

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.8225 of 2017 (O&M)
Date of Order:08th May, 2018

Ansal Mittal Township P Ltd.

..Petitioner

Versus

Rajinder Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amarpreet Singh, Advocate, for
Mr. Binderjit Singh, Advocate,
for the petitioner.

Mr. Karan Singla, Advocate,
for the respondent.

ANIL KSHETARPAL, J.

In this revision petition, under Article 227 of the Constitution of India interesting question arises for determination:-

“Whether on dismissal of consumer complaint filed under the Consumer Protection Act, 1986 (hereinafter referred to as 'the 1986 Act') being time barred, upheld in the first appeal and on withdrawal of further appeal from the National Consumer Disputes Redressal Commission, can a plaintiff can claim benefit of Section 14 of the Limitation Act, 1963, seeking exclusion of the time spent before consumer courts?”

Predecessor of the plaintiff purchased a plot from the defendant-petitioner measuring 300 square yards. Plaintiff, thereafter, stepped into the shoes of the original allottee vide transfer letter dated 18.02.2008. Plaintiff,

thereafter, appears to have paid certain amount towards price of the plot. Certain amount was further demanded on account of laying of the road etc., which was paid by the plaintiff from time to time and last payment was made on 22.05.2009. Plaintiff filed a complaint under Section 12 of the 1986 Act claiming that he is entitled to refund of the interest of Rs.38,387/- along with interest admissible at the market rate on the amount of Rs.1,84,786/- which was received maturely.

Consumer complaint under the 1986 Act was filed on 26.03.2012. The consumer complaint was contested. Apart from other grounds, it was pleaded that the complaint is barred by limitation. The District Consumer Disputes Redressal Forum, Bathinda, dismissed the complaint vide order dated 25.07.2012 on the ground that the consumer complaint is beyond limitation.

The first appeal preferred before the State Consumer Disputes Redressal Commission, Punjab, was also dismissed vide order dated 28.04.2014.

Plaintiff-respondent filed a revision petition before the National Consumer Disputes Redressal Commission and after addressing arguments, sought permission to withdraw the revision petition. The order passed by the National Consumer Disputes Redressal Commission dated 27.05.2015 is extracted as under:-

“Petitioner is present in person. Arguments heard. At this stage, petitioner wants to withdraw this Revision Petition.

As prayed by him, he is given the liberty to get redressal of his grievance before the Civil Court, as per law.

So far as the limitation is concerned, he can seek help from Luxmi Engineering Works Vs. P.S.G. Industrial Institute (1995) 3 Supreme Court Cases, 583".

Plaintiff, thereafter, filed a civil suit on 13.07.2015. Along with the plaint, an application under Section 14 of the Limitation Act, 1963 was filed, which has been allowed by the Civil Court vide order dated 01.09.2017, subject matter of challenge before this court.

The question which arises stems out from interpretation of words "other cause of a like nature" as appearing in Section 14 of the Limitation Act, 1963. Section 14 of the Limitation Act, 1963 is extracted as under:-

14. Exclusion of time of proceeding bona fide in court without jurisdiction.—

(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.

(2) In computing the period of limitation for any

application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding 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.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

The words “other cause of a like nature” appear after the words “defect of jurisdiction”. In sub-section 2 of Section 14 of the Limitation Act, 1963, position is same. The words “other cause of a like nature” is to be interpreted keeping in view the well known rule of interpretation i.e. *Ejusdem Generis*.

According to the aforesaid Rule, subsequent words take their colour from the preceding words i.e. “defect of jurisdiction” Hence, in these circumstances, the question as extracted above needs determination.

Hon'ble Supreme Court had occasion to deal with the aforesaid words in a different manner slightly in the case of **Gurdit Singh vs. Mansha Singh (1977) 1 SCC 791**. In the aforesaid case, previous suit filed was dismissed as pre-mature. In the subsequent suit, benefit of Section 14 of the Limitation Act, 1963, seeking exclusion of the time in prosecuting the previous suit was sought, which was declined. Once again, this issue was examined by the Hon'ble Supreme Court in the case of **Zafar Khan and others v. Board of Revenue, U.P., 1984(Sup.) SCC 505**. The Hon'ble Supreme Court after noticing explanation 'C' to Section 14 relied upon the rule of *Ejusdem Generis* and held as under:-

“The next limb of the submission was that as in the former proceeding restitution was refused on the ground that in the proceeding under the 1953 Act the land in dispute was allotted to the respondents and the allotment had become final, it can safely be said that the proceeding failed on account of a cause of like nature such as defect of jurisdiction and the appellants would be entitled to exclude the time spent in that

proceeding while computing the period of limitation in the suit. It is true that where the expression as a whole reads “from defect of jurisdiction or other cause of a like nature is unable to entertain it”, the expression “cause of a like nature” will have to be read ejusdem generis with the expression “defect of jurisdiction”. So construed the expression 'other cause of a like nature' must be so interpreted as to convey something analogous to the preceding words “from defect of jurisdiction.” The defect of jurisdiction goes to the root of the matter as the court is incompetent to entertain the proceeding. The proceeding may as well fall for some other expression “other cause of alike nature” on which some light is shed by the Explanation © to Section 14 which provides “misjoinder of parties or causes of action shall be deemed to be a cause of like nature with defect of jurisdiction,” must take its colour and content from the just preceding expression, 'defect of jurisdiction.' Prima facie it appears that there must be some preliminary objection which if it succeeds, the court would be incompetent to entertain the proceeding on merits, such defect could be said to be of the like nature' as defect of jurisdiction. Conversely if the party seeking benefit of the provision of Section 14 failed to get the relief in earlier proceeding not with regard to anything connected with the jurisdiction of the court or

some other defect of a like nature, it would not be entitled to the benefit of Section 14. Where therefore, the party failed in the earlier proceeding on merits and not on defect of jurisdiction or other cause of a like nature, it would not be entitled to the benefit of Section 114 of the Limitation Act.”

In the aforesaid case, the Hon'ble Supreme Court came to a conclusion that in the previous proceedings, the issue was decided on merits and, therefore, plaintiff is not entitled to the benefit of Section 14 of the Limitation Act, 1963.

On the other hand, learned counsel for the respondent has relied upon the judgment of the Hon'ble Supreme Court in the case of **Union of India and others v. West Coast Paper Mills Ltd. And another, (2004) 3 SCC, 458** to contend that the words “other cause of a like nature” has to be given a liberal interpretation and, therefore, this court should avoid interpreting the words “cause of a like nature” narrowly.

In the aforesaid case, a writ petition was filed under Article 226 of the Constitution of India seeking refund of the amount of freight collected by the Railway administration to the extent it was in violation of the declaration given by the Tribunal. The writ petition was dismissed by the High Court after forming an opinion that for a money claim of the nature made in the writ petition, writ jurisdiction was not the appropriate forum. In those circumstances, Hon'ble Supreme Court interpreted the words “other cause of a like nature” and arrived at a conclusion that benefit of Section 14 of the Limitation Act was available to the plaintiff in the aforesaid case.

Facts of the present case are entirely different. In the present

case, consumer complaint was not dismissed for defect of jurisdiction. The words “other cause of a like nature” have to take colour from the preceding words i.e. “defect of jurisdiction”. No doubt, Hon'ble Supreme Court has held that the words in Section 14 of the Limitation Act has to be liberally construed, however, the courts would not be justified in going against the plain meaning of the words used in the statute. After dismissal of the consumer complaint, on the ground of limitation, plaintiff cannot be permitted to claim exclusion of the time spent before the consumer court under Section 14 of the Limitation Act, 1963. Plaintiff elected a remedy. The aforesaid remedy was in accordance with law. Such complaint was not dismissed for defect of jurisdiction. The only difference is that the limitation for filing consumer complaint was shorter than of a civil suit. Once the plaintiff-respondent elected a remedy provided by the legislature and after having failed on the ground of limitation, plaintiff cannot be permitted to seek exclusion of the time under Section 14 of the Limitation Act, 1963 by extending the meaning of the words “other cause of a like nature”.

No doubt, National Consumer Disputes Redressal Commission has permitted the plaintiff to withdraw the revision petition with permission to file civil suit, however, such permission cannot be interpreted to mean that the benefit of Section 14 of the Limitation Act has been granted by the National Consumer Disputes Redressal Commission. The judgment referred to by the National Consumer Disputes Redressal Commission in the case of **Lakshmi Engineering Works (supra)** is only in the context when Hon'ble Supreme Court while interpreting the word “Consumer” held that persons who purchased the goods for commercial purposes would not

fall in the definition of “consumer”. Provisions of Section 14 of the Limitation Act, 1963, were not in issue before the Hon'ble Supreme Court in the case of Luxmi Engineering Works (supra).

Civil court while only relying upon the judgment in Luxmi Engineering Works (supra) allowed the application under Section 14 of the Limitation Act filed by the plaintiff. The court while following a precedent cited must apply its mind to the context as the judgment was delivered. Only ratio decidendi in the judgment is binding and not obiter-dicta.

In view of the aforesaid, revision petition is allowed. Order under challenge is set aside. The suit filed by the plaintiff shall stand dismissed being barred by limitation.

08th May, 2018

(ANIL KSHETARPAL)

nt

JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No