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

+ RFA 581/2004 and C.M. Appl. 41552/2016

HUKUM CHAND(DECD.)THR.LR'S & ORS Appellants
Through: Mr. Pawan K. Bahl, Advocate

versus

CHANDI RAM(DECD.)THR.LR'S Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% **11.08.2017**

1. The appellant has challenged the judgment dated 01st May, 2004 whereby the learned Trial Court has dismissed the appellant's suit for possession as barred by limitation.
2. The appellants instituted the suit for possession in respect of the property bearing Khasra no.41, Village Kotla Mubarakpur, New Delhi on 02nd January, 1984. The learned Trial Court returned the plaint for want of pecuniary jurisdiction on 11th February, 1993 whereupon the appellant presented the suit before this Court on 17th February, 1993.
3. The learned Trial Court held that the cause of action arose in favour of the appellant between January, 1980 to January, 1981 as per para 13 of the plaint and the suit was instituted on 17th February, 1993 when it was presented before this Court after being returned by the learned Senior Civil Judge, which is more than 12 years and, therefore, the suit was barred by limitation.
4. Learned counsel for the appellants submits that appellants seek exclusion of the period from 02nd January, 1984 to 11th February, 1993

under Section 14 of the Limitation Act. It is submitted that the appellants claimed exclusion of the period under Section 14 of the Limitation Act before the Trial Court but the said contention has not been considered by the Trial Court. Learned counsel for the appellants seeks remand back of the matter to the Trial Court to enable the Trial Court to consider the appellants' contention for exclusion of the period from 1984 to 1993 under Section 14 of the Limitation Act. Reliance is placed on judgment of this Court in **Anil Bhasin v. Telecommunications Consultants India Ltd.** 227 (2016) DLT 119. Reliance is also placed on **M.P. Steel Corporation v. Commissioner of Central Excise** (2015) 7 SCC 58. In **M.P. Steel Corporation** (supra), the Supreme Court has re-affirmed the following principles for exclusion of period under Section 14 of the Limitation Act laid down in **Consolidated Engg. Enterprises v. Irrigation Deptt.,** (2008) 7 SCC 169 :-

“Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;*
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;*
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;*
- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;*
- (5) Both the proceedings are in a court.”*

5. There is merit in the contention raised by learned counsel for the appellants. This Court is of the view that the appellants' claim for exclusion of the period from 02nd January, 1984 to 11th January, 1993 when they were prosecuting the case before the Court of Senior Civil Judge,

warrants consideration.

6. The appeal is allowed, the impugned judgment is set aside and the case is remanded back to learned Trial Court to consider the appellants' prayer for execution of the period from 02nd January, 1984 to 11th January, 1993 under Section 14 of the Limitation Act.

7. The appellants are permitted to file a fresh application under Section 14 of the Limitation Act which shall be considered by the Trial Court in accordance with law.

8. Learned counsel for the appellants submits that this case relates to South District and, therefore, the matter be listed before District Judge (South) for being assigned to an appropriate Court.

9. List the matter before District Judge (South) on 15th September, 2017 at 02:30 p.m.

10. Pending application is disposed of.

11. Trial Court record be returned back.

12. Copy of this order be given *dasti* to counsels for the parties under signatures of the Court Master.

J.R. MIDHA, J.

AUGUST 11, 2017

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