

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

% Judgment delivered on: 06.01.2016

+ **RFA No.487/2012**

ANIL BHASIN

.....APPELLANT

Vs

TELECOMMUNICATIONS CONSULTANTS INDIA
LTD. AND ORS.

....RESPONDENTS

ADVOCATES WHO APPEARED IN THIS CASE:

For the Appellant: Mr. Asheesh Jain and Mr. Ankur Bhasin, Advs.
For the Respondents: Mr. J.C. Chaudhary and Mr. N.Krishnan, Adv.
for R-1 & 2
Mr. Rajeev Sharma, Adv. for R-3

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is an appeal preferred against the judgment and decree dated 09.07.2012, passed by the learned Additional District Judge whereby, the appellant's plaint was rejected solely on the ground that it was barred by limitation.

1.1 The learned ADJ, while rejecting the plaint has, by the very same order, not only allowed respondent no.3's application filed for the said purpose, under the provisions of Rule 7 Rule 11 of the Code of Civil Procedure, 1908 (in short, CPC) but, has also, refused to allow the appellant's application filed under Section 14 of the Limitation Act, 1963 (in

short, 1963 Act) to exclude the time spent by him in prosecuting the writ petition, previously, filed before this court.

1.2 The appellant thus, via his counsel i.e. Mr. Jain, has articulated two grievances qua the impugned judgment and decree. First, that a bare perusal of the pleadings filed in the matter would demonstrate that the period of limitation qua the suit lodged before the trial court could have been computed only after the suit had been put to trial. In other words, in this case, having regard to the pleadings filed, limitation was clearly a mixed question of fact and law.

1.3 Second, the trial court misconstrued the scope and ambit of the provisions of Section 14 of the 1963 Act by holding that only if, the prior proceedings had been permitted to be withdrawn for want of jurisdiction and/ or defect in jurisdiction, could the time spent in prosecuting the said proceedings, have been excluded, in the calculation of limitation qua the suit.

2. Having regard to the fact that the appeal lies in a narrow compass, I would be briefly, touching upon the facts relevant for deciding the issue at hand.

2.1 The appellant, as it appears, entered into a contract with respondent no.1 for laying out an underground cable network; albeit in the defined area. The contract was, in effect, executed for the benefit of respondent no.3. The contract in this behalf was executed between the appellant and respondent no.1, on 16.05.2001. This contract was, however, amended; by virtue of which, terms of payment were modified. The modification entailed payment of monies to the appellant on a back-to-back basis. In effect, this meant, that only upon release of payment by respondent no.3, in favour of respondent no.1, would the amount be paid to the appellant in respect of the work

executed by him. The amendment was incorporated in clause 63 (b) which, for the sake of convenience is extracted herein after :

“...Clause 63(b): Payment Terms for MTNL Cable Rehabilitation Work.

Payments under clause 63 of form of proposal shall be made on Back-to-Back basis i.e. payment of work done by the contractor will be released on receipt of same payment from MTNL and fractional receipts from MTNL will be payable to contractor on pro rata basis of bill raised...”

2.2 Apparently, several work orders were issued in favour of the appellant. The appellant claims that he executed the work in terms of the work orders released in his favour. As per the stand of the appellant, he had raised bills worth Rs.7,79,101/-. This amount though, did not include as per the stand of the appellant a sum of Rs.2,69,415/- which, evidently, has been withheld by the respondents with respect to claims on account of stores, watch and ward charges and cost of excess material used in the execution of the work orders. The appellant, it appears, has also raised separate bills with respect to the material used.

2.3 Be that as it may, the appellant's stand has been that even though the work assigned was executed as far back as 2002-2003, since, respondent no.1 and 2 did not release payments by taking recourse to the provisions of clause 63 (b) of the contract, he was advised to approach this court by way of a writ petition under Article 226 of the Constitution.

2.4 In the writ petition, the appellant made a prayer for striking down clause 63(b) of the contract and, as a consequential relief, prayed for release of a sum of Rs.10,75,936/- alongwith interest at the rate of 24% p.a. The writ petition was numbered as : WP(C) 13669/2005. The said writ petition was instituted on and around 24.08.2005.

2.5 Pertinently, in the writ petition, a common counter affidavit has been filed by respondent no.1 to 3. The respondents, in their counter affidavit, inter alia, took an objection to the effect that the appellant herein had converted the “writ jurisdiction” of the court into a “suit jurisdiction”. It was further contended that the work orders, which were appended as Annexures P-4 to P-50, pertained to execution of work in various areas in the territory of Delhi, and that, annexure P-29 to P-34, which related to the Chanakyapuri area were subject matter of a dispute pending in the District Court. The respondents, specifically, averred that since, complicated questions of fact arose for consideration, they could not be agitated by the appellant herein, in a writ action.

2.6 It appears that having regard to the objections preferred by the respondents, the appellant sought liberty of the writ court to withdraw the petition and, consequently, urge all grounds in the pending civil proceedings.

2.7 The writ court vide order dated 29.01.2009, acceded to the request of the appellant, with liberty as sought for. Consequently, the court, proceeded to dismiss the writ petition, as withdrawn.

2.8 Since, the appellant, required a clarification qua the order dated 29.01.2009, an application was moved in that behalf. This application appears to have been moved as the appellant sought to bring to the notice of the writ court that the claims raised in the petition were not covered by the pending civil proceedings. The writ court, accordingly, clarified that it would be open to the appellant to urge the grounds adverted to in the writ petition, in a civil proceeding, which may be initiated in accordance with law. This clarificatory order was passed by the writ court, on 29.04.2009.

2.9 It may be relevant to note that in the interregnum the appellant had served upon the respondents, a legal notice dated 13.02.2009. By virtue of

this notice, the appellant sought recovery of an aggregate sum of Rs.18,05,992/- which included the principal amount, equivalent to Rs.7,57,476/- alongwith interest, factored-in, at the rate of 18% p.a. Besides this, via the said notice, information was also sought as to whether payments had been released by respondent no.3 in favour of respondent no.1

3. It appears, only respondent no.1 responded to the aforementioned notice. A reply dated 16.03.2009 was dispatched by respondent no.1, in which, the stand taken was that the claim of the appellant was barred by time.

4. Since, the respondents failed to satisfy the demand made vide legal notice dated 13.02.2009, a suit for recovery was instituted by the appellant, on 23.05.2009. In response thereto, respondent no.1 and 2 filed a joint written statement, while respondent no.3 filed a separate written statement. The appellant, in rebuttal, filed his replication to the written statements.

4.1 As indicated above, the appellant, had also filed an application under Section 14 of the 1963 Act. This application, it appears, was filed on 16.06.2009. The record shows that due opportunity was given to file replies to the application. Respondent no.1 and 2 filed a reply thereto. However, no reply was filed by respondent no.3.

4.2 As noticed at the very outset, respondent no.3, evidently, also filed an application under Order 7 Rule 11 of the CPC.

5. It is, in the background of the aforesaid broad facts, that the impugned judgment came to be passed by the trial court.

6. Mr. Chaudhary, who appears for respondent no.1 and 2 argued that the trial court judgment ought not to be disturbed for the following reasons :-

(i). First, as rightly held by the trial court, the benefit of the provisions of Section 14 would not be available to the appellant as the matter in issue in the writ petition and the suit filed by the appellant, were not the same. It was

contended that in the suit, the appellant had made a prayer for striking down clause 63(b) of the contract whereas, in the suit, a prayer had been made, not only, for passing of a decree for the sum claimed, but also, for a decree of mandatory injunction qua respondent no.1 and 2.

(i)(a) According to the learned counsel, this prayer, in effect, required issuance of a direction to respondent no.1 and 2, to submit the bills in issue to respondent no.3 and, for a further direction, to respondent no.3, to release the money directly to the appellant.

(i)(b) For this purpose, my attention was drawn to the prayer clause of the writ petition, and that, which stood incorporated in the plaint. In other words, it was contended that the relief sought for in the two actions was not the same.

(ii). Second, as held by the trial court, the writ petition was not dismissed as withdrawn on account of defect in jurisdiction. The appellant himself, chose to withdraw the writ petition, and therefore, as held by the trial court, he could not avail of the benefit of the provisions of Section 14 of the 1963 Act, till such time he was able to demonstrate that the writ petition had to be withdrawn on account of lack of jurisdiction or defect in jurisdiction.

(ii)(a) The learned counsel in this behalf, sought to place reliance on the order dated 29.01.2009, passed by the writ court to demonstrate that the writ petition was unilaterally withdrawn by the appellant. In this regard, learned counsel sought to place reliance upon the judgment of the Supreme Court in ***Deena Vs. Bharat Singh, (2002) 6 SCC 336.***

(iii). Third, the money claim made by the appellant pertained to the period spanning 2002-2004 and therefore, ex facie, the suit, filed in 2009, was barred by limitation qua which, no evidence was required to be led.

7. Mr. Sharma, who appeared on behalf of respondent no.3, supported the submissions by Mr. Chaudhary made on behalf of respondent no.1 and

2. In addition to the submissions made by Mr Choudhary, Mr. Sharma argued that the application of the appellant under Section 14 of the 1963 Act had been rightly rejected as the “*cause of action*” for filing the writ petition was different from that which obtained for instituting the suit. Learned counsel contended that the writ petition involved a challenge to clause 63(b) of the contract which, required respondent no.3 to route the payment to be made to the appellant via respondent no.1. On the other hand, according to the learned counsel, the suit filed by the appellant was a pure action for recovery of money based on the quantum of work done qua work orders released / issued in his favour.

REASONS

8. I have heard the learned counsel for the parties at some length and perused the record. What emerges therefrom, in the form of undisputed facts, is as follows:-

- (i). Admittedly, even according to the respondents, the bills qua which the appellant seeks recovery pertain to the period 2002-2004.
- (ii). There are two components to the money claim preferred by the appellant. The first component involves payment of monies with regard to work executed, which remained unpaid after adjustments had been made towards “intermittent payments” made by the respondents. Against this, component, the appellant claims in paragraph 4 of his plaint, a sum of Rs.7,79,101/-. The second component, is the amount that the appellant claims towards the monies withheld. This amount includes, according to the appellant, sums paid by him in the form of advance towards stores, watch and ward charges and cost of excess material used. The sum total of the two components of which recovery is sought is, therefore, an amount equivalent to Rs.10,48,516/-. Assertions with respect to these aspects are made in paragraph 4, 5 and 6 of the plaint. In response to these assertions,

respondent no.1 and 2, in their written statement, qua the second component, have made the following assertions in paragraph 7 under the heading, ‘preliminary submissions / objections :

“..It is stated that as per calculation of defendant no.1, plaintiff is liable to pay Rs. 6,23,000/- (Rupees Six Lacs Twenty Three Thousand) on account of stores/ materials to defendant no.1 and further an amount of Rs. 1,15,000/- (Rupees One Lac Fifteen Thousand) on account of Road Restoration charges (= RR Charges). It is stated that the stores / materials and unserviceable Store were not properly utilized and deposited to defendant no.3 (MTNL), for this reason, defendant no.3 is liable for imposition of liquidated damages.

In this respect, defendant no.1 (TCIL) will pay the unrealized amounts/ pending bills to the plaintiff as soon as same is released / paid by defendant no.3 subject to, adjustments of all such amounts which will be recovered/ charged/ adjusted from defendant no.1 (TCIL) by defendant no.3 (MTNL) due to the acts as omissions of the plaintiff under the terms of the contract. It is submitted that the defendant no.1 is suffering huge losses due to the acts and omissions of the plaintiff...”

(Emphasis is mine)

(iii). On the other hand, respondent no.3 has, in paragraph 3 of its written statement, under the heading ‘preliminary submissions / objections, taken the plea that no payment is due to the appellant as no work order was issued by it. Furthermore, it is averred that since respondent no.1 and 2 executed the work, respondent no.3 has already settled the account and made full and final payment to them.

(iv). This apart, in the counter affidavit filed by the respondents in WP(C) 13669/2005, clearly, a defence had been taken that since, it involved disputed questions of facts, the writ remedy was not available to the appellant.

(v). A perusal of the prayer clause in the writ petition would show that apart from the prayer made therein for striking out amended clause 63(b), there was, in addition, a mandamus sought qua the respondents for immediate release of a sum of Rs.10,75,936/- along with interest at the rate of 18% p.a.

(vi). The plaint was filed in an around 24.08.2005.

9. In the background of the aforementioned facts, two issues arise for consideration. First, as to whether the trial court was right in coming to the conclusion that the suit was barred by limitation? Second, whether in the facts of this case, the trial court had correctly applied the provisions of Section 14 of the 1963 Act?

9.1 In respect of the first issue, the trial court has summarily allowed the application filed by respondent no.3 under the provisions of Order 7 Rule 11 of the CPC. There is no discussion in the impugned judgment as to whether the suit filed by the appellant on its own strength was within limitation without having to take recourse to the provisions of Section 14 of the 1963 Act.

9.2 As indicated above, at least, for a part of the claim, respondent no.1 and 2 in their written statement, have taken the plea that respondent no.1 will pay the unrealized amounts / pending bills to the appellant as soon as they are released / paid by respondent no.3 subject to adjustments that may have to be made in respect of claims raised, by respondent no.3, against them. When this plea is examined in the light of the assertion made in the plaint, in paragraph 18, in which, averments have been made generally as to when cause of action arose in favour of the appellant for instituting the suit, it is clear that on the point of limitation, the matter ought to have gone to trial. For the sake of convenience, the relevant extract from paragraph 18 of the plaint is set forth below :-

“...The cause of action also accrued on the respective dates of the requests and issue of the letters and notice dated 13/02/2009. The cause of action accrued on the refusal of the defendants to pay the suit amount, though, it is submitted that the cause of action is still continuing, as the defendants inter-se having claimed to have not yet released to the due payments..”

(emphasis is mine)

9.3 The trial court as noted above, in the impugned judgment, has not discussed this aspect of the matter at all. Therefore, the impugned judgment is flawed, in my view, on this count.

10. Which brings to the second issue. Section 14 of the 1963 Act permits exclusion of time which the plaintiff has spent in prosecuting another civil proceedings with due diligence, while computing the period of limitation, provided, the proceeding relates to the “same matter in issue” and, was prosecuted in good faith, in the court, which was unable to entertain the action on account of “defect of jurisdiction” or “other cause of like nature”.

10.1 Therefore, quite clearly, for a plaintiff (i.e. the appellant herein) to succeed in a Section 14 application, he would have to demonstrate to the court adjudicating such an application that the following pre-requisites exist for exercising the power conferred by the said provision upon it :-

- (i). The earlier proceedings are civil proceedings.
- (ii). The said proceedings should be in a court of first instance or in the nature of an appeal or revision against the defendant in the suit.
- (iii). The proceedings relate to the “same matter in issue”, as that, which obtains in the suit.
- (iv). The said proceedings were prosecuted in good faith.
- (v). The court, in which, the proceedings were prosecuted was unable to entertain it on account of defect of jurisdiction or other cause of like nature.

10.2 There is no dispute raised before me and, to my mind, none could have been raised that the proceedings in the writ court are civil proceedings. It is to be borne in mind that the expression obtaining in Section 14 is, “civil proceedings” as against “civil suit”. The former expression, to my mind, is much wider in scope.

10.3 It is also clearly evident that the proceedings were instituted in a court as is obvious, and were prosecuted with due diligence till such time they were dismissed as withdrawn on 29.01.2009.

10.4 The points of attrition between the parties, therefore, pertain to two aspects. First, whether the two actions related to the “same matter in issue”. Second, whether the order of writ court permitting withdrawal of the petition fell within the scope of the expression “defect of jurisdiction or other cause of like nature”.

10.5 The counsel for the respondents have submitted that the matter in issue is not the same. The reason that the respondents have taken such a stand is, two-fold. First, that reliefs claimed in the two actions are not identical. Second, the two actions emanated from different cause of actions.

10.6 In my view, both submissions are misconceived. The first submission is untenable as, it misses the difference in the language which governs the provisions of sub-section (1) and (2) of Section 14 of the 1963 Act.

10.7 Sub-section (1) of Section 14 makes a provision for exclusion of time, based, on the ingredients given therein, when one computes the period of limitation for a suit.

10.8 Sub-section (2) of Section 14, on the other hand, applies to exclusion of time in computing the period of limitation qua an application. The expression, “same relief” finds mentions in sub-section (2) whereas, sub-section (1) of section 14 alludes to the expression, “same matter in issue”.

Therefore, in so far as sub-section (1) of Section 14 is concerned, the complete identity of relief is not a relevant factor.

10.9 What is relevant though, is, the fact that the matters in issue in the two actions should be same. While on this point, I must also advert to the fact that Section 14(1) which obtained in the Limitation Act of 1908 used the expression, “*founded on the same cause of action*” as against the expression, “*relates to the same matter in issue*”, which finds mention in the 1963 Act. The former expression was found to be too narrow and hence, was replaced by the latter expression. [See paragraph 41 of the Third Report of the Law Commission of India¹].

11. Therefore, the argument advanced by the respondents that there should be an identity of the causes of action or the reliefs claimed in the two actions (i.e. the writ action and the suit), is, in my view, an erroneous proposition which, clearly finds no support either in the language of sub-section (1) of Section 14 or, in the legislative history of the said provision.

11.1 On the other hand, the expression, “matters in issue” finds a place in Section 10 as also in Section 11 of the CPC, albeit, in the company of the words, “directly or substantially in issue”. In my opinion, therefore, the expression, “matters in issue” should be construed, broadly, as against the expression, “cause of action”. Cause of action as, generally understood, is, every fact which necessarily the plaintiff would have to prove, if traversed, in order to secure a judgment in his favour. It necessarily, does not comprise of every piece of evidence which is required to prove, each fact,

¹ 41. The Rankin Committee suggested that, following the language of sec. 11 of the C.P. Code, in sec. 14, for the words “cause of action” the words “matter in issue” may be substituted. The words “cause of action” have the effect of making the relief too narrow and adequate relief would be available if, as suggested by the Civil Justice Committee, the words “matter in issue” are substituted for the words “cause of action”. We are also of the view that prior proceedings in a court of Revision should be brought within the scope of this section. We recommend amendments to section 14 to give effect to these suggestions.

but it does include every fact, which is required to be proved. [See the observations made in *ICICI Bank Ltd. Vs. Astha Kumar*, (2015) SCC Online Delhi 13319, in paragraphs 8.2 and 8.3; *Rajasthan High Court Advocates' Association vs Union of India & Ors.* (2001) 2 SCC 294 and *The State of Madras vs C.P. Agencies & Anr.* AIR 1960 SC 1309.]

11.2 When examined from this angle, to my mind, both the writ and the suit action relate to the same issue, which is, non-payment of monies connected with the work executed against work orders, detailed out therein. It appears, in order to make the writ petition viable, the appellant had also challenged the amended clause 63(b) of the contract which, I suspect, was a plea raised as, a writ, simplicitor, for recovery of money, would not, perhaps, lie. On the other hand, in the suit, a more direct approach was adopted though, there was a reference to the fact that since there was an inter se dispute amongst the respondents with regard to release of money, dues had not been paid to the appellant. To my mind, at the heart of both actions, was a claim for recovery of dues against work, purportedly, executed by the appellant qua the work orders in issue. In my opinion, if any, other approach is adopted, in gathering, what the two actions were all about, it would amount to missing wood from the trees.

12. That brings me to the other issue, which is, whether Section 14 would be applicable in a case such as this where, apparently, the appellant was allowed to withdraw the writ with liberty to initiate a civil proceeding ostensibly, albeit, on a ground other than the ground of “defect of jurisdiction”. In this context, as indicated hereinabove, the expression, “defect of jurisdiction” obtaining in sub-section (1) of Section 14 is followed by the expression, “or other cause of a like nature”. Counsel for respondent no.1 and 2 had relied upon the judgment of the Supreme Court in the case of *Deena Vs. Bharat Singh* to contend that the latter expression, that is, “or

other cause of a like nature”, had to be construed *ejusdem generis* with the expression, “defect of jurisdiction”. In other words, it was contended, based on the said judgment, that the defect, must be of such a character that it should make it impossible for the court to entertain the action and decide the same on merits.

12.1 Before I proceed further, I may indicate in *Deena Vs. Bharat Singh*, the Supreme Court was faced with the following broad facts: The respondent / plaintiff, in the first instance, had, inter alia, filed a suit to seek a declaration that he had become the owner of the suit property. A further relief was claimed, which was, that the order of the Collector be held to be null and void.

12.2 This suit was decreed. While the appeal of the appellant / defendant was pending in the court of the District Judge, the respondent / plaintiff withdrew the suit, with permission to file a fresh suit. Consequently, the earlier suit was withdrawn as according to the respondent / plaintiff, there was a defect of non-joinder of a necessary party.

12.3 In the second suit filed by the respondent / plaintiff, more or less, the same reliefs were sought.

12.4 In the written statement, the appellant/ defendant took the plea that the fresh suit was barred by limitation.

12.5 It is, in this context, that the Supreme Court noted the provisions of not only Section 14(1) and (3) of the 1963 Act but also those of Order 23 Rule 2 of the CPC which, inter alia, provides that qua any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if, the first suit had not been instituted.

12.6 In these facts, the Supreme Court came to the conclusion that in view of the non-obstante clause obtaining in sub-section (3) of Section 14, the

provisions of sub-section (1) of Section 14 shall apply in relation to a fresh suit, in a case, where permission is granted on the ground that the first suit must “fail” by reason of defect in the jurisdiction of the court or other cause of like nature.

12.7 Thus, unlike *Deena vs Bharat Singh’s* case, one, is dealing with not two suits but with a writ action and a suit. Furthermore, a closer scrutiny of sub-section (3) of Section 14 would show that provisions of sub-section (1) of Section 14 would apply only when the court which grants liberty to withdraw the earlier suit under Rule 1 of Order 23, grants such permission on the ground that the action (i.e. the suit) would “fail” by reason of defect in jurisdiction or other cause of a like nature.

12.8 In a case where sub-section (3) of Section 14 is not applicable, the requirement is that the concerned court should be unable to entertain the civil proceeding on account of “defect of jurisdiction” or “other cause of a like nature”. To my mind, there is a subtle but a clear distinction in the two provisions. Where sub-section (3) of Section 14 is triggered, the court must come to the conclusion that the suit would “fail” on account of defect of jurisdiction or other cause of a like nature. The expression, that the suit must fail by reason of some formal defect, finds a mention in Order 23 Rule 1(3) clause (a) of the CPC, as well. In my opinion, the setting, in which, the expression, defect in jurisdiction of the court or other cause of a like nature, appears in sub-section (3) of Section 14 is, perhaps, not the same as that which pertains to a somewhat similar expression, i.e. defect of jurisdiction or other cause of a like nature, which, stand incorporated in sub-section (1) of Section 14. The inability of the court to entertain an action is not only on the ground of defect of jurisdiction but can also be, as in this case, on the ground that given the nature of the issues involved, a civil proceeding, other than a writ petition, would be a more appropriate action. Therefore, in my

opinion, the expression, “or other cause of a like nature” need not necessarily have the same connotation as that which one may give to the very same expression appearing in sub-section (3) of Section 14. It is not the likeness of the expression but the setting in which the expression is found incorporated, which is of greater relevance.

12.9 Having said so, this is not the only reason, based on which, I am of the view that the judgment of the Supreme Court in *Deena Vs. Bharat Singh* would not apply to the facts of the case. The reason for the same is, that the Supreme Court appears to have taken the view in several cases that Section 14 of the 1963 Act is wide enough to cover defects which are “..not merely jurisdictional strictly so called but others which are more or less neighbours to such deficiencies”. See *Roshan Lal Kuthalia Vs. R.B. Mohan Singh Oberoi*, (1975) 4 SCC 628 at page 639 / paragraph 27. This was a judgment delivered by a bench of three judges. This view was followed in *Union of India vs. West Coast Paper Mills Ltd.*, (2004) 3 SCC 458, at page 464 / para 14, and in *Shakti Tubes Ltd. Vs. State of Bihar and Ors.*, (2009) 1 SCC 786. *Shakti Tubes Ltd.*’s case was a matter, in which, provisions of Section 14 of the 1963 Act were applied by the Supreme Court in excluding the time spent in prosecuting a writ petition, which was, evidently, prosecuted in good faith. The Supreme Court observed, in no uncertain terms, that the provisions of Section 14(1) of the 1963 Act had to be construed liberally, and therefore, went on to note, with approval, its judgment in *Rameshwar Lal Vs. Municipal Council Tonk*, (1996) 6 SCC 100 wherein, it held that the fact that the High Court had declined to grant relief in a writ petition filed by the petitioner, and relegated the party to a civil suit, the time taken, in prosecuting such proceedings before the High Court, had to be excluded, under the provisions of Section 14 of the 1963 Act. In my view, a similar situation obtains in the present case.

13. Therefore, if the time spent by the appellant in prosecuting the writ remedy (i.e. between the date of institution of the writ and its withdrawal) is excluded, which must be so, then, the suit could not have been dismissed on the ground of limitation.

14. In view of the foregoing discussion, I am of the opinion that the impugned judgment and decree deserves to be set aside. It is ordered accordingly.

15. The appeal is, consequently, allowed. The trial court will, however, take up the suit for adjudication from the point at which it is presently positioned. To hasten the proceedings, parties and their respective counsel(s) shall appear before the trial court, on 10.02.2016.

16. There shall, however, be no orders as to costs.

17. The Registry will accordingly, remit the record to the trial court.

RAJIV SHAKDHER, J

JANUARY 06, 2016

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