$~15

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

% **Date of Decision: 05th September, 2018**

\+ CS(OS) 343/2018

PARAM PREET SINGH ..... Plaintiff

Through: Mr.Sudhir Nandrajog, Senior Advocate with Mr.J.C. Mahindro and Mr.Shubham Agarwal, Advocates

versus

DAVENDER KUMAR RELAN & ORS. ..... Defendants

Through: Mr.Mukul Gupta, Senior Advocate with Mr.Himanshu Bajaj, Mr.Sumit Kumar Mishra, Mr.Raj Kumar and Mr.Aditya, Advocates

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

JUDGMENT (ORAL)

I.A. 9256/2018 *(exemption)*

Allowed, subject to just exceptions.

I.A. 9257/2018 *(under Section 14 of the Limitation Act)*

1. The plaintiff has filed this suit for specific performance of agreement dated 04th October, 2010 against the defendants. Along with suit, the plaintiff has filed I.A. 9257/2018 under Section 14 of the Limitation Act for exclusion of the time spent in pursuing the application under Order I Rule 10 of the Code of Civil Procedure in CS (OS) 252/2013.

2. Relevant facts of this case are as under:

2.1. On 04th October, 2010, the plaintiff agreed to purchase two properties namely, property bearing No. D-54, Kalkaji, New Delhi and plot No. 75, Sainik Farms, New Delhi (also known as Khasra No.

288 measuring 4 Bighas and 8 Biswas, Village Khanpur) from the defendants for a consideration of Rs.6,34,00,000/-. The plaintiff paid Rs.31,00,000/- in cash and agreed to pay the balance amount, after the completion of mutation proceedings to the defendants, within eight months from 04th October, 2010. The terms of the agreement are recorded in receipt which is reproduced hereunder:

> *"RECEIPT/AGREEMENT 04/10/2010*
> *We, Pushpa hurriya, Saroj Bala, Chander Kanta, Savita Girdhar, D/o Late Sh. Bhagwan das Kalra, R/o D-54, Kalkaji, Delhi all four sisters legal heirs of Late Sh. Bhagwan das Kalra have received a sum of Rs.3100000/- (thirty one lacs) in cash from (sic) Sh. P.P. Singh R/o A-6 Shivalik, N. Delhi through our husbands as advance against the Sale of our both Properties, entire house D-54, Kalkaji and entire Property 4 Bighas 8 Biswas in Khasra no.288, Khanpur (Sainik Farms), N. Delhi out of settled Sale Consideration for both above said Properties is Rs.63400000/- (Six Crores thirty four Lacs) balance Payment we will receive at the time of transfer both Properties in the name of P.P.Singh (buyer) after mutation formalities are completed which is Pending, within 8 months from today 04/10/10 Photostat Papers self attested has been given to the buyer."*

2.2. On 12th August, 2011, the plaintiff filed the police complaint against the defendants on the basis of which FIR No. 17 dated 19th January, 2013 under Section 420/406/120-B/34 IPC was registered against the defendants on 19th January, 2013. In the complaint, the plaintiff prayed for action to be taken against the defendants for cheating, fraud and criminal misappropriation. The defendants applied for anticipatory bail which was rejected.

2.3. On 07th February, 2013, one Yogesh Kumar instituted a suit for specific performance namely CS (OS) No.252/2013 against defendants No.1 to 10 in respect of plot No.75, Sainik Farms, Delhi in which the notice was issued to the defendants on 11th February, 2013.

2.4. On 13th May, 2013, the plaintiff filed an application under Order I Rule 10 of the Code of Civil Procedure for being impleaded as a defendant in CS (OS) 252/2013. The notice of this application was issued on 31st May, 2013.

2.5. Yogesh Kumar (plaintiff in CS (OS) 252/2013) objected to the impleadment of the present plaintiff on the ground that the plaintiff's rights *qua* the suit property cannot be adjudicated in CS (OS) 252/2013 and <u>the appropriate remedy for the plaintiff was to file an independent suit for specific performance</u>. Paragraph 2 of the reply dated 12th February, 2014 is reproduced hereunder:

> *"2. That the present application filed by and on behalf of the Applicant is not maintainable in as much as the grievance of the Applicant can not be adjudicated by way of the present proceedings. As per the allegations of the Applicant, he had also entered into an Agreement to Sell with the defendants herein and had paid some amount to them, ad advance payment. <u>It is submitted that by getting himself impleaded in the present proceedings, it seems that the Applicant wants adjudication of his alleged rights over the property in dispute. It is submitted that the Applicant's alleged rights qua the property in dispute can not be adjudicated in the present proceedings in as much as the only remedy for the same would be filing of a suit for specific performance independently against the defendants herein.</u> In view of the same, the present application is liable to be dismissed with heavy costs."*
>
> *(Emphasis supplied)*

2.6. The plaintiff, in his rejoinder, claimed that he was a necessary party in view of the allegations made against him. Paragraph 2 of the rejoinder of the plaintiff is reproduced hereunder:

> *"2. Allegations made in Para 2 of the Preliminary Objections as stated are vague, evasive, baseless, misconceived, wrong and therefore denied. <u>It is denied that the Present Application is either not maintainable on the mere premises that the Applicant seeks the adjudication of his rights over the Property in dispute when admittedly the Plaintiff himself has made allegations with regard to the Agreement in favour of the Applicant in his Suit itself or that the Applicant needs to file a Suit for Specific Performance independently as alleged. It is submitted that in view of the allegations made by the Plaintiff himself about the Agreement existing in favour of the Applicant and as such the Applicant is though a necessary Party</u> but by no stretch of imagination can be denied to be a Proper Party when his rights are being put to issue by the Parties to the Present Suit. The Presence of the Applicant is also necessary to avoid multiplicity of proceedings which need to be avoided in law as well as in Equity.........."*
>
> *(Emphasis supplied)*

2.7. Vide order dated 01st February, 2016, the Joint Registrar dismissed the plaintiff's application under Order I Rule 10 of the Code of Civil Procedure in CS(OS) 252/2013 mainly on the ground that the plaintiff had a separate remedy of filing a suit for specific performance. The Joint Registrar also noted that the plaintiff's agreement dated 04th October, 2010 was relating to two properties whereas CS (OS) 252/2013 related to only one property namely Sainik Farms property.

2.8. The plaintiff filed O.A. 97/2016 against the order dated 01st February, 2016 passed by the Joint Registrar which was dismissed by this Court on 05th September, 2017. This Court, however, gave liberty to the plaintiff to file appropriate proceedings in accordance with law along with an application under Section 14 of the Limitation Act which would be considered on its own merits.

2.9. On 2nd June, 2018, the plaintiff instituted this suit for specific performance of the agreement dated 04th October, 2010.

2.10. The plaintiff is seeking exclusion of the time spent in pursuing the application under Order I Rule 10 of the Code of Civil Procedure in CS(OS) 252/2013 under Section 14 of the Limitation Act.

3. Learned senior counsel for the plaintiff urged at the time of the hearing that the plaintiff was prosecuting the application under Order I Rule 10 of the Code of Civil Procedure with due diligence and in good faith. It is further submitted that the original documents were filed by the plaintiff in CS(OS) 252/2013. The plaintiff applied for the return of the said documents on 16th January, 2018 and the said documents were returned to the plaintiff on 22nd February, 2018. It is further submitted that original documents were thereafter requisitioned by the Investigating Officer in FIR No. 17 of 2013. Reliance is placed on ***Rameshwarlal v. Municipal Council, Tonk,*** (1996) 6 SCC 100. and ***Deena v. Bharat Singh,*** MANU/SC/0612/2002.

4. Learned senior counsel for the defendants No. 1 to 10 urged at the time of hearing that Section 14 is not applicable to the present case as the plaintiff never instituted a suit for specific performance against the defendants. CS (OS) 252/2013 related to the specific performance sought by one, Yogesh Kumar against the defendants No. 1 to 10 in respect of Sainik Farms property, in which the plaintiff sought impleadment without seeking any substantive relief against the defendants. The plaintiff's application for

impleadment was dismissed on 01st February, 2016 and the appeal was dismissed on 05th September, 2017 on merits. The plaintiff lodged an FIR No. 17 of 2013 in respect of which the Police filed the closure report after investigation on 22nd August, 2014 mainly on the ground that this dispute was civil in nature and the plaintiff should have filed a suit for specific performance. Reliance is placed on ***Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department,*** (2008) 7 SCC 169 and ***Jitender Kumar Gupta v. Sukhbir Singh Saini***, 2012 SCC OnLine 4938.

5. Section 14 of the Limitation Act is reproduced hereunder:

> "***Section 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."

6. In ***Consolidated Engineering Enterprises*** (supra), the Supreme Court held that Section 14 protects a litigant against bar of limitation when he institutes a proceeding which by reason of some technical defect, cannot be decided on merits and is dismissed. The protection is to a litigant who brings the suit before a wrong Court due to a bona fide mistake or law or defect or procedure and was diligently pursuing a remedy before a wrong Court. The Supreme Court held that the following five conditions have to be fulfilled before applying Section 14:

> *"21. 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 proceedings 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.*

(Emphasis supplied)

The Supreme Court further held that Section 14 requires the prior proceedings should have been prosecuted in good faith and with due diligence. Relevant portion of said judgment is reproduced hereunder:

> *"31. To attract the provisions of Section 14 of the Limitation Act, five conditions enumerated in the earlier part of this judgment have to co-exist.There is no manner of doubt that the section deserves to be construed liberally. Due diligence and caution are essential prerequisites for attracting Section 14. Due diligence cannot be measured by any absolute standards. Due diligence is a measure of prudence or activity expected from and ordinarily exercised by a reasonable and prudent person under the particular circumstances. The time during which a court holds up a case while it is discovering that it ought to have been presented in another court, must be excluded, as the delay of the court cannot affect the due diligence of the party. Section 14 requires that the prior proceeding should have been prosecuted in good faith and with due diligence. The definition of good faith as found in Section 2(h) of the Limitation Act would indicate that nothing shall be deemed to be in good faith which is not done with due care and attention. It is true that Section 14 will not help a party who is guilty of negligence, lapse or inaction. However, there can be no hard-and-fast rule as to what amounts to good faith. It is a matter to be decided on the facts of each case. It will, in almost every case be more or less a question of degree. The mere filing of an application in wrong court would not prima facie show want of good faith. There must be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party. In the light of these principles, the question will have to be considered whether the appellant had prosecuted the matter in other courts with due diligence and in good faith.*
>
> *(Emphasis supplied)*

7. In ***Jitender Kumar Gupta v. Sukhbir Singh Saini*** (supra), the

Division Bench of this Court upheld the dismissal of an application under Section 14 of the Limitation Act in the case of a litigant seeking exclusion of time spent in pursuing an application under Order I Rule 10 of Code of Civil Procedure. Relevant portion of said judgment is reproduced hereunder:

> *"5. Having perused the impugned order and heard learned counsel for the appellant, we find no merit in this appeal and are inclined to dismiss the same. As noticed hereinabove, the learned Single Judge has taken note of various decisions on the subject. Since, we are in agreement with the reasoning and conclusions of the learned Single Judge, we do not propose to once again delve into the various decisions on the subject. Suffice it to say that <u>the application preferred by the appellant under Order 1 Rule 10 read with Order 6 Rule 17 CPC in the earlier suit was not dismissed on account of defect of jurisdiction or other cause of a like nature. The learned Single Judge has observed in the impugned order that the said application was dismissed on merits. Learned counsel for the appellant has not even urged before us that this finding of the learned Single Judge is not in order. This being the position, one of the basic ingredients of Section 14 did not exist. The pendency of the suit of the respondent for declaration certainly could not give cause to the appellant to withhold its own action for recovery against the respondent as, for the purpose of invoking Section 14 of the Limitation Act, it is essential that the earlier civil proceeding is the one instituted by the plaintiff who seeks exclusion of time by resorting to Section 14 of the Limitation Act.</u> The argument that the appellant should not be made to suffer for the delay in disposal of his application for impleadment also has no merit. A party who litigates in a Court does so at his own peril. It is not for the Court to advise him as to what steps he needs to take to safeguard his interests. The appellant should have known that the disposal of his application may take time. There was no guarantee that the same would be allowed. <u>When he saw that the limitation for filing the recovery suit against the respondent was about to expire, it was for him to take appropriate steps to ensure that</u>*

> *<u>the claim does not become barred by limitation.</u> There is also merit in the finding of the learned Single Judge that the application for impleadment was moved in a suit to seek rendition of accounts. The respondent had no concern with the internal dealings or accounting of M/s Devred (India) Pvt. Ltd. of which the appellant and Shri Bal Kishan Saini were the partners/Directors. The respondent, possibly, could not have rendered any accounts of the said company to the appellant. <u>The said impleadment application was wholly meritless and the dismissal was accepted by the appellant. Thus, the earlier proceeding against the respondent could not be considered as undertaken in good faith and bona fide, which is also a requirement of Section 14 of the Limitation Act.</u>"*
>
> *(Emphasis supplied)*

<u>Findings</u>

8. The cause of action in favour of the plaintiff and against the defendants for specific performance initially arose on 4th October, 2010 when the agreement was executed between the parties; it again arose on 4th June, 2011 upon expiry of eight months period from the date of the agreement; and it finally arose on 12th August, 2011 when the plaintiff had notice that the performance had been refused by the defendants. As such, the period of limitation of three years for instituting the suit for specific performance under Article 54 of the Limitation Act expired on 12th August, 2014.

9. The plaintiff instituted this suit for specific performance on 02nd June, 2018. As such, there is a delay of more than three years in filing this suit.

10. The plaintiff's application under Order I Rule 10 of the Code of Civil Procedure for impleadment in CS(OS) 252/2013 was dismissed on merits as back as on 01st February, 2014 on the ground that the plaintiff had a remedy of specific performance. <u>The dismissal was not due to any other defect of</u>

jurisdiction or other cause of like nature as prescribed in Section 14 of the Limitation Act.

11. CS(OS) 252/2013 related to only one property namely plot No.75, Sainik Farms, Delhi whereas the plaintiff's agreement was in respect of two properties. As such, the matters in issue in CS(OS) 252/2013 and this suit are not the same.

12. The plaintiff's decision to pursue Order I Rule 10 of Code of Civil Procedure in CS(OS) 252/2013 instead of filing a suit for specific performance, cannot be said to be either in due diligence or in good faith.

13. The plaintiff's application under Order I Rule 10 CPC was dismissed as back as on 01st February, 2016 and the plaintiff's appeal against the aforesaid order was dismissed by this Court on 05th September, 2017. The plaintiff waited for more than eight months thereafter to institute this suit on the ground that the original documents were filed in CS(OS) 252/2013 and thereafter, with the Investigating Officer. This explanation is not satisfactory as the plaintiff could have sought exemption from filing original documents.

14. The plaintiff could have invoked Section 14 of the Limitation Act if he had instituted a suit for specific performance and had prosecuted the same with due diligence and in good faith, in a Court which for the defect of jurisdiction was unable to entertain it. However, in the present case, the plaintiff did not institute a suit for specific performance before any Court and therefore, Section 14 is not applicable.

15. The plaintiff could not give any satisfactory explanation as to why the suit for specific performance was not filed within the prescribed period of limitation. It is not the plaintiff's case that he was not aware that the period of limitation for filing the suit for specific performance would be expiring in

August, 2014

16. On 12th August, 2011, the plaintiff filed a criminal complaint against the defendants for cheating, fraud and criminal misappropriation on the basis of which FIR was registered against the defendants on 19th January, 2013. From the plaintiff's conduct of pursuing a criminal complaint instead of a civil remedy, it appears that the plaintiff was not interested in the specific performance and he just wanted refund of money by pressuring the defendants. Otherwise, there was no reason for not filing a suit for specific performance.

17. In ***Rameshwarlal v. Municipal Council, Tonk and Ors.*** (supra) relied upon by the plaintiff, the litigant filed a writ petition to claim the dues of salary under Article 226 of the Constitution which was dismissed by the Single Judge of the High Court on the ground that it was a claim recoverable by a civil action. The appeal was also dismissed by the Division Bench. The Supreme Court held that the litigant should avail remedy of a civil suit and Section 14 of the Limitation Act would apply for exclusion of the period spent in pursuing the litigation. This judgment does not support the plaintiff who did not file a suit for specific performance before any Court. In ***Deena v. Bharat Singh***, (supra) relied upon by the plaintiff, the litigant filed a suit for declaration which was withdrawn at the appellate stage on the ground of non-impleadment of a necessary party. The Trial Court and the appellate Court dismissed the claim for exclusion of the period under Section 14. The High Court however allowed the exclusion under Section 14. The Supreme Court set aside the judgment of the High Court and disallowed the exclusion of the period under Section 14 of the Limitation Act. This judgment also does not support the plaintiff.

18. No case for exclusion of the period from August, 2011 to May, 2018 is made out under Section 14 of the Limitation Act.

19. There is no merit in this application which is hereby dismissed.

<u>CS(OS) 343/2018</u>

20. Dismissed as barred by limitation.

SEPTEMBER 05, 2018 **J.R.MIDHA, J.**

ds