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

\+ C.R.P. 9/2016

BSE LIMITED

..... Petitioner

Through Mr.ANS Nadkarni, Sr. Adv. with Ms.Surekha Raman and Mr. Purushottam, Advocates.

versus

M/S NAM CREDIT AND INVESTMENT CONSULTANTS LTD

..... Respondent

Through None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

O R D E R

% **19.01.2016**

C.M. No.1853/2016 (exemption)

Exemption is allowed subject to just exceptions. Application disposed of.

C.R.P. 9/2016 & C.M. No.1852/2016

Petitioner (Bombay Stock Exchange-BSE) is aggrieved by the order dated 19.10.2015 vide which three preliminary issues framed by the Trial Judge on 27.11.2014 were disposed off. The petitioner is aggrieved by the finding returned on issue no.1 as also on issue no.3.

Issue no.1 reads herein as under:

"Whether or not the present suit is barred by limitation? OP on Parties."

Learned counsel for the petitioner on this count submits that although an application under Section 14 of the Limitation Act, 1963 (hereinafter referred to as the "said Act") had been filed by the non-applicant/plaintiff yet there was no averment in the entire body of the said application that the proceedings before the Competition Commission of India (CCI) were being prosecuted by him bonafide under the belief that the CCI had no jurisdiction; in the absence of this pleading and the impugned order also not returning any specific finding on this count, the impugned order holding that the suit is within limitation and the benefit of Section 14 of the said Act having been accorded to the plaintiff suffers from an illegality.

Learned counsel for the petitioner in support of his submission has placed reliance upon a judgment of the Apex Court reported as AIR 1985 SC 1669 *Vijay Kumar Rampal and Ors. Vs. Diwan Devi.*

Record shows that the plaintiff (M/s Bidwell Securities Pvt. Ltd.

has initially filed a complaint under Sections 10 and 12 read with Section 36 of the MRTP Act, 1969. The complaint was to the effect that the petitioner was indulging in an unfair and restricted trade practice. The earnest money (Rs.5 lakhs) which has been deposited by the plaintiff with the respondent has wrongly been forfeited by the respondent and the said amount along with the interest be paid back to him. This complaint was filed on 07.7.2009. Proceedings before the MRTPC continued till the time it was dissolved. The successor forum i.e. the CCI was thereafter relegated with this dispute. Before the CCI proceedings continued till the order dated 16.12.2013 was passed by the CCI permitting the plaintiff to withdraw the petition with liberty to take such steps as permitted by law by approaching to some other Tribunal. There was a further direction that if the matter is taken up for hearing in two months the Tribunal will favourably consider the question of limitation.

Accordingly, the proceedings before the CCI were withdrawn on 16.12.2013.

Thereafter the present suit i.e. a suit for recovery was filed against the petitioner/respondent. Along with the plaint, an application under

Section 14 of the said Act was filed. The plaint sought recovery of Rs.10,42,712/- along with pendentelite interest which included the sum of Rs.5 lakhs which had allegedly been forfeited by the respondent illegally as also interest @ 18% p.a. was claimed.

The averments contained in the application under Section 14 of the said Act have been perused. Paras 25, 26, 27, 28, 31, 32, and 33 are relevant. While detailing the facts, the petitioner in this application has stated that proceedings were pending before the CCI but on 16.12.2013 the plaintiff company was constrained to withdraw the matter; in para 27 it has specifically been averred that after pursuing the case diligently and with bonafide intention for almost five years firstly before the MRTP and then before the CCI; thereafter on the withdrawal of said proceedings before the CCI a specific permission had been granted by the CCI to the petitioner to file the proceedings before the next forum; if the petition was filed within two months before the appropriate forum, the forum would consider exclusion of the time period spent in prosecuting the proceedings before the CCI.

Reply had also been filed to this application. The vehement argument made before this Court is that the essential ingredient of Section 14 are missing in the pleadings of the application under Section 14 of the Said Act. There is no pleading that the proceeding which were being conducted before the CCI were being prosecuted under the bonafide impression that the CCI had the jurisdiction. This submission has also been made orally before this Court, was not an objection taken in the reply filed to the pending application under Section 14 of the said Act.

The impugned order while disposing off issue no.1 had interalia held as follows:

"Issue no.1: Whether or not present suit is barred by limitation? OP on parties.

It is argued by ld. Counsel for the defendant that in the order dated 16.12.2013 the Tribunal directed the plaintiff herein to approached the appropriate Court within two months while the petition in hand has been filed after two and half months. I am not in conformity with the ld. Counsel for the defendant for the simple reason that the protection accorded by Section 14 of Limitation Act, 1963 cannot be limited or restricted by a Court or any Tribunal in the manner sought to be done by Competition Appellant Tribunal. An accommodation or a facility provided under a central Act promulgated by Parliament cannot be *nullified by such like observations. Having once accepted that the plaintiff was prosecuting his grievance under a good faith before that Tribunal, it was not appropriate to restrict benefit accorded by Section 14 of the Limitation Act in the manner done. As such issue no.1 is also answered in favour of plaintiff."*

Contention of the petitioner that there was a defect in the pleading in the application under Section 14 of the said Act and the words that the proceedings before the CCI were without jurisdiction may be absent to the extent that the plaintiff has not specifically pleaded that the CCI did not have the jurisdiction to proceed with the matter but the provisions of Section 14 of the said Act under which this application has been filed clearly stipulate that the Court shall consider an application which has been filed seeking exclusion of time for a period where the party has pursued a proceeding under the bonafide belief that it did have the jurisdiction. At the cost of repetition, this objection was not taken by the respondent in his reply to the application under Section 14 of the said Act.

The impugned order while disposing off issue no.1, had premised its order on the submissions and counter submissions of the parties and had accepted the plea that the plaintiff while prosecuting his grievance before the CCI was under good faith; accordingly benefit of Section 14 of the said Act has been granted to the plaintiff/petitioner.

Section 14 does envisages such a situation. It provides for the exclusion of time spent in proceedings which are being carried out bonafide in a court which does not have the jurisdiction. Accordingly, in computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceedings where the proceedings relate to the same matter in issue and are being prosecuted in good faith in a court which, from defect of jurisdiction or some other cause of a like nature, is unable to entertain it, an order under this Statutory provision may follow. This is clear from the language and dictate of Section 14.

The impugned order noting the factual matrix and the submission of the plaintiff that he was prosecuting the proceedings bonafide before the CCI and merely because it has not specifically averred that the CCI does not have the jurisdiction yet at the same time noting the fact that the application had been filed under the provisions of Section 14 of the said Act which does encompass such a situation, the impugned order disposing off issue no.1 suffers from no infirmity.

The petitioner is also aggrieved by the finding returned by the Trial Judge on issue no.3.

Issue no.3 reads herein as under:

Whether or not this Court has jurisdiction to try this matter in view of the order dated 16.12.2013 of the Competition Appellant Tribunal in RTPE 26/2009 (C.A. 80/2009) as well as in view sections 23 E, 22E and 23 L of the Securities Contracts (Regulation) Act, 1956? OP on parties.

This Court is of the view that the order passed by the Trial Judge while disposing off this issue also suffers from no infirmity. The submission of the learned counsel for the petitioner that the provisions of Sections 22E, 23 E and 23L (which have been highlighted by the learned counsel for the petitioner) have not been followed have been perused. Special emphasis has been laid on Section 23 L. Submission is that any person aggrieved by the order or decision of the recognized stock exchange (which in this case is the order passed by the BSE on 13.3.2008) may prefer an appeal before the Security Appellant Tribunal (SAT) and the provisions of Section 22B, 22C,22 D and 22E so far as is applicable will apply to such an appeal. Additional submission being that the Civil Court has no jurisdiction to entertain any suit or proceeding in respect of any matter which the SAT is empowered to deal with and this is clear from the reading of Section 22E of the said Act.

The order dated 13.3.2008 passed by the BSE is relevant. Vide this order the BSE had held that the earnest money of Rs.5 lakhs which had been deposited by the plaintiff is forfeited forthwith and the application of the plaintiff for deposit based membership was treated as cancelled.

The present suit is a suit for recovery of Rs.10,42,712/-. This amount encompasses the forfeiture of Rs.5 lakhs and Rs.5,42,712/- as also interest claimed @ 18 % per annum from 20.02.2008. Submission being that this amount is also due and payable to the plaintiff as the amount was illegally forfeited by the BSE. The Trial Judge noting the factual matrix while disposing off the issue no.3 had passed the following order:

"In the matter in hand, the dispute is primarily of civil nature in so far as, at this juncture, there is nothing on record to show that M/s BSE had actually conferred its Membership upon M/s NAM so as to confer it

a status of Stock Broker/Trader. Until and unless an entity becomes a Member of a Stock Exchange, any dispute qua it can not be covered under Securities Contract Regulation Act, 1956. Section 2A of this Act defines the word "Contract:" as a contract for or in relating to the purchase or sale of securities and it under Section 2C it defines the "Member" to be a Member of a recognized Stock Exchange.

As such, once admittedly no Membership number or a certificate was ever conferred/issued by M/s.BSE to M/s NAM, plaintiff herein is not be per se covered under the definition of "Member" under Section 2C of the Act.

Furthermore, in their letter dated 22.02.2008, defendant M/s.BSE only talked of completion of certain other formalities by M/sNAM so that its application for becoming a 'Member" can be processed further. Likewise, in their reply dated 27.6.2008 (annexure P 15 at page 138 of plaintiff's paper book), M/s BSE is only talking of cancellation of the application moved by M/s. NAM, and not of cancellation of any membership.

As such I have no hesitation in concluding that the plea of ld. Counsel for M/s.BSE, defendant, that M/s. NAM, plaintiff had become a Member of M/s BSE and that the dispute in hand is subject to Securities Contract Regulation Act, 1956.

Likewise, plaintiff herein cannot be faulted for approaching the Civil Court of judicature on a bare plea that in the order dated 16.12.2013, the word "Tribunal" was used by Competition Appellate

Tribunal, New Delhi. In so far as the usage of the terms Tribunal is concerned, it has to be understood and appreciated as "Court of appropriate jurisdiction" whichever may be.

This issue is accordingly answered in favour of the plaintiff."

The impugned order disposing off issue no.3 suffers from no infirmity. It was not within the domain of the Appellant Tribunal in terms of Section 22B to have granted the amount of Rs.10,42,712/- which has been claimed in the suit filed by the plaintiff. The suit is not specifically barred. Section 9 of the CPC comes to the aid of the plaintiff.

Impugned order in this background on no counts suffers from any infirmity. Petition is without any merit. Dismissed with cost quantified at Rs.10,000/-.

INDERMEET KAUR, J

JANUARY 19, 2016
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