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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :17.02.2021

Pronounced on :26.02.2021

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

A.S.No.199 of 2010

1.The Divisional Engineer,
Highways,
Ariyalur.

2.The Superintending Engineer,
Highways,
Villupuram.

3.The Secretary to Government,
Highways Department,
Chennai-9.

.. Appellants/Defenants

/versus/

1.K.Muthammal
W/o Kandasamy

2.K.Senguttuvan
S/o Kandasamy

3.T.Tamilselvi
D/o Thangaraj

4.A.Malarvizhi
W/o Anbalagan,
1 t 4 represented by their
General Power of Attorney
K.Jagannathan

5.K.Jagannathan
S/o Anbalagan

.. Respondents/Plaintiffs

Prayer:- Appeal Suit has been filed under Section 96 of the Civil Procedure Code, 1908, against the judgment and decree of the Principal District Court, Perambalur in O.S.No.14 of 2006 dated 06.08.2009.



For Appellants :Mr.K.Umesh Rao
Government Advocate (A.S.)

For Respondents :Mr.V.Raghavachari for R1 to R5

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J U D G M E N T

This appeal suit has been filed by the defendants being aggrieved by the judgment and decree of the Principal District Court, Perambalur in O.S.No.14 of 2006, dated 06.08.2009.

2.For clarity and brevity, the appellants/defendants are referred as Highways Departments and the plaintiffs/respondents are referred as legal representatives of the deceased Kandasamy Contractor or contracor in short.

3.The suit filed to declare that the two letters dated 04.02.1998 and 20.11.2001 issued by the Divisional Engineer (Highways) are illegal and that, there is no deficiency in the execution of work done by the contractor Kandasamy under Agreement Number C.R.No.736/1995-1996, dated 06.03.1996; and to make full payment of the money due for the work done as per the agreement dated 06.03.1996 and 9% interest thereon, totalling Rs.3,92,161/- + Rs.3,54,316/-= Rs.7,46,477/-. After full trial, the Court beow allowed the suit and passed decree as prayed with costs.

4.The facts which are relevant and necessary to decide this appeal:-

Case of the Plaintiffs:

The deceased Kandasamy was a registered Contractor for Highways Department. On 6th March 1996 he entered into a contract with the 2nd respondent namely, Superintending Engineer, Highways Department, Villupuram Circle, for "Special Repairs to Kunnam-Veppur Road Km 4/0-5/6" at the estimation cost of Rs.3.80 lakhs. The work was completed during the month of June 1996. The measurements for the work done were recorded in the Measurement Books No.7196 A and 6155 A. The last date of measurements and check measurement were done on 10.06.1996 and 12.06.1996 respectively. The contractor Kandasamy was not paid the contractual amount, till his death on 28.04.1999. During his lifetime, vide his letter dated 13.05.1997, he requested the first defendant, the Divisional Engineer, Highways Department to pay the contractual amount. The first defendant vide, his reply letter dated 04.02.1998, informed the contractor that they are not in a position to give the completion certificate, since the work done by him found sub-standard. This letter was signed by the first defendant on 25.02.1998 and communicated the same to the contractor Kandasamy. On receipt of this letter, the contractor caused notice dated 15.04.1998 through his Advocte calling upon the defendants 1 and 2 to pay the money due. Till the death of Kandasamy on 28.04.1999, the department did not



respond to the said notice. After the death of Kandasamy, his son K.Jagannathan, who is the 5th plaintiff in the suit, caused another notice on 16.09.1999 to the defendants intimating the death of contractor Kandasamy and to pay the dues to him being the power agent. Since the defendants failed to consider his request, he approached the Hon'ble High Court invoking Article 226 of the Constitution of India and filed W.P.No.16618 of 2001 to issue Mandamus. The Hon'ble High Court vide order dated 13.09.2001 directed the department to pass appropriate orders on the legal notice dated 16.09.1999 within six weeks and that if the petitioners are still aggrieved, it was open to them to seek arbitration, if the terms of the contract provided for the same or otherwise, approach the competent civil Court for appropriate relief.

5.The first defendant, after issuance of Mandamus by the High Court, gave a reply dated 20.11.2001. The details of substandard execution of work was set out in this reply. Referring the earlier letter dated 04.02.1998 the first defendant stated that there is no fresh grounds to reconsider the issue.

6.As observed by the Hon'ble High Court, vide, order dated 13.09.2001, the legal heirs of the deceased contractor Kandasamy filed arbitration petition on 10.03.2002 before the Sub Court, Ariyalur for appointment anyone as the Arbitrator from among four eminent retired Engineers of the Highways Department. In the said Arbitration Original Petition, the Highways Department filed counter stating that as per the terms of contract, the Superintending Engineer (Highways) Tirunelveli alone could be appointed as a sole Arbitrator and none could be appointed by the Court and also sought for dismissal of the petition on the ground of limitation. The counter filed after 2 ½ years is contrary to the Departmental Rules and Conditions for contractor. The dispute of withhold payment of Rs.3,96,000/- does not fall under the category, where the sole arbitrator could be appointed. However, the legal representatives of the contractor filed an application under Order 23, Rule 1 to withdraw the arbitration petition reserving right to institute a fresh suit on the same cause of action. The Sub Court, Ariyalur, allowed the petition filed Order 23, Rule 1 of the Civil Procedure Code and dismissed the Arbitration O.P.No.1 of 2004 on 29.11.2005 with liberty to file fresh suit on the same cause of action. Accordingly, the suit filed on 04.07.2006

7. Case of the Defendants:-

The Department in their written statement contended that the suit is not maintainable both on facts and on law. The contractor committed breach by not completing the contract within the time stipulated and the work done was substandard. The same was periodically informed to the contractor. Having



known that his work was not in accordance with the specification and the terms of the contract, the contractor did not claim money for nearly two years. As per the terms of contract, the contractor ought to have sought for appointment of Arbitrator, since he has not executed the work in time and in terms of the contract. Knowing well that the subject experts will hold against him, he conveniently avoided arbitration. The legal representatives of the contractor had belatedly approached the High Court filed writ petition to intimidate the Department. The defect in work and substandard execution made known to the contractor during his lifetime and later to his legal representatives. The work done by the contractor was periodically inspected and the defects were notified and conveyed to the contractor periodically. It is not correct to say that the contractor completed the work, as per the specification within the time. It has been clearly stated in the letter dated 04.02.1998 that "due to substandard work" the Department is not in a position to issue work completion detail. Again on 20.11.2001, the defects in execution of work has been stated. Therefore, the suit filed on 04.07.2006 hopelessly barred by limitation.

8. Issues framed by the trial Court:-

- 1) Whether the plaintiffs are entitled for declaration that the communication of the first defendant dated 04.02.1998 and 20.11.2001 are void?
- 2) Whether the defendants are liable to pay the plaintiffs the suit claim?
- 3) What other relief, the plaintiffs are entitled to?

9. Before the Trial Court, the 5th plaintiff as a power agent and representative of the other plaintiffs mounted the witness box and got examined as PW-1. 12 exhibits were marked. On behalf of the defendants/Departments, Vadivelu, Assistant Divisional Engineer was examined as DW1. 17 Exhibits were marked in support of their case.

10. The Trial Court held that the communication dated 04.02.1998 and 20.11.2001 issued by the first defendant is void. The department never whispered about the defects in execution of work till 04.02.1998 though the work was completed during the month of June 2006 and the contractor as well as the legal representatives were repeatedly demanding the payment of Rs.3,92,161/- which the departments are liable to pay as per the contract. Referring the evidence of DW1 and Exhibits B9 and B10 the trial Court held that at every stage of the work, the Assistant Engineer has recorded the completion of work to the satisfaction and necessary endorsement is made by him on 11.05.1996, 13.05.1996 and 10.06.1996 after carrying out



necessary measurements. On 20.07.1996 and 29.07.1996 the Assistant Divisional Engineer inspected and confirmed the measurement recorded by the Assistant Engineer. Therefore, the Department cannot deny payment.

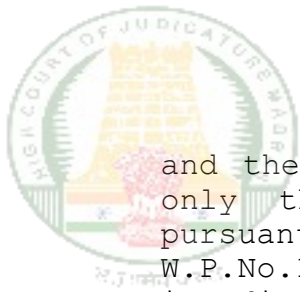
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11.The appeal assails the trial Court judgment on the ground the suit money was not paid to the contractor because the construction work was not done up to the standard. The authorities did not give completion certificate to the contractor, since he failed to complete the work, as per the standard. The contractor, knowing fully well that he will not succeed, withdrew the petition seeking appointment of Arbitrator and filed the suit beyond the period of limitation. The trial Court failed to note that, the suit is hopelessly barred by limitation and the relief sought are not sustainable in law and in terms of contract. The trial Court ought to have rejected the suit, for violation of the terms of the contract and the plaintiffs are not entitled for any relief. The trial Court erred in awarding interest on the suit claim, when the plaintiffs are not entitled to seek money from the defendants.

12.The main contention by the appellants in this appeal is that the Court below failed to frame issue regarding limitation and also failed to dismiss the suit on the ground of limitation. Particularly, the learned Government Advocate appearing for the appellants submitted that, it is the suit filed by the representatives of the deceased contractor Kandasamy. As per Article 18 of the Limitation Act, the limitation to file the suit is one year. Even according to the plaintiffs, the contract between the parties entered during the month of March 1996 and the work supposed to be completed by June 1996. The plaint in the suit was presented on 04.07.2006 after 10 years. The leave obtained before the Sub Court, Ariyalur to file fresh suit will not save the limitation under Article 14 of the Limitation Act.

Regarding the grievance of non-payment, the contractor Kandasamy, during his lifetime, issued letter dated 13.05.1997 and the same was duly replied on 25.02.1998. The limitation to file the suit has to be reckoned from that date. The contractor during his life time after causing notice on 15.04.1998 did not initiate any legal proceedings. The Legal Representatives of the deceased contractor after causing 2nd notice on 16.09.1999 filed writ seeking Mandamus to dispose of the representation. Neither the notice issued on 16.09.1999 nor the subsequent events like filing of writ petition and then filing of arbitration original petition will save limitation for the suit.

13.Per contra, the learned counsel appearing for respondents/plaintiffs submitted that the parties were engaged in continuous dialogue. The refusal to pay the contractual due



and the reason for that refusal, was made known to the parties only through the communication dated 20.11.2001. That was pursuant to the direction of the High Court, vide, order in W.P.No.16618/2001. As per the directions of the High Court, immediately the plaintiffs approached the Sub Court for appointment of arbitrator. After 1 ½ years, the defendants filed counter opposing the maintainability of arbitration petition contrary to their own Rules and terms of contract. Since the question whether the dispute regarding non-payment of contractual due is arbitrable was doubted. So, the plaintiffs with leave of the Court to file fresh suit on the same cause of action withdrew the arbitration original petition. Thus, the suit filed to declare the communications dated 04.02.1998 and 20.11.2001 as null void and consequently, to pay the contractual due with interest filed well written in the limitation and therefore, there was no necessity arose for the trial Court to frame issue on limitation.

14. Heard both sides and perused the records.

15. Point for determination:-

1. Whether the omission of the trial Court to frame the issue regarding the limitation is fatal to its decision? and whether the suit is barred by limitation?

16. The trial Court has omitted to frame the issue regarding limitation, though there was a plea in the written statement regarding limitation. Under Order 41, Rule 25 of the Civil Procedure Code, in case of omission to frame relevant issue, the normal course to be followed to remand back the matter to the trial Court for trial after framing the issue. However, in this case, taking into consideration, time spent in the litigation and after hearing the learned counsels extensively on limitation, the issue regarding the limitation is to be decided, based on the materials available. Notwithstanding, Order 41, Rule 25 of C.P.C, this Court exercising the inherent power conferred under Section 151 of the C.P.C, proceeds to determine the points under consideration. The above decision of this Court is well fortified by the ratio laid by the Hon'ble Supreme Court in Lisamma Antony and Another v. Karthiyayani and Another (2015) 11 SCC 782, which holds that once the record of the trial Court is complete, the appellate Courts should not remand matters but should decide the cases themselves on the basis of record. Remand is only if the suit is decided on a preliminary issue or if additional evidence has to be led before the trial Court.

17. The three fold argument of the learned Government Advocate submission on behalf of the appellants is as below:-

The cause of action for suit arose, when the works contract alleged to have been completed by the contractor (i.e) during



the month of June 1996 and thereafter, the refusal to pay intimated through the two communications dated 04/02/1998 and 20/11/2001. The suit to declare the two communications dated 04/02/1998 and 20/11/2001 as null and void and consequentially to pay Rs.7,46,477/- (Rs.3,92,161 + Rs.3,54,318) was presented on 04.07.2006 and taken on file on 21.08.2006. (1) The suit filed by the legal representatives of the deceased contractor, who are entitled to inherit his estate. Under Article 81 of the Limitation Act, for a suit filed by the legal representatives, the period of limitation is one year from the date of death of the person wronged. Therefore, the suit, which is in the nature of an actionable claim alleging pecuniary loss to the estate of the deceased as per the provisions of the Legal Representatives Suits Act, 1855 and Article 81 of the limitation Act is hopelessly barred by limitation; (2) Running of limitation will not be excluded, in view of the earlier proceedings initiated by the plaintiffs before the High Court under Article 226 of the Indian Constitution in W.P.No.16618/2001 or the Arbitration O.P.No.01/2004 filed before the Sub-Court, Ariyalur under Section 20 of the Arbitration Act 1940, or its withdrawal with liberty to file fresh suit for the same cause of action. These proceedings were initiated knowingly before the wrong Forum which had apparently lack jurisdiction. Section 14 of the Limitation Act has no application to the facts of the case in hand; and (3) The leave granted by the Sub Court in the Arbitration original petition is silent above saving limitation period. Leave granted is restricted only regarding filing of fresh suit on the same cause of action to save the rigour of Section 11 of C.P.C., and nothing more.

18. Per contra, the learned counsel for the respondents argued that, the suit is not an actionable claim under Tort, but it is for recovery of money arose on completion of work in terms of the contract. The suit relates to contracts and for declarations. The limitation for suits relating to contracts and suits relating declarations are prescribed under Part II and III of the Limitation Act. Article 81 which falls under Part VII under the caption suits relating to Tort not applicable to the facts of the case. Therefore, the period of limitation is not one year, but three years. Further, the period spent on pursuing the remedy bona fide before the High Court and Sub-Court, Ariyalur save the running of limitation time under Section 14 of the Limitation Act. Further, the learned counsel for the respondents citing judgments of Kerala High Court and Supreme Court contended that State cannot take the plea of limitation to defeat the honest claim of a weaker party.

19. In the said circumstance of the facts and law, the point for determination is whether breach to honour the terms of contract is an actionable wrong; (i) whether the period of limitation in this case is one year or three years; (ii) whether



the time taken gets excluded from the period of limitation when the parties are engaged in dialogue including litigation before wrong Forum; (iii) whether the plaintiffs are entitled to take advantage of Section 14 of the Limitation Act to save the time spent in previous litigations; and (iv) whether on facts the plaintiffs have proved their right to claim money decree as per the terms of the contract Ex. B-1.

20. The effect of the submissions made by the learned counsel for the appellants is to bring the claim of the plaintiffs as a liability in respect of an 'actionable wrong' and to restrict the period of limitation to one year. To buttress his argument, Section 2 of the Legal Representative Suits Act, 1855, Article 81 of the limitation Act and certain observations made by the Hon'ble Supreme Court in State of Tripura and others -vs- Province of East Bengal : Reported in AIR 1951 SC 23 are relied. To decide this point, the relief sought has to be looked.

21. In the suit, which is subject matter of the appeal, the following relief claimed:-

- 1) To declare 2 letters of the defendants dated 04/02/1998 and 20/11/2001 as illegal and there is no deficiency in the execution of the work done by the plaintiffs under the agreement dated 06/03/1996.
- 2) To make full payment of the sum due towards work done as per agreement.

22. Thus, in form and substance, the relief claimed is in connection with recovery of money payable under the contract. Article 18 of the Limitation Act under Part II prescribes three years limitation for the suit filed for the price of work done by the plaintiffs for the defendants at their request, where no time has been fixed for payment. The limitation period shall commence from the date when the work is done.

23. No doubt, the plaintiffs in this case are the legal representatives of the contractor, who died prior to the initiation of the suit. It is legally incorrect to plead, because the suit filed by the Legal representatives, Legal Representative Suits Act, 1855 (Act XII of 1855) shall apply and the limitation period shall be only one year.

24. The Legal Representative Suits Act, 1855 is an enabling Act to maintain action by the executors, administrators or representatives of any person deceased, for any wrong committed during the life time of should person, which has occasioned pecuniary loss to his estate. The said wrong should have been committed within one year before his death and the damages, when recovered, shall be part of the personal estate of such person.

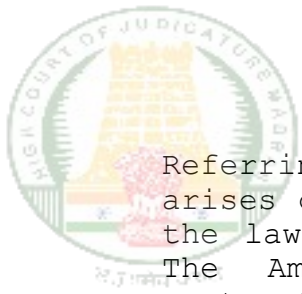


This short Act consist of a preamble and 2 Sections sufficiently provides the scope, reason and object of the Act. This enabling legislation was brought during the British period when there was no other Act to save litigants from the rigour of the principle "Actio personalise moritur cum persona" (meaning 'a personal action dies with the person'). This Act enabled those actions to continue by or against the executor, administrator or the representatives, which will otherwise abate, after the death of the person. The period of limitation under this Act to sue by the legal representatives was one year and to be sued is fixed as two years. Subsequently after the Limitation Act 1908 came into force, the limitation period was referred to the Limitation Act. Under the Limitation Act, Article 81 prescribes one year limitation for suits by legal representatives. This Article has to be read along with the other Articles 72 to 81 under Part VII suits relating to Tort. If read together with the other Articles under Part VII and applying the principle of esjustum generis, there can be no doubt in anybody mind, that Article 81 is applicable only to actions under Tort and not for recovery of money as per the terms of works contract.

25.A Division Bench of this Court, as early as 1965, had made an extensive research on the Legal Representative Suits Act, 1855 in V.S.Ramaswamy Iyer and another -vs- Brahmayya and Co., reported in 1965 SCC online Mad.160 and has given a clear finding and therefore, this point is no more res integra. To better appreciation, the facts of the case and point laid at rest by the Division Bench of this Court in this case is given below:-

(i) Hanuman Bank Limited incorporated as a public limited company went into liquidation on petition by creditors for winding up. According to the liquidator, Swaminatha Iyer as Director recklessly conducted the business of the Bank leading to its bankruptcy. Bank fund was unauthorisedly utilised for the purchase of coffee estates of which Swaminatha Iyer was the President. Action for misfeasance, misapplications of funds, breach of trust etc was initiated against Swaminatha Iyer and other Directors. Pending adjudication, Swaminatha Iyer died on 16th August 1959. The liquidator proceed against the legal representatives of Swaminatha Iyer claiming relief against the estate of Swaminatha Iyer for the losses caused by the acts of misfeasance and breach of trust. In the said contest, the legal representatives resisted the claim on the ground, the cause of action does not survives after the death of Swaminatha Iyer and assuming that it is otherwise tenable, it is hopelessly barred by limitation since the claim initiated in the year 1963, after 4 years of the Swaminatha Iyer's death.

(ii) The Division Bench, rejected the said defence and held that, the claim is based on liability arising from a civil wrong, but not a tort. Payment of liquidated sums of money by way of penalty or otherwise, are claimed will not be torts.



Referring Paton's Jurisprudence, held, "the right of contract arises directly from a juristic act. Other rights are granted by the law, whether the person bound by the duty consents or not. The American Restatement contrasts three broad branches—contract, tort and restitution. In contract the underlying postulate is that a person shall obtain what was freely promised; in tort that a person has a right not be harmed by an unlawful act; in restitution that a person has a right to have restored to him a benefit gained at his expense by another, if the retention of that benefit would be unjust. Since, both in tort and restitution the rights do not arise from consent but are granted by the law, there will be naturally be some overlapping of the boundaries in actual systems."

(iii) The Division Bench, asserted that breach of trust, just as breach of contract are dealt along with the laws of contract. Torts, contracts, and trusts developed separately, the principles of liability in each case are largely different, and they must be retained as distinct departments of the law.

26. To relish the felicity of expression by the Division Bench of this Court in the above judgment, the relevant portion are reproduced in verbatim:-

"36. The arguments on this part of the case may be briefly summed up thus. The liability of the director is not ex contractu, but one in tort. The cause of action is, in fact, based on negligence, and not on any contract, express or implied; not is the action founded on the type of obligations commonly referred to as "quasi contract" and the subject of provision by Sections 68 to 72 of the Indian Contract Act in Chapter V under the heading "Of certain relations resembling those created by contract". It not being the case of the liquidators that Swaminatha Iyer had gained for himself any pecuniary advantage, it is argued that forms of action for recovery based on the theory of unjust enrichment have no application. Strong reliance is placed on the scope of the maxim *actio personalis moritur cum persona* stated by Bowen L.J. in *Phillips v. Homfray*, (1883) 24 Ch.D. 439, 454 thus,

"The only cases in which, apart from questions of breach of contract, express or implied, a remedy for a wrongful act can be pursued against the estate of a deceased person who has done the act, appear to us to be those in which property or the proceeds or value of property, belonging to another, have been appropriated by the deceased person and



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added to his own estate or moneys."

"47. We have referred above to the statutory modifications of the rule in India, which, as is apparent, leaves much to be desired. The general rule at common law in England was that the maxim had no application to any breach of contract except breach of promise to marry. Several exceptions to the applicability of the maxim were introduced in England by statutes in the case of claims to property arising out of tort. The Administration of Estates Act, 1925, Section 26(2) and (5), replacing 4 Edw. 3, c. 7, and the Civil Procedure Act, 1883, Section 2, made considerable inroads on this rule by permitting actions to survive for the benefit of the estate if based on wrong to the deceased's real estate, and to survive against the estate if based on wrongs committed by the deceased to the property of other persons, subject in each case to a special period of limitation. There was the Fatal Accidents Act, 1846, commonly known as Lord Campbell's Act, which gave right of action by executors or administrators for the benefit of the relatives specified in the Act, corresponding to the Indian Fatal Accidents Act (XIII of 1955). Subject to these exceptions, the maxim continued in force for several centuries in regard to actions for tort, and was abrogated in England only in 1934, by the Law Reform (Miscellaneous Provisions) Act, 1934. Under this Act it is provided that on the death of any person, all causes of action subsisting against or vested in him shall survive against or for the benefit of his estate, except causes of action for defamation, seduction, inducing one's spouse to leave the other, and claims for damages for adultery. Under the provisions of this Act, a suit by or against a person in tort may be continued by or against his representative. This makes a distinct departure from the Legal Representatives' Suits Act of 1855, which does not provide for the continuance of actions. But a reference to the English text books would show that the principle of the maxim, which operated under the common law as



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a bar to the survival of actions against the estate of the deceased or for the benefit of the estate of the deceased, was confined only to actions in tort. It is a feature to be noticed in the early case-law in England that often the tort was waived, where permissible, and the action founded on contract to escape the rule. Actions based upon torts, by which the deceased had enriched his estate at another's expense, could be pursued against the estate of the deceased, and the operation of the maxim, already limited by various statutes as afore-stated totally ceased to have any effect after the Act of 1934."

54. In Salmond on Jurisprudence, eleventh edition, the sources of obligations in English law are divided into four classes :

- (1) Contractual--Obligationes ex contracts.
- (2) Delictal--Obligationes ex delicto.
- (3) Quasi-contractual--Obligationes quasi ex contractu.
- (4) Innominate.

55. The first class of obligations is well-known. Coming to obligations arising from tort, the learned author defines tort as :

"A civil wrong, for which the remedy is an action for damages, and which is not solely the breach of a contract or the breach of a trust or other merely equitable obligation."

56. A civil wrong is not a tort unless the appropriate remedy for it is an action for damages. Forms of civil remedy, according to the learned author, where restitution of property or payment of liquidated sums of money by way of penalty or otherwise, are claimed will not be torts. Referring to the breaches of trust as not coming under torts, the learned author puts the principle thus, at page 497 :

"The fourth and last class of wrongs which are not torts consists of breaches of trusts or other equitable obligations. The original reason for their exclusion and separate classification is the historical fact that



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the law of trusts and equitable obligations originated and developed in the Court of Chancery, and was wholly unknown to those courts of common law in which the law of torts grew up. But even now, although the same courts administer both law and equity, it is still necessary to treat breaches of trust as a form of wrong distinct from torts, and to deal with them along with the law of trusts itself, just as breaches of contract are dealt with along with the law of contract. Torts, contracts, and trusts developed separately, the principles of liability in each case are largely different, and they must be retained as distinct departments of the law."

116. In view of the decision of the Division Bench of this court, cited above, as to the limitations in the applicability of Section 306 of the Indian Succession Act, we would rest our decision that the cause of action survives in a case like the present against the legal representatives on other grounds. The foundation of the liability is not on mere tort, but on the breach of fiduciary relationship, the failure to perform duties undertaken by a person in the position of a trustee. The liability in such cases is as on a breach of trust, or, as observed by Cotton L.J. in *Concha v. Murrieta*, (1889) L.R. 40 Ch. D. 543 on breach of a quasi-contract. Not being laid on tort, in the light of the foregoing discussion, the maxim *actio personalis moritur cum persona* does not apply to the present claim by the liquidators, and there is survival of the claim against the appellants.

117. Of course, we do not say that the maxim has no application at all to cases outside torts. Contracts of purely personal nature, such as contracts for personal service, will get discharged by the death of either party. Claims for restitution of conjugal rights, custody and the like, will also get extinguished. But it will be seen that the extinction is by reason of the very nature of the claim--the impossibility of enforcement. Doubtless, the liability of the



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representative originates from, and depends entirely upon, the liability of the deceased, so that a representative would have all the defence open to the deceased, and could rely upon any period of limitation which the deceased could have maintained. The liability is of the estate of the deceased and the representative cannot rely upon any limitation period which the deceased himself could not have set up. The contention that there is no survival of the cause of action against the estate of Swaminatha Iyer, now represented by his sons, fails, and the first point is thus found against the appellants."

27. The judgment of the Hon'ble Supreme Court relied by the appellants counsel examined. The definition of 'wrong' as explained by Underhill in his commentaries and referred in State of Tripura and Ors -vs- Province of East Bengal, reported in AIR 1951 SC 23, emphasis that the word 'wrong' has to be construed as an 'act' which is legally wrongful as prejudicially affecting a legal right of the person and must consist of two elements namely:-

- a) There must be an act or omission amounting to an infringement of a legal right of a person or a breach of legal duty towards him; and
- b) The act or omission must have caused harm or damage to that person in some way, the damage being either actual or presumed.

28. Therefore, it is suffice to say, the suit laid is based on the contract between the parties and the liability is on the breach of contract. Only actionable wrong under tort or such other contracts purely personal in nature which will get discharged by the death of either party applying the principle of "Actio personalis moritur cum persona" the legal representatives of the said person can sue or be sued by virtue of the enabling provisions subject to the conditions mentioned in Sections 1 and 2 of the Legal Representative Suits Act, 1855, within the period of limitation prescribed under Article 81 of the limitation Act.

29. For suits laid for recovery of money payable for the work done under the contract Article 18 which reads as below alone will apply:-



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Description of Suit	Period of Limitation	Time from which period beings to run
18. For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Three years	When the work is done

Therefore, the period of limitation in this case shall be three years and not one year as contended by the learned counsel for the appellants.

30. Before advertng to the issue of exclusion of time under Section 14 of the Limitation Act, 1963 it may be appropriate to mention certain dates relevant to reckon the time for limitation.

06/03/1996 Ex.B-1	Article of agreement between the plaintiff and the defendants for special repairs to Kunnamm to Veppur Road Km 4/0 to 5/6 at an estimated cost of Rs 3,80,000/-.
03/05/1996 Ex B-2	Divisional Engineer (Highways) proceedings for extending time to complete the work upto 31/07/1996.
19/07/1996 Ex.B-3 and Ex.B-4.	Certificate by Assistant Engineer in the Measurement book pages 79 and 85 as work done as per specification.
31/07/1996 Ex.B-7	Divisional Engineer (Highways) proceedings for extending time to complete the work upto 30/11/1996.
29/11/1996 Ex.B-9	Divisional Engineer (Highways) proceedings extending time to complete the work upto 31/01/1997.
29/11/1996 Ex.B-10	Divisional Engineer (Highways) proceedings imposing penalty of Rs.500/- for delay in execution of the work.
25/01/1997 Ex. B-11 to Ex.B-13	The Divisional Engineer (Highways) conducted spot inspection of the 12 Km Kunnamm to Veppur road. Found sub-standard work and boosting of measurements.
13/05/1997	Letter of Kandasamy contractor demanding payment for the work done.
04/02/1998 Ex.A-2= Ex B-17	Reply to Kandasamy by Divisional Engineer (Highways) refusing to give the work completion certificate in view of substandard work done.



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06/03/1996 Ex.B-1	Article of agreement between the plaintiff and the defendants for special repairs to Kunnam to Veppur Road Km 4/0 to 5/6 at an estimated cost of Rs 3,80,000/-.
15/04/1998 Ex.A-3	Lawyer notice from Kandasamy to the Divisional Engineer to make payment or will face legal action to recover the amount due.
14/04/1999 Ex.A-4	Lawyer notice from Jaganathan, S/o Kandasamy as power of attorney of Kandasamy to the Divisional Engineer demanding payment.
28/04/1999	Contractor Kandasamy died.
16/09/1999 Ex.A-5	Lawyer notice from Jaganathan to Divisional Engineer intimating the death of Kandasamy and reiterating the demand of payment within 15 days.
13/09/2001 Ex.A-6	W.P.No.16618/2001 filed by Jaganathan, S/o Kandasamy for issuance of writ of Mandamus to the Divisional Engineer (Highways) to disburse the contract amount due, disposed with direction.
20/11/2001 Ex.A-8	Proceedings of the Divisional Engineer rejecting the request for payment, on the ground that the contractor Kandasamy failed to fulfil the contract as per the conditions stipulated in the agreement and same already intimated to Kandasamy vide letter dated 4/2/1998.
29/11/2005 Ex.A-12	I.A.No.29/2005 filed to withdraw Arb.O.P.1/2004, before Sub-Court, Ariyalur with liberty to file civil suit on same cause of action allowed.
09/08/2006	O.S. 14/2006 filed before Principal District Judge, Perambalur.

31.The learned counsel for the appellants contend that the cause of action to sue arose on 04/02/1998 the date on which the Divisional Engineer of the Highways Department informed the contractor that he is not entitled for payment since his work found to be substandard and not upto specification. Since the suit for recovery of money filed only on 04.07.2006, the suit is barred by limitation. The legal proceedings initiated by Jaganathan son of Kandasamy before wrong forum will not save limitation since it was not filed with bonafide intention. The leave and liberty granted by the Sub- court in Arb.O.P 1/2004 is only to file fresh suit on the same cause of action and not to exclude the period of limitation. No order specifically



excluding the period was passed by the Sub Court in its order dated 29/11/2005. In fact as per the terms of contract, the dispute ought to have been referred to arbitrator. In spite initially pursuing the arbitration petition, the respondents withdrew the arbitration petition the withdrawal was not for defect of jurisdiction or other cause of a like nature, hence, Section 14 of the Limitation Act does not apply to the case in hand.

32. In support, the following judgments were referred:-

(i) the Hon'ble Supreme Court made in India Electric Works Ltd -vs- James Mantocsh and others reported in AIR 1971 SC 2313 said,

".....To attract the applicability of S. 14(1), therefore, all that has to be determined is whether the court in which the previous suit was filed was unable to entertain the claim relating to future mesne profits "from defect of jurisdiction" or "other cause of a like nature". It is common ground and indeed cannot be argued nor has any attempt been made to urge such a contention before us that the court trying the previous suit was unable to entertain it from defect of jurisdiction. The only question for determination is whether the court was unable to entertain the previous suit from "other cause of a like nature". In Jaikishan Singh v. The Peoples Bank of Northern India(1) it was pointed out that S. 14 of the Act will have no application where failure on the part of the petitioner or the plaintiff to get the reliefs which he asked for was not attributable to anything connected either with the jurisdiction of the court or with some other defect which was like that of jurisdiction. It was observed that the words "or other cause of a like nature", however, liberally construed must be read so as to convey something ejusdem generis or analogous to the preceding words relating to the defect of jurisdiction. If these words were read along with the expression "is unable to entertain", they would denote that the defect must be of such a character as to make it impossible for the court to entertain the suit or application in its inception or at all events as to prevent it from deciding it on the merits. In other words, if the defects were of such a nature that they had to be decided before the case



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could be disposed of on merits or it they did not necessitate an examination of the merits of the case they would be defects of a "like nature". The cases which were decided on the principle that if 'a plaintiff or a petitioner failed to establish a cause of action in himself no deduction of time could be allowed under s. 14 were noticed and it was accepted that they proceeded on a correct view. Illustration of the facts which would be covered by the words "or other cause of a like nature" as given in the decided cases were : (i) if a suit had failed because it was brought without proper leave; (ii) if it had failed because no notice under S. 80, Civil Procedure Code, had been given; (iii) where it would fail for non-production of the Collector's certificate required by S. 7 of the Pensions Act. In each one of these cases the court did not lack jurisdiction in its inception but the suit could not be proceeded with and disposed of until the statutory conditions laid down had been satisfied or fulfilled."

(ii) In Baktawar singh and ors -vs- Sada Kaur and ors. reported in AIR 1988 P & H 131, the High Court of Punjab and Haryana held that:

"7. R.2 of O. XXIII of Civil Procedure Code, provides that in any fresh suit instituted on permission granted under R.1 of this Order, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted. Thus, it is quite clear that the plaintiffs could not claim extension of limitation because the earlier suit was allowed to be withdrawn with permission to file a fresh suit on the same cause of action. Extension of time could be claimed under sub-section (3) of S.14 of the Act only, which, the plaintiffs, in the present case, have failed to prove by leading any evidence much less cogent. It cannot be disputed that the time spent in prosecuting the earlier suit could be excluded if the permission to withdraw the suit was granted on the ground that the suit was bound to fail by reason of the defect in the jurisdiction of the Court or other cause of a like nature such as mis joinder of parties or the causes



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of action as provided in clause (c) to the Explanation to S.14 of the Act.

8. While dealing with subsection 13 of Section 14 of the Act, it was held by this Court in *Johri Mal v. Surjan Singh*. (1970) 72 Pun LR 385, that the plaintiff before taking advantage of sub-section (3) of S.14 must establish all the essential conditions namely, due diligence good faith and that the suit would have failed by reason of the defect in jurisdiction of the Court or other cause of the like nature. The expression "other cause of like nature" of howsoever wide amplitude has to be read ejusdem generis and along with the earlier part of the same provision which relates to defect of jurisdiction of the Court."

33. The learned counsel for the appellants referring the contradistinction between jurisdictional fact and adjudicatory fact as explained by the Hon'ble Supreme Court in *Carona Ltd - vs- Parvathy Swaminathan and Sons*, reported in AIR 2008 SC 187 submitted that, the Sub-Court, Ariyalur, never suffered jurisdictional power to entertain arbitration petition under Section 20 of the Arbitration Act, 1940. Whether, the request for appointing any one as Arbitrator from the list of four experts suggested by the respondents/petitioners was only a adjudicatory fact, therefore, the withdrawal of the arbitration original petition with leave to file suit on same cause of action was not on defect in jurisdiction or other cause of a like nature to take advantage of Section 14 of the Limitation Act.

34. Per contra, the learned counsel for the respondents submitted that the appellants delayed the payment after completion of work and after due entries in the Measurement books about the completion of work, as per the specification. After waiting for nearly one year, the contractor requested the Divisional Engineer to make payment, the Divisional Engineer choose to respond, after 9 months thereafter through his letter dated 04/02/1998, Ex.A-2, informing the work done by the contractor found to be of sub-standard. As per the terms of the contract, if at all any defect in the work or substandard work noticed, the same should be informed for rectification. If the contract fails to rectify, the same must be rectified and the cost must be recovered from the contract or above all, the contractor must be first put to notice about the substandard work alleged. Even in Ex.A-2-reply, no detail about the alleged substandard work mentioned. Only after direction issued by the High Court in W.P.No.16618/2001, the appellants thought of giving reason for non-payment. For the first time after five



years on 20/11/2001 vide, Ex.A-8 some detail about substandard work provided to the respondents. Only after the receipt of the letter dated Ex.A-8, the respondents came to know the reason for non payment. The cause of action to sue arose only on receipt of Ex.A-8 and not earlier. The belated reply by the appellants is the fault of the appellants. They cannot take advantage of their own fault and take a defence of limitation.

35.In the writ petition, Hon'ble High Court in its order dated 13/09/2001 Ex.A6 gave liberty to the respondents either to resort arbitration proceedings, if the terms of contract provides (or) to file civil suit before appropriate Forum. The arbitration proceeding initiated under Section 20 of the old Arbitration Act before the Sub-Court, Ariyalur, later found to be without jurisdiction due to the provisions under new Arbitration Act, 1996. Therefore, petition was filed under Order XXIII, Rule 1 of CPC, to withdraw the petition and file fresh suit on same cause of action. The averments made in the affidavit filed in support of this petition marked as Ex.A12 disclose the error in proceeding before the Forum which lack jurisdiction. The said application was pending for two years for the appellants to file counter. The appellant did not file counter. Only thereafter order passed by the Sub-court giving liberty to file fresh suit. When there is no malafide in approaching the wrong Forum which lacks jurisdiction, the period shall stand excluded under Section 14 of the Limitation Act.

36.In support of his submissions, the following judgments relied by the learned counsel for the appearing for the respondents:

(1)Oriental Insurance Company Limited v. Tejparas Associates and Exports Private Limited: (2019) 9 SCC 435;

(2) Andhra Pradesh Power Coordination Committee and others v. Lanco Kondapallli Power Limited and others: (2016) 3 SCC 468;

(3)M.P.Steel Corporation v. Commissioner of Central Exercise: (2015) 7 SCC 58.

37.The point to be decides, whether exclusion under Section 14 of the Limitation applies in the given facts. Section 14 of the Limitation Act, 1963 reads 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 proceedings, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the



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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, the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on 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."

38. The five pre-conditions for invoking Section 14 of the Limitation Act, 1963 are:

"(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."

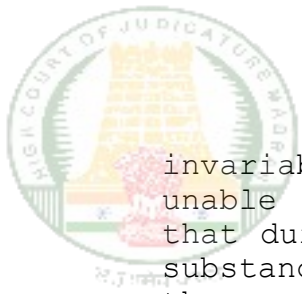
39. From the dates and events tabulated above, we find that the parties were engaged in dialogue before approaching the Court. Ex.B-1 agreement provides for settlement of dispute through arbitration. As per the agreement, if the claim is upto Rs.2 lakhs by the Superintending Engineer, Thirunelveli and above Rs.2 lakhs by the Arbitrator appointed on application in the Court, since the subject contract was prior to the commencement of Arbitration Act, 1996 and dispute was above Rs.2 lakhs, the respondents have approached the Court for appointment of Arbitrator under Section 20 of the Arbitration Act, 1940. As per the terms of contract, the work



should be completed within two months from the date of handing over the site. From Ex.B-7, Ex.B-9 and Ex.B-10, it appears that the time for completion of contract extended twice up to 31/01/2007 and penalty collected for the delay execution. Further, as per the agreement-Ex.B-1, the retention money of 2 ½ % will be refunded only after the expiry of the observation period of 1 year from the date of completion of the work. We find from Ex.A-2, when the contractor demanded payment for the work done, the Divisional Engineer had refused to give the work completion certificate quoting work done was not upto the specification (Sub-Standard). No other reason given in this letter, such as how and why the work found to be substandard and whether action taken for not executing the work as per the specification standard. Only after direction from the High Court in W.P.No.16618/2001, the Divisional Engineer had passed proceedings dated 20/11/2001, wherein he has mentioned about the substandard work as under:-

"As per terms of contract, WBM Grade II has to be done to a consolidated thickness of 75mm in KM 4/0-4/2 where as 43 mm thick only had been done by the contractor. WBM Grade III to be done to a consolidated thickness of 75mm in KM 4/0- 5/0 where as 58 mm thick only had been done. As per Agreement condition Premix Carpet to a consolidated thickness of 20 mm had to be done in KM 4/0 -5/0 and 5/0 - 5/6 where as 18 mm thick only was available under the circumstances it is made clear that the work was not done to the required thickness and specification."

40.This reasoning for withholding the payment was made known to the contractor only on 20/11/2001. Only thereafter the cause of action for recovery of money arose. On examination of the evidence, we find that this belated reasoning is an afterthought and contrary to their own documents. Particularly, in the Measurement Book, the Assistant Engineer has recorded that the works are done as per specification. The Joint Chief Engineer, who inspected the site on 22/08/1996 and 23/08/1996, had reported to the Chief Engineer vide, his letter dated 29/08/1996 (Ex.B-8) that, "in Reach 3/6 - 5/0 of Kunnam - Veppur Road, the estimate provides for one layer WBM Grade III 7.5 cm thick in B.T WBM work has been completed as it is of required thickness. Before laying B.T., the WBM surface has to be re-rolled and then, the work was done". In the Measurement Book marked as Ex.B-3, at page 68, at the top, the Divisional Engineer has recorded, "super check the page and thickness WBM Grade II recorded in the page has been verified at KM 4/0 - 5/0 and found to be 43 mm only". Similar endorsements are found in Ex.B-4 and Ex.B-5 for WBM Grade III and Premix Carpet. These endorsements signed by Divisional Engineer with date, but



invariable in all these three exhibits, the year is overwritten unable to know whether it was 1997 or 1998. Though it appears that during the super check, the Divisional Engineer has noticed substandard execution of work, there is no record produced by the appellants to show that after the super-check conducted by the Divisional Engineer, the contractor was informed about the substandard work or any further action against him. At least when the contractor asked them through his letter dated 13/05/1997 to pay the money, if really the super check was conducted on 25/01/1997, the appellants would have mentioned the substandard work as found in the M.Book and then refused payment. The reply Ex.A-2 dated 04/02/1998 is not only belated but also bereft of particulars.

41.The only record produced to infer that there was sub-standard execution of work in repairing Kunnan-Veppur Road, total length of 12 km is Ex.B-14 marked during the trial. It is the departmental proceedings initiated against the Assistant Engineer for boosting the measurement. The Ex.B-14 is dated 30/06/1997 and the estimated loss for the Government for entire length of 12 km is shown as Rs.2,65,511/-covering only 5 contracts. The subject matter of this appeal is the 6th contract for the reach 4/0 to 5/6 km. The statement annexed to the charge memo Ex.B-14 in respect of the estimated loss does not cover the reach 4/0 - 5/6. Therefore, it is obviously clear that the appellants herein had taken all endeavour to deprive the contractor his lawful due and when he approached the court now ventured to defeat his claim on the ground of limitation.

42.In Harishankar Singahania and others -vs- Gaur Hari Singahania and another : 2006(4)SCC 658, the Honble Supreme Court held that, when the parties are in dialogue and are corresponding to negotiate the matter, the right to apply under Section 20 accrues, when the dispute in fact arises between them, ie. when they fail to resolve that matter themselves.

43.The dictum laid in the above judgment squarely applies to the case in hand. Therefore the relevant passages are extracted below:-

"10.It is now well settled that Article 137 of the Limitation Act, 1963 applies to an application under Section 20 of the Arbitration Act, 1940. Accordingly, an application under Section 20 of the Act for filing the arbitration agreement in the court and for reference of disputes to arbitration in accordance therewith is required to be filed within a period of three years when the right to apply accrues. The right to apply accrues when difference or dispute arises between the parties to the



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arbitration agreement. In the facts of the case, it is therefore necessary to find out as to when the right to apply accrued.

.....

25.The High Court, in our view, has erred in coming to the conclusion that because no distribution of the property had been made till 29-2-1988, it was indicative of the fact that there were disputes and differences between the parties. The High Court, in our view, has failed to appreciate that merely because parties did not take steps for distribution of the immovable properties it did not automatically follow that disputes and differences had arisen between them in this regard. In fact, from the correspondence on record, it is clear that the parties were making efforts to complete the distribution of the immovable properties as per the terms of the agreement between them. It is submitted that the correspondence between the parties does not indicate that any dispute or difference had arisen between them on or before 18-3-1989 and the finding of the learned Judges to the effect that the correspondence exchanged between the parties leaves no manner of doubt that the dispute had arisen between the parties in any case on 18-3-1989 is erroneous, contrary to the record and unsustainable."

44.The arbitration proceedings initiated by the legal representatives of the contractor within the period of 3 years, after all their attempts to settle the dispute amicable ended in vain. In the Arbitration Original Petition, the appellants have filed their counter stating the dispute is not fit for arbitration. Thereafter, the respondents have decided to approach Civil Court and filed petition to withdraw arbitration original petition with leave to sue afresh on same cause of action. The Court has also granted the leave. Now, it is contended by the appellants that the said leave will not save limitation. The said argument fail to stand the test of law and bonafide. The appellants even without assigning reason, were with holding the contractual money till 20/11/2001, they came forward to assign reasons only after the respondents approached the Constitutional Court under Article 226 seeking Mandamus. Thereafter, as per the direction of the High Court, they approached the Sub-Court for appointment of Arbitrator. That was



opposed by the appellants on technical ground. Hence, leave was sought to file suit on same cause of action. In this application I.A.No.25/2004, the appellants not even filed their counter despite adjourning the matter for more than a year. When no malafide seen from the conduct of the respondents approaching other Forums for relief, Section 14 of the Limitation Act excludes the time, consumed in the prior proceedings.

45. When similar case came before the Hon'ble Supreme Court in AP Power Coordination Committee and others -vs- Lando Kondapalli Power Ltd and others reported in 2016 (3) SCC 468, the Hon'ble Apex Court held,

" 35. A spirited argument was advanced on behalf of the appellant that after the judgment of this Court in Gujarat Urja on 13.03.2008, the continuance of the arbitral proceedings before the High Court at the instance of M/s LANCO should not be accepted as bona fide and that the Commission was justified in not excluding this period of about one year on the ground that it was not bona fide and in such facts APTEL should not have taken a contrary view. Having considered the submissions of the parties we find no merit in the aforesaid contention advanced on behalf of the appellant. The view which we are going to take has been indicated by this Court in several judgments including M.P. Steel Corpn. But the point requires no debate in view of the clear stipulation in Explanation (a) to sub-section (3) of Section 14 of the Limitation Act. This Explanation reads as follows:-

"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;"

The same conclusion is inevitable even on other relevant facts. The appellant had notice of the arbitral proceeding and after the judgment in Gujarat Urja, the appellant also took no steps to get the application under Section 11 listed and disposed of earlier to 18.03.2009. The averments and the materials are not sufficient to establish the claim of the appellant that the proceeding ceased to be bona fide after 13.03.2008.

36. As a consequence of the aforesaid



discussion, the challenge to the impugned order in respect of views taken on the issue of limitation in the light of the principles of Section 14 of the Limitation Act fails."

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46. In *M.P. Steel Corporation -vs- Commissioner of Central Excise* reported in 2015(7) SCC 58, the Hon'ble Apex Court observed that in the later suit, a formal plea regarding exclusion of period under Section 14 of the Limitation Act is not mandatory and any omission to make a formal plea is not fatal for the later suit. In *Union of India -vs- West Coast Paper Mills Ltd* reported in 2004(3) SCC 458, the Hon'ble Supreme Court held that:

"14..... In the submission of the learned Senior Counsel, filing of civil writ petition claiming money relief cannot be said to be a proceeding instituted in good faith and secondly, dismissal of writ petition on the ground that it was not an appropriate remedy for seeking money relief cannot be said to be 'defect of jurisdiction or other cause of a like nature' within the meaning of Section 14 of the Limitation Act. It is true that the writ petition was not dismissed by the High Court on the ground of defect of jurisdiction. However, Section 14 of the Limitation Act is wide in its application, inasmuch as it is not confined in its applicability only to cases of defect of jurisdiction but it is applicable also to cases where the prior proceedings have failed on account of other causes of like nature. The expression 'other cause of like nature' came up for the consideration of this Court in *Roshanlal Kuthalia v. R.B. Mohan Singh Oberoi* and it was held that Section 14 of the Limitation Act is wide enough to cover such cases where the defects are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any circumstance, legal or factual, which inhibits entertainment or consideration by the Court of the dispute on the merits comes within the scope of the section and a liberal touch must inform the



interpretation of the Limitation Act which deprives the remedy of one who has a right."

47. For the forgoing reasons, this Court dismiss the appeal as devoid of merits. Before parting, this Court beg to borrow the words of Justice V.R.Krishna Iyer (as he then) was in P.P.Abubacker -vs- Union of India reported in AIR 1971 103 and conclude that, the contention of the appellants not only untenable but unjust and is calculated only to protract the litigation and to postpone the facing of inevitable.

48. In the result, this Appeal Suit is dismissed with costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To:

The Principal District Judge,
Perambalur.

Copy To

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate SR.No.11708

A.S.No.199 of 2010

PVS (CO)
GMY (03/09/2021)