

In the High Court of Judicature at Madras

Dated: 20.07.2017

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The Honourable Mr.JUSTICE RAJIV SHAKDHER
and
The Honourable Mr.JUSTICE ABDUL QUDDHOSE

O.S.A.No.257 of 2016
and C.M.P.No.20390 of 2016

M/s.Pridhivi Asset Reconstruction and Securitisation
Company Limited,
1-55, Raja Prasadamu, 4th Floor,
Wing - I, Kondapur, Masjd Road, Banda Road,
Hyderabad - 84
and also at 155, Anna Salai,
Chennai - 2. Appellant

Vs.

1. M/s.Naihaa Retail Private Limited
rep. by its Managing Director Mr.R.Aravind
No.6, Somasundaram Street, T.Nagar,
Chennai - 600 017.
2. The Authorised Officer,
State Bank of India,
Industrial Finance Branch,
No.155, Anna Salai, Chennai - 600 002.
3. The Secretary,
Ministry of Micro Small and Medium Enterprises
Shastri Bhavan, Chennai - 600 006. Respondents

APPEAL filed under Order XXXVI Rule 11 of the O.S.Rules read
with Clause 15 of the Letters Patent against the judgement and
decree dated 28.11.2016 made in C.S.No.771 of 2016 on the file
of the Honourable Court.

For Appellant : Mr.Srinath Sridevan

For Respondent : Mr.Vijayakumar - R1
Mr.M.L.Ganesh - R2
Mr.Su.Srinivasan - R3

J U D G E M E N T

(Judgement of the Court was delivered by RAJIV SHAKDHER, J.)

1. This is an appeal preferred against the judgment and order dated 28.11.2016.

1.1. The appeal has been preferred by defendant No.1, which is an Asset Reconstruction and Securitisation company. The 1st respondent had instituted a Suit for declaration, permanent injunction etc.

2. The learned Single Judge via the impugned judgement disposed of the Suit with the following operative directions:

"1. The plaintiff is given liberty to approach the Debt Recovery Tribunal, Chennai within a period of four weeks. Till such time, the order of injunction granted by this Court shall continue.

2. The Debt Recovery Tribunal, Chennai, shall decide the application to be filed within the time granted by this Court on its own merits without rejecting it on the ground of limitation.

3. All the issues are left open to be agitated by the parties."

3. The appellant is aggrieved by the fact that, while giving liberty to the 1st respondent, to approach the Debt Recovery Tribunal, Chennai (in short, 'the DRT'), the learned Single Judge has directed the DRT to decide the matter on merits, albeit, "without rejecting it on the ground of limitation".

4. Counsel for the appellant says that the observation of the learned Single Judge, in paragraph 4 of the impugned judgment that Section 14 of the Limitation Act, 1963 would apply, is flawed for the following reasons:

i) The exclusion of time, if any, can only be ordered by the concerned Forum, i.e., DRT, where the 1st respondent is to file his action.

ii) The time, which can be excluded, if at all, is the time, between the date, when, the plaint was first presented, i.e., the action was instituted, and the date of the impugned judgement.

4.1. In support of his submission, learned counsel for the appellant, relies upon the following judgments : Raj Ranjeet Singh and others V. Bind Bahadur Singh, AIR 1973 Allahabad 547 and M.P.Steel Corporation V. Commissioner of Central Excise (2015) 7 SCC 58.

5. Counsel for the contesting respondent, i.e., 1st respondent submits that the action under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, 'the SARFAESI Act'), has already been instituted and that the matter is ripe for arguments. It is the learned counsel's submission that the aspects raised qua limitation can always be advanced before the DRT, which would, then, be free to pass appropriate orders in the matter.

6. In rejoinder, learned counsel for the appellant submitted that the application instituted by the 1st respondent under Section 17 of the SARFAESI Act, is still at the stage of maintainability. Learned counsel submitted that in order to enable the appellant to advance its objections qua the maintainability, it would be necessary to obtain an appropriate order in the instant appeal, redacting the observations made in the impugned judgement, with regard to limitation. In other words, it is the submission of the learned counsel for the appellant that the observations made vis-a-vis limitation in the impugned judgment will impede the appellant's submission that the application under Section 17 of the Act is not maintainable.

7. We have heard the learned counsel for the parties and perused the record.

8. According to us, counsel for the appellant is right in submitting that any relief, in terms of Section 14 of the Limitation Act, can only be granted by the Forum, before whom, the application is presented.

9. We are fortified in this behalf by the judgement rendered in the matter of : Raj Ranjeet Singh and others V. Bind Bahadur Singh, AIR 1973 Allahabad 547. The relevant observations made therein are extracted hereafter:

"...10. From whatever aspect the matter is looked into, it must be held that the coparceners, namely, plaintiffs Nos. 2 to 4, were neither necessary nor proper parties to the suit. It was not necessary for plaintiff No. 1 to implead them as co-plaintiffs. Plaintiff No. 1 clearly impleaded plaintiffs Nos. 2 to 4 to oust the Nyaya Panchayat of its jurisdiction. This could not be allowed. No party has the right to determine the forum nor can jurisdiction be conferred by consent on a court other than one prescribed under some enactment. In the circumstances the suit must be held to have been within the exclusive jurisdiction of the Nyaya Panchayat not cognizable by the Civil Court including the Court of Judge Small Causes. Ordinarily, such a plaint is returned for presentation to a competent court.

11. The learned District Judge was moved by the fact that plaintiff No. 1 had unnecessarily impleaded the other coparceners to oust the jurisdiction of the Nyaya Panchayat. He treated this as a fraud played on the Court. Whether the plaintiff was entitled to the benefit of Section 14 of the Limitation Act. is not to be decided by the Court directing the return of the plaint. Such a question, if raised and permissible under the law, can be raised before the court before whom the plaint is represented. Courts of law do not attempt to fetter the discretion of other courts or tribunals. The District Judge was, therefore, not well advised to express the opinion that a fraud had been played on the courts. The proper thing would have been to leave the question open and to simply order that the plaint shall be returned for presentation to a competent court. ..."
(emphasis is ours)

10. In so far as the other submission is concerned, in that behalf also, counsel for the appellant is correct in submitting that, only that period could be excluded, which commenced from the date when the action was instituted and the date when the impugned judgement was passed.

11. It is not disputed before us that the plaint was instituted on 16.10.2016. As is obvious, the impugned judgment was passed on 28.11.2016.

12. In regard to this aspect, we only quote with profit the observations of the Supreme Court, in the matter of: M.P.Steel Corporation V. Commissioner of Central Excise (2015) 7 SCC 58:

"... 47. Shri Viswanathan, learned senior counsel appearing for the appellant, placed before us a judgment of the Andhra Pradesh High Court in which it was held that even prior to the institution of a particular proceeding, time taken in steps taken for prosecuting such proceedings should also be excluded. In Tirumareddi Rajarao & Ors. v. The State of Andhra Pradesh & Ors., AIR 1965 A.P. 388, the Andhra Pradesh High Court held that the period taken for preparatory steps before instituting proceedings should also be excluded. It said:

48.

49. The language of Section 14, construed in the light of the object for which the provision has been made, lends itself to such an interpretation. The object of Section 14 is that if its conditions are otherwise met, the plaintiff/applicant should be put in the same position as he was when he started an abortive proceeding. What is necessary is the absence

of negligence or inaction. So long as the plaintiff or applicant is bonafide pursuing a legal remedy which turns out to be abortive, the time beginning from the date of the cause of action of an appellate proceeding is to be excluded if such appellate proceeding is from an order in an original proceeding instituted without jurisdiction or which has not resulted in an order on the merits of the case. If this were not so, anomalous results would follow. Take the case of a plaintiff or applicant who has succeeded at the first stage of what turns out to be an abortive proceeding. Assume that, on a given state of facts, a defendant - appellant or other appellant takes six months more than the prescribed period for filing an appeal. The delay in filing the appeal is condoned. Under explanation (b) of Section 14, the plaintiff or the applicant resisting such an appeal shall be deemed to be prosecuting a proceeding. If the six month period together with the original period for filing the appeal is not to be excluded under Section 14, the plaintiff/applicant would not get a hearing on merits for no fault of his, as he in the example given is not the appellant. Clearly therefore, in such a case, the entire period of nine months ought to be excluded. If this is so for an appellate proceeding, it ought to be so for an original proceeding as well with this difference that the time already taken to file the original proceeding, i.e. the time prior to institution of the original proceeding cannot be excluded. Take a case where the limitation period for the original proceeding is six months. The plaintiff/applicant files such a proceeding on the ninetieth day i.e. after three months are over. The said proceeding turns out to be abortive after it has gone through a chequered career in the appeal courts. The same plaintiff/applicant now files a fresh proceeding before a court of first instance having the necessary jurisdiction. So long as the said proceeding is filed within the remaining three month period, Section 14 will apply to exclude the entire time taken starting from the ninety first day till the final appeal is ultimately dismissed. This example also goes to show that the expression "the time during which the plaintiff has been prosecuting with due diligence another civil proceeding" needs to be construed in a manner which advances the object sought to be achieved, thereby advancing the cause of justice.

50.

51. We, therefore, agree with the decision of the Madhya Pradesh High Court that the

period from the cause of action till the institution of appellate or revisional proceedings from original proceedings which prove to be abortive are also liable to exclusion under the Section. The view of the Andhra Pradesh High Court is too broadly stated. The period prior to institution of the initiation of any abortive proceeding cannot be excluded for the simple reason that Section 14 does not enable a litigant to get a benefit beyond what is contemplated by the Section - that is to put the litigant in the same position as if the abortive proceeding had never taken place."

(emphasis is ours)

13. In so far as the submissions made on behalf of 1st respondent are concerned, according to us, the same are untenable. The reason being, that the maintainability issue cannot be adjudged, de hors the outcome of the instant appeal. Learned counsel for the appellant is right, that since, via the impugned judgment, the learned Single Judge has directed that Section 17 application should be decided on merits and not rejected on the ground of limitation, the appellant's defence has been compromised to that extent.

14. Therefore, having regard to the foregoing discussion, we are inclined to allow the appeal to the extent, the learned Single Judge has indicated that the 1st respondent's application before the DRT would not be rejected on the ground of limitation. Having said so, the 1st respondent would be at liberty to move an application under Section 14 of the Limitation Act and seek exclusion of the time spent in prosecuting the proceedings in this Court.

15. The DRT, we are sure, in doing so, will have regard to the applicable law, and also, the judgment of the Supreme Court in the matter of: M.P. Steel Corporation V. Commissioner of Central Excise (2015) 7 SCC 58.

16. The appeal is, thus, disposed of, in the aforementioned terms. Consequently, the connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Sub Assistant Registrar,
Original Side,
High Court,
Madras.

2.The Depts Recovery Tribunal,
Chennai.

+1cc to Mr.Su.Srinivasan, Advocate SR.No.51157

+1cc to Mr.Srinath Sridevan, Advocate SR.No.51143

+1cc to Mr.Vijaya Kumar, Advocate SR.No.51503(21/07/2017)

O.S.A.No.257 of 2016
and C.M.P.No.20390 of 2016

KS (CO)
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