

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.3958 OF 2016**

United India Insurance Company Ltd.	]	Petitioner
<i>Versus</i>		
Vulcan Association and others.	]	Respondents

....

Mr. V.Y. Sanglikar, Advocate for the Petitioner.

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CORAM : R.G. KETKAR, J.

DATE : 3RD JANUARY, 2019.

P.C.

Heard Mr. V.Y. Sanglikar, learned counsel for the petitioner at length.

2. By order dated 4th March, 2016, notice was issued to the respondents, returnable on 18th March, 2016. Office remark dated 26th April, 2016 shows that notice on respondents No.1, 2, 4, 5 and 7 to 10 is served, notice of respondent No.6 is affixed with remark 'left the premises hence pasted on door' and notice of respondent No.3 is affixed with remark 'not found at the time of service'. By order dated 4th May, 2016, the petitioner was allowed to delete the name of respondent No.6 at their cost and consequences. Accordingly, name of respondent No.6 is deleted.

3. The Petition was thereafter heard on 26th February, 2018 and assurance on behalf of the petitioner that service will be effected on respondents No.1, 2, 4, 5 and 7 to 10 as also Advocate representing the

plaintiffs in the Small Causes Court, was recorded. Office remark dated 16th March, 2018 shows that notice of respondent No.3 is affixed with remark 'not found at the time of service'. Office remark dated 9th April, 2018 shows that affidavit of service is silent as regards the service of notice on respondent No.3. Office has also not made any endorsement as regards notice issued through office.

4. Mr. Sanglikar seeks permission to delete respondent No.3 on the ground that respondent No.3 is not occupying the premises. In view thereof, at the request of Mr. Sanglikar leave to delete respondent No.3 at the risk of the petitioner is granted. Amendment shall be carried out forthwith. Despite service, respondents No.1, 2, 4, 5 and 7 to 10 do not appear.

5. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 5th September, 2015 passed by the learned Judge, Court Room No.9 of the Court of Small Causes at Mumbai below Exhibit 18 in R.A.D. Suit No.2071 of 2011. By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as 'defendant No.1' under Order-VII, Rule-11 (d) of the Code of Civil Procedure, 1908 (for short 'C.P.C'). In the suit, the plaintiffs have claimed declaration of their tenancy rights. Defendant No.1 prayed for dismissal of the suit principally on the ground that respondents, hereinafter referred to as 'plaintiffs' came with the case that cause of action accrued on 1st June, 2005, 13th June, 2005, 14th June, 2005 and 26th July, 2005. The present plaint is filed in the Small Causes Court in December, 2011, as such the suit is barred by limitation. The suit for declaration has to be instituted within a period of three years when the right to sue first accrued as per Article 58 of the Limitation Act, 1963 (for short 'Limitation Act'). The relevant and material facts, that are necessary, for disposal of the present Petition, are as under.

6. The plaintiffs initially instituted suit being S.C. Suit No.3190 of 2005 in the City Civil Court at Mumbai, *inter alia*, praying for declaration that they have right to park their cars in the compound at their respective places as tenants at Vulcan Insurance Building, Churchgate, Mumbai -400 020 as also for permanent injunction restraining the defendants, their servants, agents, representatives, officers and security personnel engaged by them, in any manner, from preventing and/or obstructing the plaintiffs from parking their cars in the compound pending the suit. They also claimed temporary injunction restraining the defendants from preventing and/or obstructing them from parking their cars in the compound. Defendant No.1 resisted the suit by filing written statement, *inter alia*, raising contention regarding bar of jurisdiction. One of the contentions raised was that the suit was barred by section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short '1971 Act'). The learned trial Judge framed necessary issues including issue as to the jurisdiction of the City Civil Court to entertain and try the suit. The learned trial Judge overruled the objection raised by defendant No.1 in respect of jurisdiction and decreed the suit on 7th April, 2008.

7. Aggrieved by that decision, defendant No.1 instituted First Appeal bearing No.1647 of 2008 in this Court. By order dated 2nd September, 2011, this Court allowed the Appeal and set aside the judgment and decree dated 7th April, 2008 passed by the City Civil Court. This Court held that the City Civil Court has no jurisdiction to entertain and try the suit. The City Civil Court was directed to return the plaint to the plaintiffs for presentation before the appropriate Court. To enable the plaintiffs to take appropriate steps for a period of four months, interim relief in terms of clause (2) of the operative part of the impugned judgment and decree was continued.

8. In pursuance thereof, Registrar of the City Civil Court handed over original plaint to the plaintiffs on 21st November, 2011 for presentation to the proper Court.

9. It is not in dispute that in pursuance thereof, the plaintiffs presented plaint in the Small Causes Court in December, 2011. Defendant No.1 took out notice under Order-VII, Rule-11 (d) of the C.P.C at Exhibit 18 for dismissal of the suit on the ground that in paragraph 28 of the plaint, the plaintiffs asserted that cause of action arose on 1st June, 2005, 13th June, 2005, 14th June, 2005 and 26th July, 2005 and the suit is instituted in December, 2011. As the relief of declaration has to be claimed within a period of three years from the date of accrual of cause of action, the suit was clearly barred by limitation. By the impugned order, the learned trial Judge has rejected the application. It is against this order, defendant No.1 has instituted the present Petition.

10. In support of this Petition, Mr. Sanglikar has invited my attention to paragraph 28 of the plaint as also has taken me through the judgment of this Court dated 2nd September, 2011 in First Appeal No.1647 of 2008. He submitted that the plaintiffs merely presented the same plaint in the Small Causes Court. The plaintiffs ought to have filed notice claiming benefit of section 14 of the Limitation Act and/or at least filed affidavit claiming benefit. The plaintiffs have to plead and prove requirements of section 14 before claiming benefit therein. In the present case, the plaintiffs have neither pleaded nor proved that they were bona fide prosecuting the suit with due diligence and in good faith in the City Civil Court. As the plaintiffs did not amend paragraph 28 and the suit is instituted in December, 2011, on the face of it, it is barred by limitation.

11. Mr. Sanglikar submitted that in substance the suit filed by the plaintiffs in the Small Causes Court is a fresh suit and is subject to the limitation. It is not in continuation of the suit instituted in the City Civil Court, Mumbai. He submitted that in the present case, the plaint was returned to the plaintiffs for presentation to the proper Court and was accordingly presented in the Small Causes Court in December, 2011. In that case, the suit instituted in the Small Causes Court is deemed to be instituted only when the plaint was presented in that Court.

12. In support of his submission, he relied on following decisions;

- [1] Hanamanthappa Vs. Chandrashekharappa, AIR 1997 Supreme Court 1307 and in particular paragraph 3 thereof.
- [2] Decision of this Court (Coram: D.K. Deshmukh, J.) in M/s. Foreshore Co-operative Housing Society Ltd. Vs. Shri Praveen Desai in Notice of Motion No.1222 of 2004 in Suit No.2939 of 1999 decided on 20th January, 2006.
- [3] M/s. Foreshore Co-operative Housing Society Ltd. Vs. Shri Praveen Desai, 2008 (6) ALL MR 600. (Decision of the learned Single Judge in Notice of Motion No.1222 of 2004 was challenged in Appeal before the Division Bench.) The said decision is upheld by the Apex Court in M/s. Foreshore Co-operative Housing Society Ltd. Vs. Shri Praveen Desai, 2015 (3) Mh.L.J 315.
- [4] Harshad Chimanlal Modi (II) Vs. DLF Universal Ltd, (2006) 1 Supreme Court Cases 364.
- [5] Latadevi Vs. Ramnath, AIR 1987 Bombay 364.

13. I have considered submissions advanced by Mr. Sanglikar. I have also perused the material on record. As mentioned earlier, it is not in dispute that the plaintiffs have instituted suit for declaration of their rights to park cars in compound at their respective places as tenants in at Vulcan Insurance Building, Churchgate, Mumbai -400 020. In paragraph 28, the plaintiffs asserted thus;

“The cause of action has taken place on 1.6.2005, 13.6.2005 and 14.6.2005 and 26.7.2005 and therefore, suit is filed within time”.

A perusal of the plaint shows that the suit was instituted on or about 8th July, 2005.

14. As mentioned earlier, the learned Judge of the City Civil Court decreed the suit on 7th April, 2008. Aggrieved by that decision, defendant No.1 instituted First Appeal No.1647 of 2008. In paragraph 6, this Court recorded submissions advanced on behalf of defendant No.1. This Court also referred to the decision of the Apex Court in **Mansukhlal Dhanraj Jain and others Vs. Eknath Vithal Ogale, AIR 1995 Supreme Court 1102** and decision of this Court in **Nagin Mansukhlal Dagli Vs. Haribhai Manibhai Patel, AIR 1980 Bombay 123**. In paragraph 7, this Court noted the submissions advanced on behalf of the plaintiffs as also referred to the decision in **Packing Paper Products Vs. Nicafe Private Ltd and Anr., 2007 (4) Mh. L.J, 34**. From paragraph 9 onwards, the learned Single Judge gave dealt with the submissions. It was observed that issue of jurisdiction has to be determined on the basis of the averments made in the plaint and for the purpose of determining the issue of jurisdiction the Court will have to proceed on the premise that the averments made in the plaint are true. The learned Single Judge referred to the assertions made in paragraphs 12,13,15 and 16 of the

plaint. In paragraph 10, it was noted that the foundation of the prayer for injunction is that the plaintiffs are the tenants of the various open parking spaces in the building owned by defendant No.1. The plaintiffs, therefore, claimed perpetual injunction restraining defendant No.1 from interfering with the rights of the plaintiffs of parking cars. In paragraph 11, the learned Single Judge referred to section 15 of 1971 Act and held that the said provision is not applicable. Reference was made to paragraph 7 of the written statement where it was contended that if the plaintiffs want to claim tenancy rights, the plaintiffs must approach the Rent Act Court.

15. The learned Single Judge thereafter referred to the provisions of the Presidency Small Causes Courts Act, 1882 (for short 'P.S.C.C Act') as also provisions of the Maharashtra Rent Control Act, 1999 (for short "1999 Act"). In paragraph 14, the learned Single Judge referred to phraseology "relating to recovery of possession" used in section 41(1) of the P.S.C.C Act and decision of the Apex Court in the case of **Mansukhlal Dhanraj Jain and others** (supra). Paragraph 13 of that decision was reproduced in paragraph 15 by the learned Single Judge. In paragraph 16, it was observed that the Apex Court held that the suit for protecting the possession over the immovable property filed either by a tenant or licensee against his landlord or licensor, as the case may be, is clearly covered by the wide sweep of the words "relating to recovery of possession" as employed by Section 41 (1) of the P.S.C.C Act. Reference was made to the decision of this Court in the case of **Nagin Mansukhlal Dagli** (supra). In paragraph 21, the learned Single Judge held that the jurisdiction of the City Civil Court to entertain the suit for injunction filed by the plaintiffs was barred. In paragraph 22, it was observed that only on this ground, the impugned decree deserves to be quashed and set aside and the order of return of the plaint will have to be passed. Consistent with these findings, this Court passed the following order;

- “i. The impugned judgment and decree dated 7th April, 2008 is quashed and set aside;
- ii. As the City Civil Court had no jurisdiction to entertain the suit, the said Court is directed to return the plaint to the Plaintiffs for presentation before the appropriate Court;
- iii. To enable the original Plaintiffs to take appropriate steps, for a period of four months from today, there will be interim relief in terms of clause (2) of the operative part of the impugned judgment and decree;
- iv. The appeal is allowed on above terms with no order as to costs; and
- v. All the contentions of the parties on merits are kept open”.

16. A perusal of the record shows that Registrar of the City Civil Court handed over the original plaint to the plaintiffs on 21st November, 2011 for presentation to the proper Court. As noted earlier, it is not in dispute that the plaint was presented in the Small Causes Court in December, 2011. The question is whether the suit is barred by limitation in terms of Article 58 of the Limitation Act.

17. In my opinion, it cannot be said that the plaintiffs were not prosecuting the suit with due diligence and in good faith. The facts on record clearly demonstrate that in the first place, though defendant No.1 raised objection about maintainability of the suit before the City civil Court on the ground that the plaintiffs are claiming tenancy rights and only the Small Causes Court has jurisdiction to entertain and try the suit, objection was overruled by the learned Judge of the City Civil Court. The learned trial Judge decreed the suit. The said decree was set aside on 2nd September, 2011. In view thereof, it cannot be said that the plaintiffs did not institute the suit with due diligence and care and that they were not prosecuting the suit with due diligence and in good faith. Having regard to the undisputed facts on record, it has to be held that the plaintiffs were prosecuting the suit in the City Civil Court with due diligence and in good faith. Immediately, after the plaint was returned to the plaintiffs on 21st November, 2011, the plaint was presented

in the Small Causes Court in December, 2011.

18. Mr. Sanglikar relied upon decisions of the Single Judge, Division Bench and the Apex Court in **M/s. Foreshore Co-operative Housing Society Ltd. Vs. Shri Praveen Desai** (supra). Before the learned Single Judge, defendant No.8 contended that the suit instituted by the plaintiffs on the Original Side of this Court was barred by law of limitation. In view of provisions of section 9-A of C.P.C, the learned Single Judge framed following issues;

- (i) Does the Defendant No.8 prove that the suit as framed and filed is barred by the law of limitation?
- (ii) Does the Defendant No.8 prove that the suit as framed and filed, in the absence of notice to the Corporation in terms of provisions of Section 527 of the Bombay Municipal Corporation Act, is not maintainable?"

At the hearing, defendant No.8 did not press Issue No. (ii). Contest between the parties was only in respect of Issue No.(i). Before filing of the suit on the Original Side of this Court on 18th May, 1999, the plaintiffs had instituted suit in the City Civil Court, Mumbai in the year 1994 mainly for declaration that the defendants were not entitled to avail of additional FSI and for a declaration that the revalidation of the building permission granted by the Corporation was not valid. In that suit, preliminary issue was framed as to the jurisdiction of the Court to entertain the suit. By order dated 15/16th April, 1999, the City Civil Court held that it did not have pecuniary jurisdiction to entertain the suit and returned the plaint to the plaintiffs for presentation to the proper Court. The plaintiffs challenged that order by filing A.O No.400 of 1999 in this Court. On 5th May, 1999, the plaintiffs withdrew that Appeal. The present suit was instituted on the Original Side of this Court on 18th May, 1999. In the present suit, the plaintiffs took out Notice of Motion claiming certain interim reliefs. In

reply, defendant No.8 contended that the suit is barred by law of limitation because the cause of action for filing the present suit arose in October, 1994. A suit for claiming the reliefs could have been filed within a period of three years from accrual of the cause of action. The suit instituted on 18th May, 1999 was thus barred by law of limitation.

19. The plaintiffs took out Chamber Summons No.1335 of 2005 for amending the plaint. By order dated 8th December, 2005, Chamber Summons was allowed. The plaintiffs incorporated paragraph 31C in the plaint. The learned Single Judge referred to section 14 of the Limitation Act and observed that requirements of that section are that the previous legal proceeding;

- (I) must be prosecuted with due diligence in the court of first instance or of appeal or revision;
- (ii) should relate to the same matter in issue;
- (iii) should be against the same Defendant;
- (iv) should be prosecuted in good faith in a court which is unable to entertain it due to want of jurisdiction or other causes of like nature.

20. The learned Single Judge referred to the decision of **Madhavrao Narayanrao Patwardhan Vs. Ram Krishna Govind Bhanu & Ors, AIR 1958 SC 767** and held that the plaintiffs have to plead and prove that they had instituted the suit bona fide, with due diligence and due care and that they prosecuted the earlier suit in good faith. It was also noted that the plaintiffs did not lead evidence to show that error in valuing the suit was a bona fide error.

21. The said decision was challenged before the Division Bench of this Court. The controversy centered around issue whether plea of limitation can be decided as a preliminary issue of jurisdiction under section 9-A of the C.P.C.

After considering several decisions, the Division Bench observed in paragraph 21 that plea of limitation is a plea which goes to the jurisdiction of the Court and it is a plea of law. As far as applicability of section 14 of the Limitation Act is concerned, in paragraph 23, the Division Bench observed that from paragraph 18 of the plaint, it was clear that cause of action arose in April, 1994 and the suit was filed on 18th May, 1999 and hence, was clearly barred by law of limitation.

22. The matter was carried before the Apex Court. Even before the Apex Court controversy centered around issue whether plea of limitation can be decided as a preliminary issue of jurisdiction under section 9-A of the C.P.C. The Apex Court declined to follow decision in **Kamlakar Eknath Salunkhe vs. Baburav Vishnu Javalkar, 2015 (2) Mh.L. J 886**. The Apex Court affirmed the orders passed by this Court.

23. Relying upon these decisions, Mr. Sanglikar submitted that the suit instituted by the plaintiffs in the Small Causes Court is a fresh suit and is not a continuation of a suit which was previously instituted in the City Civil Court at Mumbai. In paragraph 11 of **M/s. Foreshore Co-operative Housing Society Ltd.** (supra), the learned Single Judge observed thus;

“11. There was some debate whether the present suit is a fresh suit or it is continuation of the suit filed in the city civil court, because the city civil court had made an order for return of the plaint. After going through the judgments which were relied on by the Plaintiffs to my mind it is clear that even the plaint which is returned by one court having no jurisdiction to entertain the suit is presented in the same condition to the court having the jurisdiction, it amounts to institution of fresh suit and there is no question of continuation of the earlier suit. Therefore, it is absolutely clear that the suit instituted in this court is a fresh suit and therefore, the plaintiffs would be entitled to claim benefits of provisions of Section 14 of the Limitation Act”.

24. In view thereof, the suit instituted by the plaintiffs will have to be treated as a fresh suit and not continuation of the earlier suit. As mentioned earlier, before the City Civil Court issue as to the jurisdiction was framed. By order dated 15/16th April, 1999, the City Civil Court held that it did not have pecuniary jurisdiction to entertain the suit and returned the plaint for presentation to the proper Court. That order was challenged by the plaintiffs by filing Appeal in this Court. That Appeal was withdrawn by the plaintiffs on 5th May, 1999 and thereafter, the suit was instituted on 18th May, 1999 in this Court. As against this, in the present case, though defendant No.1 raised objection to the jurisdiction before the City Civil Court, the same was not only turned down but the City Civil Court decreed the suit on merits. This is a distinguishing feature in the present case. In view thereof, decisions of the learned Single Judge, Division Bench and the Apex Court in **Foreshore Co-operative Housing Society Ltd** (supra) are not applicable to the facts of the present case.

25. Mr. Sanglikar relied on the decision of **Hanmanthappa** (supra). A perusal of paragraph 2 of that decision shows that the respondents had instituted suit in the Court of District Munsif, Navalagund. On the grounds of lack of territorial jurisdiction, the plaint was returned for presentation to the proper Court. Accordingly, after making necessary amendment to the plaint, the respondents represented the suit in the Civil Court at Dharwad. The petitioners filed application under Order-VII, Rule-10 of C.P.C for dismissal of the suit on the ground that the plaint was materially altered, without seeking permission for amendment of the plaint as required under Order-VI, Rule-17 of the C.P.C. In that context, the Apex Court in paragraph 3 observed thus;

“It is contended by Shri Kulkarni, learned counsel for the petitioners, that since the petition had been filed with amended averments in the plaint, necessarily it must be treated to be a fresh plaint and not one after representation

to the proper Court. We find no force in the contention. The object of Order VII, Rule 10-A is that the plaintiff, on return of the plaint, can either challenge in an appellate forum or represent to the Court having territorial jurisdiction to entertain the suit. In substance, it is a suit filed afresh subject to the limitation, pecuniary jurisdiction and payment of the Court fee as had rightly been pointed out by the High Court. Therefore, it cannot be dismissed on the ground that the plaintiff made averments which did not find place in the original plaint presented before the Court of District Munsiff, Navalgund. It is not always necessary for the plaintiff to seek amendment of the plaint under Order VI, Rule 17, C.P.C At best it can be treated to be a fresh plaint and the matter can be proceeded with according to law. Under those circumstances, we do not think that there is any error of law committed by the High Court in giving the above direction”.

For the reasons recorded earlier, this case does not advance the case of the petitioner.

26. Mr. Sanglikar relied on the decision in **Harshad Chimanlal Modi (II)** (supra) and in particular paragraph 10 thereof;

“10.Considering the provisions of the Limitation Act and Order 7 Rule 10 of the Code, the Court stated: (SCC p. 118, para 9)

“It was, however, argued by counsel for the appellant that the suit instituted in the trial court by the presentation of the plaint after it was returned for presentation to the proper court was a continuation of the suit filed in the Karnal Court and, therefore, the suit filed in Karnal Court must be deemed to have been filed in the trial court. We think there is no substance in the argument, for, when the plaint was returned for presentation to the proper court and was presented in that court, the suit can be deemed to be instituted in the proper court only when the plaint was presented in that court. In other words, the suit instituted in the trial court by the presentation of the plaint returned by the Panipat Court was not a continuation of the suit filed in the Karnal Court”.

There is no dispute with the proposition laid down by the Apex Court in the above quoted decision. The fact, however, remains that in the present case, the City Civil Court after overruling objection to jurisdiction decreed the suit and that decree was set aside in the appeal.

27. In paragraph 10 of the impugned order, the learned trial Judge has referred to the decision of this Court in **Latadevi Vs Ramnath, AIR 1987 Bombay 364**. In that case, respondent No.1/plaintiff had instituted suit in the Small Causes Court on 10th July, 1979 for eviction among other reliefs. On behalf of the defendants, it was contended that the Small Causes Court had no jurisdiction. This point was decided on merits by the Small Causes Court on 17th July, 1983. It was held that the Small Causes Court had jurisdiction to entertain and decide the suit. That order came to be challenged before the High Court in Revision. The High Court decided this Revision sometime on 6th February, 1984 and held that the Small Causes Court had no jurisdiction to entertain and try the suit. After receipt of writ from this Court, Small Causes Court passed an order on 12th March, 1984 directing the plaintiff and defendant to appear before the Court of the Civil Judge, Senior Division, Nagpur on 16th April, 1984. The plaint was actually returned to the plaintiff on 18th April, 1984 and on the same day, the plaint was presented before the Civil Judge, Senior Division, Nagpur. It was in that context, the learned Single observed in paragraphs 10,11 and 12 which read thus;

10. We have now to consider the whole question on the background of the orders actually passed. The mandatory procedures that were to be complied with by the court and then examine the consequences of these difference actions. As already pointed out, on 12-3-84 the Judge of the Small Cause Court took up the case on Board and declared his intention of returning the plaint for procedure before the proper Court. At the same time, he directed both the parties to appear before the Civil Judge Senior Division, Nagpur, on 16-4-1984

Obviously, the parties were not expected to go before the Civil Judge, Senior Division, Nagpur merely as invitees or casual visitors. There was a purpose for this direction and the purpose was that this plaint which was to be returned by the Court of Small Causes was to be handed over to the plaintiff and the plaintiff was to produce or present this plaint before the Civil Judge, Senior Division Nagpur. It was the only purpose of this direction. For complying with this direction, what was necessary for the Court was to keep all the endorsement ready by 16-4-1984 so that the plaint could, without any difficulty, be handed over to the party or to his counsel for further presentation to the proper court. Mr. Bobde urged before me that there is nothing on record to show that the parties did attend the court either of the Small Causes or of the Civil Judge, Senior Division on 16-4-1984. Let me assume that neither of the parties went before the Court on that day, though there was a direct mandate given by the Court. That does not solve the real problem. That may merely be a non compliance of the directions given by the Court. The real question that arises is, whether the Court was prepared to hand over the plaint to the plaintiff for presentation to the proper Court on that day. We find no endorsement in the plaint that it was ready for handing over to the plaintiff. On the other hand, what we find is the endorsement made on 18-4-1984 by the Judge and the endorsement shows that all the papers and the plaint were handed over to the plaintiff. There is nothing on record to show that these papers were ready for being handed over to the plaintiff on any day in between 16-4-1984 and 18-4-1984. It could have been the legitimate argument made by the Court, that the papers were ready even prior to 16-4-1984 but the parties did not come to receive those papers.

11. Thus, as the record stands, the parties were directed to appear before Civil Judge, Senior Division on 16-4-1984 which means that there was nothing which the parties could do at least till 16-4-1986, and therefore, the argument that the plaintiff ought to have shown the acts on his part to show his diligence becomes futile, because there was nothing which the plaintiff could show. The court had already directed them to come on 16-4-1984 and not before that. There is nothing on record to show that the mandatory procedures required to be complied with under R. 10-B of O.7 were completed by the

Court before 18th. In view of this there is nothing to show that the plaintiff could have taken any steps in furtherance of the final act, but he has not taken those steps. The question of conduct in these circumstances becomes completely irrelevant as far as the record goes”.

“12.Mr. Bobde urged before me that S.14 of the Limitation Act enables the Court to exclude only that much time commencing from the institution of the suit till the date of termination of the proceedings before the wrong Court. He urged that the time till 6-2-1984 could be legitimately excluded under S.14. He was even prepared to say that the time till 12-3-1984 could be legitimately excluded because the parties were called upon to appear on that day. His main grudge was that the time commencing from 12-3-1984 onwards till 18-4-1984 was to be accounted for, positively. It is difficult to accept this argument in view of the discussion in the preceding paragraph. Because the proceedings cannot be said to have terminated as soon as the High Court passed the order on 6-2-1984. On that day there was merely a declaration that the Court of Small Causes at Nagpur has (no?) jurisdiction to entertain and decide the suit. However, for return of the plaint, the procedure necessary under O.7, R.10-B was to be complied with and that procedure being mandatory and the plaintiff having no voice in that procedure, these procedures could not be completed except in taking some steps by the Court itself. From that point of view, the steps which the Court was required to take, were beyond the control of the plaintiff. It was only the Court which could do these things and the plaintiff except for asking the Court to take case on Board could not legitimately do anything in the matter. Without the completion of the mandatory procedure, proceedings could not be held to have been legitimately terminated in the real sense of the term. This itself would explain the whole delay. In fact there is no question of delay. Section 14 of the Limitation Act does not speak of delay, but it speaks only exclusion of time required by the proceedings before the trial Court. The proceedings must be held to have been terminated effectively only when the plaint was ready for handing over to the plaintiff for presentation to the proper Court. It was so on 18-4-1984 and admittedly enough it was presented before the proper court on the very same day without wasting any further time”.

28. In my opinion, the said decision applies on all fours to the facts of the present case. In view thereof, I do not find that the learned trial Judge has committed any error. Hence, Petition fails and the same is dismissed with no order as to costs.

29. That apart, Order-VII, Rule-6 of the C.P.C reads thus;

“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:

{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.”

A perusal of proviso extracted hereinabove shows 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. The plaintiffs will be at liberty to file application for amending the plaint in terms of Order-VII, Rule-6 of the C.P.C if so advised and if permissible in law. Defendant No.1 would be at liberty to oppose the said proceeding. The learned trial Judge will decide the said proceeding uninfluenced by the observations made herein and in accordance with law. All contentions of the parties in that regard are expressly kept open.

30. At this stage, Mr. Sanglikar orally applies for continuation of ad-interim order dated 4th March, 2016 for a period of 12 weeks from today. He submitted that stay is operating from 4th March, 2016. I find that request of Mr. Sanglikar is reasonable. Hence, notwithstanding dismissal of this Petition, ad-interim order relief granted on 4th March, 2016 in terms of prayer clause (b)

excluding the bracketed portion is continued for a period of 12 weeks from today. Order accordingly.

[R.G. KETKAR, J.]