

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 21/02/2018****Judgment Delivered on : 04/05/2018****First Appeal No. 41 of 2018***(Arising out of order dated 04.12.2017 passed in IA No. 1 and Misc. Civil Suit No. 71 of 2016 by the 2nd Additional District Judge, Raipur)*

1. Jain and Brothers, a partnership firm, Budhapara, Sadar Bazar, Raipur.
2. Inderchand Dhariwal S/o Late Uttamchand Dhariwal, aged about 69 years, Resident of 11/2, Sadar Bazar, Raipur.
3. Smt. Pushpa Surana, Wife of Late Deepak Surana, aged about 54 years, Resident of Shankar Nagar, Raipur.
4. Smt. Garima Nahar D/o Late Deepak Surana, aged about 54 years, R/o Shankar Nagar, Raipur, Chhattisgarh.

---- Appellants**Versus**

1. State of Chhattisgarh, Through Secretary, Department of Housing and Environment, Mantralaya, Mahanadi Bhawan, Raipur.
2. Raipur Development Authority, G.E. Road, Raipur.

---- Respondents

For Appellant	: Shri G.D.Vaswani, Advocate.
For Respondent/State	: Shri UNS Deo, Government Advocate.
For Respondent No. 2	: Shri Pankaj Agrawal, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. Judgment**Per Thottathil B. Radhakrishnan, Chief Justice**

1. The Plaintiff in a suit claimed eligible to exclusion of time in terms of Section 14 of the Limitation Act, 1963; for short 'the Limitation Act'. The trial Court took up the application specifically filed invoking the said provision and

held that the prior proceedings on the basis of which benefit of exclusion of time was claimed, was decided on merits and not for want of or defect in jurisdiction. The Court below proceeded to hold that the earlier proceedings were decided on merits and therefore, the Plaintiff is not entitled to maintain the application under Section 14 of the Limitation Act. Holding so, the said application was dismissed and consequentially, the plaint was rejected under Order VII Rule 11(d) of the Code of Civil Procedure, 1908; hereinafter called 'the CP Code'. That is under challenge.

2. Assailing the impugned order, the learned counsel for the Appellant argued that the question whether the prior proceedings in writ jurisdiction before the Madhya Pradesh High Court and before the Hon'ble Supreme Court in Special Leave Petition arising therefrom, are civil proceedings in relation to the same matter in issue, is by itself a question that ought to have been determined at trial of the suit and that the plea whether the prosecution of such earlier proceedings were with due diligence and in good faith are also matters to be considered at trial and not in summary manner, as has been done by the Court below. Elaborating on the various aspects of Section 14 of the Limitation Act, learned counsel made reference to the judgments of the Apex Court in **C. Venkat Swamy v. H.N.Shivanna**; AIR 2017 SC 5604, **Suryachakra Power Corporation Ltd. v. Electricity Department**; (2016) 16 SCC 152, **M.P.Housing Board v. Mohanlal & Company**; (2016) 14 SCC 199, **Alka Gupta v. Narender Kumar Gupta**; (2010) 10 SCC 141, **Union of India v. West Coast Paper Mills Ltd.**; (2004) 2 SCC 747, and that of the Calcutta High Court in **Basdeo Prasad Khemka v. Union of India**; AIR 1978 Cal 100.

3. Learned counsel appearing for the Respondents No. 1 and 2 supported the impugned order.

4. Section 14 of the Limitation Act deals with exclusion of time of proceeding *bona fide* in court without jurisdiction. Sub-section 1 of that Act reads as follows:

“(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.”

5. In **Consolidated Engineering Enterprises v. Irrigation Department**; (2008) 7 SCC 169, the Hon'ble Supreme Court delineated the conditions in which Section 14 of the Limitation Act will be application. The five conditions enumerated therein, on the basis of clear terms of Section 14, are as follows:

“(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

(2) The prior proceedings had been prosecuted with due diligence and in good faith;

(3) The failure of the prior proceedings was due to defect of jurisdiction or other cause of like nature;

(4) The earlier proceedings and the latter proceeding must relate to the same matter in issue and;

(5) Both the proceedings are in a court.”

It was also held in that case as follows:

22....While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bonafide litigious activity.”

6. As succinctly laid down in **Basdeo Prasad Khemka** (supra); the provision in Section 14 of the Limitation Act for exclusion of time applies to

cases where the person brings the previous suit not only in the wrong court but also where he brings the case in the right court, but, is nevertheless prevented from getting trial on merits by reason of not only any defect in jurisdiction, but also for causes of like nature. Section 14 of the Limitation Act must be liberally construed. The said provision does not give a discretion to the Court, but on the other hand, the litigant is entitled, as a matter of right, to exclude the period spent in infructuous proceedings, provided, the conditions laid down in that Section are fulfilled. While the power given under Section 5 of the Limitation Act is discretionary, the power under Section 14 is mandatory, if the requisite conditions are satisfied by the Plaintiff.

7. 'Good faith' and 'due diligence' are twin conditions which have to be satisfied to secure the benefit of Section 14 of the Limitation Act in cases which fall under that provision of the Limitation Act. 'Good faith' is defined in Section 2(h) of that Act. It reads as follows: "good faith" - nothing shall be deemed to be done in good faith which is not done with due care and attention". Thus, due care and attention are the yardsticks to determine whether something is to be deemed to be done in good faith, to enable accrual of the benefit of Section 14 of the Limitation Act, insofar as it relates to the term "good faith" in that Section. "Due diligence" depends on the relative facts of a particular case. It is a measure of prudence or activity expected from and ordinarily exercised by a reasonable and prudent person under particular circumstances. The burden of proving that the prior civil proceedings was prosecuted with due diligence is on the person claiming the benefit of that Section. The aforesaid are the clear indicators to hold that due diligence and good faith are not pure questions of law; but, largely mixed questions of fact and law, in not questions of fact only. The question whether the prior civil proceedings failed on account of defect of jurisdiction is not by itself conclusive and decisive because Section 14 would apply also when the Court where that civil proceedings was prosecuted was

unable to entertain it on account of “other cause of the like nature”. We concur with the view in this regard, stated in **Basdeo Prasad Khemka** (*supra*). This is also an issue which cannot be treated as a question of law only.

8. Order VII Rule 6 of the CP Code as it stood before the 1976 Amendment, reads as follows:

“6. Grounds of exemption from limitation law. - Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the ground upon which exemption from such law is claimed:”

By the amendment to the CP Code as per the Act 104 of 1976, a proviso was added to that Rule. It is to the following effect:

“Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.”

Order VII Rule 6 alongwith its proviso as noted above, requires that the plaintiff shall show the ground upon which exemption from the law of limitation is claimed and the Court is within its power to permit the Plaintiff to claim exemption from law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint. This is noticed here to state that the question of eligibility for exemption from limitation is a matter that may arise for decision during the course of the suit. This is the scheme of the CP Code as well.

9. Rule 1(4) of Order XIV of the CP Code states that issues are of two kinds, namely, issues of fact and issues of law. Sub-rule (2) of Rule 2 of Order XIV provides that where issues, both of law and of fact arise in the same suit, if the Court is of the opinion that the case or any part thereof may be disposed on an issue of law only, the Court may try that issue first. Clause (a) and (b) of Rule 2(2) of Order XIV confines such authority to try such an issue of law only,

if it relates to (a) jurisdiction of the Court; or, (b) a bar to the suit created by any law for the time being in force. That does not include the authority to consider any plea of the Plaintiff as regards the grounds on which exclusion is claimed under Section 14 of the Limitation Act because the consideration of the grounds of claim for exclusion calls for decision on different points or issues, which are not issues of law only and also for the reason that if such consideration is done summarily, it will be in conflict with the power of the Court in terms of the proviso to Rule 6 of Order VII of the CP Code as explained in paragraph No. 8 above.

10. When the predominant questions that would arise for adjudication of a claim for exclusion under Section 14 of the Limitation Act are not questions or issues of law only, they require to be dealt with only by affording opportunity to the Plaintiff to establish such eligibility in consonance with the prescriptions of Section 14 of the Limitation Act. This is done at the trial of the suit by framing an issue or such issue, as to question of limitation, as may arise for decision; and, not otherwise, through a summary disposal of the Plaintiff's claim of exclusion on the strength of Section 14 of the Limitation Act.

11. In the light of the provisions in Order VII Rule 6 of the CP Code requiring the Plaintiff to show in the plaint, the ground upon which exemption from limitation is claimed, there is no requirement to institute a separate application claiming the benefit of Section 14 of the Limitation Act. In the light of the provision to Order VII Rule 6 of the CP Code, the Plaintiff could be permitted to claim exemption on any ground not set out in the plaint, provided such ground is not inconsistent with the grounds set out in the plaint. Therefore, even if a separate application is filed by the Plaintiff pleading eligibility for exclusion of time in terms of Section 14 of the Limitation Act, that ought to be treated as part of the pleadings for the purpose of adjudication and not to be decided

summarily. Once the plaint, taken alongwith any such application, contains the claim of exclusion of time in terms of Section 14 of the Limitation Act, the plaint cannot be rejected under Order VII Rule 11(d), because the suit cannot then, "appear from the statement in the plaint" to be barred by limitation.

12. For the aforesaid reasons, the impugned order of the Court below dismissing the application under Section 14 of the Limitation Act by merely making reference to the earlier proceedings and the contents of those orders, is an exercise without jurisdiction and is illegal and materially irregular even on counts of jurisdiction and procedure of the trial Court in terms of the CP Code and the Limitation Act. The consequential rejection of the plaint as if is to be treated as barred by limitation, is also therefore unsustainable.

13. In the result, this appeal is allowed setting aside the impugned order including the consequential rejection of the plaint and directing that the suit and IA No. 1 shall stand restored to the file of the Court below, which shall decide on the plea of the Appellants as to the eligibility for exclusion of time in terms of Section 14 of the Limitation Act. That shall be done only by framing requisite issue or issues as to the bar of limitation, among the issues in the suit, and such issue shall not be tried as a preliminary issue.

14. The parties are directed to mark appearance before the Court below on 19th June, 2018. Registry to inform the Court below.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Sharad Kumar Gupta)
JUDGE