal against the decree in favour of the defendant-counter claimant Nand Lal, should be condoned.

24. The learned Additional District Judge, however, dismissed the said application on 13.03.2013, on the ground that a perusal of the pleadings showed that the appellant was aware that the (first) appeal filed against the other decree (the one by which the appellant-plaintiffs' suit had been dismissed), had been dismissed on 24.04.2012, but yet he filed the appeal against the other decree in favour of the counter claimant, only after a period of almost four and half months of such knowledge, i.e. on 11.09.2012, for which there was no explanation.

Consequently, Civil Revision No. 5804 of 2013 has been filed here, against the order dated 13.03.2013, which has been ordered to be heard with RSA No. 2875 of 2012.

25. Before this Court, Mr.Harsh Kinra, learned counsel for

the petitioner in CR No.5804 of 2013 (also counsel for the appellant in RSA No.2875 of 2012), submitted that the learned lower Appellate Court completely ignored the fact that against the judgment dated 24.04.2012, RSA No.2875 of 2012 had been filed, which was pending before this Court and which fact had been duly mentioned in the application for condonation of delay accompanying the appeal filed before the first appellate Court, against the decree in favour of the counter claimant.

He contended that the judgment by which the earlier appeal had been dismissed, on the ground that non-filing of an appeal against the decree in favour of the counter claimant operated as *res judicata*, having been appealed against in this Court, the petitioner/appellant initially remained sanguine that such second appeal would succeed before this Court.

It is only subsequently that he obtained proper advice, to the effect that the decree in favour of the counter claimant also needed to be challenged and thereafter he challenged the said decree, by way of Civil Appeal No.305 of 2012, within 3 months and 12 days after filing of the RSA here, on 11.09.2012.

26. On the other hand, Mr. Ramesh Goyat and Mr. M.S.Kathuria, learned counsel appearing for respondents Subhash and Nand Lal respectively, firstly submitted that petitioner/appellant Dharam Pal, not having availed of the proper remedy at the first stage itself, i.e. when he filed Civil Appeal No.80 of 2009/2011, against the decree by which the suit was dismissed, he was, in fact, estopped from filing an appeal

subsequently, after such a long delay, when the decree in favour of the counter-claimant had become final and operated as *res judicata* even in Civil Appeal No.80, filed earlier before the first appellate Court.

It is further submitted that in any case, the learned Additional District Judge was not in error in refusing to entertain the appeal against the decree in the counter claim, simply on the ground of the long delay in filing the said appeal, for almost three years.

27. Having considered the aforesaid arguments, in the opinion of this Court, there is actually no error in the judgment of the learned lower Appellate Court in dismissing the Civil Appeal No.80, filed by plaintiff Dharam Pal against the decree dismissing his suit, on the ground that non-filing of an appeal against the decree in favour of the counter-claimant, would operate as *res judicata* in Civil Appeal No.80. This is for the reason that it is now well settled by the judgment of the hon'ble Supreme Court in **Sri Gangai Vinayagar Temple and another v. Meenakshi Ammal and others** (2015) 3 SCC 624, that unless each decree passed is challenged by way of separate appeals, the decree not appealed against would be deemed to have become final and as such, would operate as *res judicata*, in such circumstances, in an appeal filed against another decree, even if the judgment was a common judgment.

28. Having said that, however, I am of the opinion that as regards the order of the learned Additional District Judge, i.e. the

first Appellate Court, dated 13.03.2013, dismissing the appeal filed later by the appellant (petitioner in CR No.5804 of 2013), on the grounds of delay, that Court fell in error.

Undoubtedly, the delay of about two years and eight months in filing the first appeal against the decree dated 07.10.2009, passed in favour of the counter claimant, Nand Lal (respondent No.1 in the present civil revision petition and respondent No.2 in RSA No.2875 of 2012), is an extremely long delay, but in the opinion of this Court, the delay would be covered in favour of the petitioner/appellant by Section 14 of the Limitation Act, 1963. The said provision reads as follows:-

“14. Exclusion of time of proceeding *bona fide* in Court without jurisdiction. —(1) In computing the period of limitation for any suit 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.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding 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.

(3) Notwithstanding anything contained in rule 2

of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature. Explanation.— For the purposes of this section,--

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

29. A perusal of the above would show that if the plaintiff had been pursuing his remedy with due diligence in another civil proceeding, under a bona fide error, whether at the first stage or a subsequent stage of appeal or revision, the period spent in such pursuit shall be excluded.

In my opinion, the appellant/petitioner, in the first appeal filed by him, having specifically stated in the prayer clause, that he was challenging the decrees in favour of Ved Parkash (plaintiff in the other suit) and the counter claim in his own suit, i.e. Nand Lal, as also the decree by which his own suit was dismissed, showed that he was under a bona fide impression that he need not challenge each decree separately, having challenged the common judgment in all three proceedings (which were

consolidated earlier by the learned Additional Civil Judge).

That appeal having been dismissed by the lower Appellate Court, he duly filed RSA No.2875 of 2012 within limitation, and thereby continued under the same impression for about 3 months that as a matter of fact, the lower Appellate Court had erred in dismissing his appeal on a technical ground without going into the merits of the case.

It is only thereafter that he was obviously advised to file a separate appeal against the decree in favour of the counter claimant and as such, he filed Civil Appeal No.305/2012, on 11.09.2012, with a total delay of 1030 days occurring in the meanwhile, during which period he was actually in first appeal, and 2nd appeal, against the original judgment.

Therefore, in the opinion of this Court, the learned lower Appellate Court should have exercised its jurisdiction in favour of the appellant (petitioner in CR No.5804 of 2013) under Section 5 of the Limitation Act, read with Section 14 thereof, and condoned the delay in filing the appeal and should have gone ahead to hear it on merits.

30. On the liberal application of Section 14, the judgment of the Supreme Court in **M.P. Steel Corporation** vs. **Commissioner of Central Excise** (2015) 7 SCC 58, can be referred to and cited from, as follows:-

*"50. Section 14 has been interpreted
by this Court extremely liberally inasmuch as it
is a provision which furthers the cause of*

*justice. Thus, in **Union of India v. West Coast Paper Mills Ltd., 2004 (2) R.C.R (Civil) 256: (2004) 3 SCC 458**, this Court held:*

*"14. In the submission of the learned Senior Counsel, filing of civil writ petition claiming money relief cannot be said to be a proceeding instituted in good faith and secondly, dismissal of writ petition on the ground that it was not an appropriate remedy for seeking money relief cannot be said to be 'defect of jurisdiction or other cause of a like nature' within the meaning of Section 14 of the Limitation Act. It is true that the writ petition was not dismissed by the High Court on the ground of defect of jurisdiction. However, Section 14 of the Limitation Act is wide in its application, inasmuch as it is not confined in its applicability only to cases of defect of jurisdiction but it is applicable also to cases where the prior proceedings have failed on account of other causes of like nature. The expression 'other cause of like nature' came up for the consideration of this Court in **Roshanlal Kuthalia v. R.B. Mohan Singh Oberoi [(1975) 4 SCC 628]** and it was held that Section 14 of the Limitation Act is wide enough to cover such cases where the defects are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any circumstance, legal or factual, which inhibits entertainment or consideration by the court of the dispute*

on the merits comes within the scope of the section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has a right."

(Para 50, SCC citation)

Similarly, in **Ghasi Ram** vs. **Chait Ram Saini** (1998)

(2) RCR (Rent) 311, it was held that a litigant cannot be made to suffer when he is ill advised by his counsel. In that case, the litigant had filed a revision in the High Court, instead of bringing a fresh suit under Order 21 Rule 103 CPC, on the advice of his counsel. It was held by their Lordships that the litigant having pursued a remedy in good faith, the interest of justice demanded that he should not be refused the benefit of Section 14.

The judgment goes on to cite other judgments also on the same issue. Thus, it is obvious that Section 14 of the Limitation Act has to be construed liberally where a litigant has pursued his remedies diligently, but due to a *bona fide* error, has not followed it as per proper procedure. This would be the natural interpretation of the phrase "from defect of jurisdiction or other cause of a like nature...", as given in sub-section (2) of the aforesaid provision, as has been held by their Lordships.

31. Consequently, Civil Revision No.5804 of 2013 is allowed and the impugned order dated 13.03.2013, of the learned first Appellate Court, is set aside and the delay of 1030 days in filing Civil Appeal No.305 of 2012 before the learned Additional District Judge, Rohtak, is condoned. The said appeal is ordered to

be restored to its original number by that Court and to be heard on merits.

32. Coming then to RSA No. 2875 of 2012, filed against the judgment dated 24.04.2012. Though, as already said, on merits there is no error in the said judgment of the learned first Appellate Court in dismissing Civil Appeal No.80/2009, in view of the fact that the decree in favour of the counter claimant had not been challenged at that stage by the present appellant; however since in the accompanying revision petition, the delay in filing the appeal against the decree in favour of the counter claimant has been condoned by this Court, directing the learned first Appellate Court to hear that appeal on merits, this appeal also has to be allowed, the learned first Appellate Court having dismissed the appeal before it, i.e. bearing No.80/2009/2011, only on the aforesaid ground, without going into its merits.

33. Consequently, the impugned judgment and the decree of the learned first Appellate Court, dated 24.04.2012, are set aside and the appeal is remitted back to the same Court for hearing on merits, after restoring it to its original number, i.e. Civil Appeal No.80/2009/2011.

34. It may be observed here that this Court is obviously aware that the suit filed by the appellant-plaintiff, Dharam Pal, was only one for possession and the decree of permanent injunction in favour of Ved Parkash (through his legal representatives) in Civil Suit No.223/98/2000 has still not been challenged by the appellant in the present appeal, i.e. by Dharam

Pal, or at least no such challenge has been brought to the notice of this Court. Obviously, whatever effect that may or may not have on the appeals now ordered to be heard by this Court, would be looked into by the learned first Appellate Court, with no comments whatsoever being made by this Court in that regard, or on the merits of the cases set up by each party to the *lis*. Those would be issues to be gone into, on their own merits, by the first appellate Court.

35. Thus, CR No. 5804 of 2013 and RSA No. 2875 of 2012 are both allowed, as already stated in Paragraphs 31 and 33 respectively, hereinabove. No order as to costs.

August 24, 2016
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes