

\$~4 & 5

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

% *Date of Decision: 06th December, 2022*

4

+ C.R.P. 276/2017

M/S. RADNIK EXPORTS & ORS. Petitioners
Through: Mr. A.J. Khan, Advocate.

versus

M/S. STL GLOBAL LIMITED Respondent
Through: Mr. Aditya Goel, Advocate.

5

+ C.R.P. 277/2017

M/S. RADNIK EXPORTS & ORS. Petitioners
Through: Mr. A.J. Khan, Advocate.

versus

M/S. STL GLOBAL LIMITED Respondent
Through: Mr. Aditya Goel, Advocate.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

C.M. APPL. 46454/2017 (condonation of delay in filing the revision petition, by Petitioners) in C.R.P. 276/2017

C.M. APPL. 46463/2017 (condonation of delay in filing the revision petition, by Petitioners) in C.R.P. 277/2017

1. Present applications have been preferred on behalf of the Petitioners for condonation of delay of 41 days in filing both the revision petitions.
2. Issue notice.
3. Mr. Aditya Goel, learned counsel accepts notice on behalf of the Respondent.
4. For the reasons stated in the applications, the same are allowed.

5. Delay of 41 days in filing both the revision petitions, respectively, is condoned.

6. Applications stand disposed of.

C.R.P. 276/2017 & C.M. APPL. 46452/2017 (Stay)

C.R.P. 277/2017 & C.M. APPL. 46461/2017 (Stay)

7. Both these Revision Petitions lay challenge to a common order dated 05.08.2017 passed by learned Trial Court in C.S. No. 8957/2016 and C.S. No. 8339/2016 respectively, whereby applications filed by the Defendants under Order VII Rule 11 CPC for rejection of plaints, have been dismissed. Respondent herein is the Plaintiff in the suits before the Trial Court and Petitioners herein are the Defendants. Parties are referred by their litigating status before this Court, for the sake of convenience.

8. Facts to the extent necessary for disposal of these petitions are that Respondent filed two suits for recovery against the Petitioners in the Trial Court at Faridabad, Haryana. Petitioners filed applications under Order VII Rule 11 CPC read with Section 20 CPC for rejection of the plaints, on the ground that the Court at Faridabad did not have jurisdiction to entertain and try the suits. The applications were dismissed by the District Judge, Faridabad *vide* order dated 24.10.2013. Revision Petitions preferred against the said order were allowed by the High Court of Punjab and Haryana *vide* judgment dated 18.02.2015, directing the Trial Court at Faridabad to return the plaints to the Respondent for being presented before the Court at Delhi, within 4 weeks of the endorsement by the Court. It was also held that if the suits were filed within 4 weeks from the endorsement by the Trial Court, bar of limitation shall not be raised by either party and suits shall be decided in accordance with law.

9. Upon receiving the original plaints, Court fee and the documents, Respondent initially filed the suit being C.S. No.

8957/2016 in this Court on 29.06.2015, for recovery of a sum of Rs.19,08,972.66/- with costs etc. and on enhancement of pecuniary jurisdiction of the Trial Court, the same was filed before the Trial Court on 24.02.2016. C.S. No. 8339/2016 was filed before the Trial Court for recovery of a sum of Rs.4,52,471/-. Pertinently, both the suits initially filed as Summary suits, were subsequently treated as ordinary suits *vide* order dated 16.11.2016.

10. Petitioners filed written statements along with applications under Order VII Rule 11 CPC for rejection of the plaints. In the applications, Petitioners raised the following issues: (a) Respondent has not presented original plaints, despite the directions of the High Court of Punjab and Haryana; (b) without the leave of the Court, Respondent has changed the original plaints with fresh plaints, which is not permissible under law; and (c) no formal application under Section 14 of the Limitation Act, 1963 (hereinafter referred to as the 'Act') for exclusion of time has been filed by the Respondent and this plea is not even taken in the plaints.

11. Petitioners, in support of their plea for rejection of the plaints, relied on the judgment of Supreme Court in ***Hanamanthappa and Another v. Chandrashekharappa and Others, (1997) 9 SCC 688***, wherein the Supreme Court held that object of Order VII Rule 10-A CPC 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 limitation, pecuniary jurisdiction and payment of Court fee. Relying on the judgment, it was the contention of the Petitioners that Respondent had not presented the original plaints before the Trial Court and being a fresh suit, Respondent was not entitled for exclusion of time under Section 14 of the Act.

12. Petitioners had also placed reliance on the judgment of this Court in ***Alphabetics Pvt. Ltd. v. Lohia Jute Press, 2003 SCC OnLine Del 728***, wherein this Court has held that under Order VII Rule 10-A CPC, for return of plaint for want of jurisdiction, Court ought to intimate its decision to the Plaintiff to enable it to take appropriate steps in the matter. It was urged by the Petitioners that perusal of the order dated 18.02.2015 passed by the High Court of Punjab and Haryana shows that there was no application by the Respondent under Order VII Rule 10-A CPC seeking directions from the Court for appearance of the Petitioners.

13. In support of the plea on exclusion of time under Section 14 of the Act, Petitioners have relied on the judgment of the Supreme Court in ***Deena (Dead) Through LRs v. Bharat Singh (Dead) Through LRs and Others, (2002) 6 SCC 336***, wherein the Supreme Court has held as under:

“14. The main factor which would influence the court in extending the benefit of Section 14 to a litigant is whether the prior proceeding had been prosecuted with due diligence and good faith. The party prosecuting the suit in good faith in the court having no jurisdiction is entitled to exclusion of that period. The expression “good faith” as used in Section 14 means “exercise of due care and attention”. In the context of Section 14 the expression “good faith” qualifies prosecuting the proceeding in the court which ultimately is found to have no jurisdiction. The finding as to good faith or the absence of it is a finding of fact. This Court in the case of Vijay Kumar Rampal v. Diwan Devi [AIR 1985 SC 1669] observed : (AIR p. 1670, para 3)

“The expression good faith qualifies prosecuting the proceeding in the court which ultimately is found to have no jurisdiction. Failure to pay the requisite court fee found deficient on a contention being raised or the error of judgment in valuing a suit filed before a court which was ultimately found to have no jurisdiction has absolutely nothing to do with the question of good faith in prosecuting the suit as provided in Section 14 of the Limitation Act.””

14. Learned counsel for the Respondent *per contra* argued that applications under Order VII Rule 11 CPC were filed by Petitioner No. 2 only and that it is a well-settled law that for rejection of plaint,

only the averments in the plaint and the documents filed along with it have to be looked into. It was also argued that limitation is a mixed question of facts and law and hence a triable issue, after the parties lead their evidence. Relying on the judgments on this issue, Respondent refuted the contention of the Petitioners that the suits filed before the Courts in Delhi are fresh suits and asserted that the Respondent is entitled to exclusion of the period from 28.04.2009 till 02.06.2015 by virtue of provisions of Section 14 of the Act, as the earlier suits were prosecuted with due diligence and in good faith.

15. After hearing the arguments of the parties, the learned Trial Court agreed with the submissions made by the Respondent and dismissed the applications under Order VII Rule 11 CPC on two-fold grounds: (a) for deciding an application under Order VII Rule 11 CPC, only the averments in the plaint are to be seen; and (b) limitation is a mixed question of law and facts. The Trial Court came to a conclusion from a perusal of the plaints, that the objections raised by the Petitioners in the applications under Order 7 Rule 11 CPC, cannot be decided without evidence.

16. Reiterating the arguments urged before the Trial Court, learned counsel for the Petitioners submits that the Trial Court failed to appreciate that the earlier suits were filed against M/s. Radnik Exports Company with its two Directors as parties for recovery of Rs.4,52,471/- and Rs.19,08,972.66/- respectively, while the suits before the Trial Court at Delhi were filed against M/s. Radnik Exports Company, a partnership concern with partners as party-Defendants. Since these were fresh suits, Respondent was not entitled to the benefit of Section 14 of the Act and the suits being barred by limitation, the plaints ought to be rejected.

17. It is contended that the Trial Court erred in not appreciating that the Respondent had not followed the procedure under Order VII

Rule 10-A CPC for return of the plaint. The directions of the High Court of Punjab and Haryana were clear that only if the plaints were presented in the appropriate Court within four weeks of the order, parties will not raise objections on the limitation. The Trial Court, therefore, ought to have examined the date on which the plaints were returned and filed before it at the threshold, instead of treating it as a triable issue. No doubt, limitation is a mixed question of law and facts requiring trial, however, where the facts are undisputed, as in this case, applications under Order VII Rule 11 CPC can be allowed. Respondent had averred in paragraph 11 of the plaint that cause of action for filing the suits arose in 2007 and 2008 and therefore, there was no dispute with regard to limitation. In order to avail the benefit of Section 14 of the Act, it is necessary that the earlier proceedings alleged to be prosecuted in good faith are between the same parties and for the same reliefs, while in the present case, neither the parties were same nor the reliefs claimed.

18. Learned counsel for the Respondent, supporting the impugned Order, argues that there is no infirmity in the said order. Insofar as C.S. No. 8957/2016 is concerned, the suit was initially filed before the District Court, Faridabad, Haryana, which was subsequently directed to be returned with endorsement by the High Court of Punjab and Haryana *vide* order dated 18.02.2015, granting liberty to file the same before the appropriate Court in Delhi, within 4 weeks from the return of the plaint. Pursuant to the liberty granted, the plaint and the original documents were ordered to be returned by learned Civil Judge, Faridabad *vide* order dated 26.05.2015 and were actually returned by endorsement dated 02.06.2015. Respondent filed the suit before this Court within time on 29.06.2015. However, on account of enhancement in the pecuniary jurisdiction of the Trial Court, the suit was filed before the said Court. With respect to C.S. No. 8339/2016, it

C.R.P. 276/2017 & connected matter

Page 6 of 13

is submitted that the suit was returned to the Respondent by endorsement dated 02.06.2015 and was filed before the Trial Court at Delhi on 29.06.2015 within the time granted by the High Court of Punjab and Haryana. Therefore, the contention is that Respondent is entitled to benefit of the exclusion of these periods under Section 14 of the Act and assuming that the Petitioners wish to contest the date of return of the plaints and their subsequent filings or even on the question of the reliefs claimed in the suits and/or the parties thereto, these are triable issues and on these grounds, plaints cannot be rejected at the threshold under Order VII Rule 11 CPC.

19. I have heard learned counsels appearing on behalf of the parties and examined their rival contentions.

20. It is an undisputed position that Respondent had filed two suits for recovery, before the District Court, Faridabad, Haryana in which the Petitioners had filed applications under Order VII Rule 11 CPC challenging the jurisdiction of the Court to entertain the suits. The applications were dismissed on 24.10.2013, however, in Revision Petitions, filed by the Petitioners before the High Court of Punjab and Haryana, the High Court *vide* order dated 18.02.2015 directed return of the plaints to the Respondent, to be filed in the appropriate Court, within 4 weeks from the date of the endorsement by the District Court, with a further direction that if the suits were filed within the said period, neither party shall raise the question of limitation and the suits shall be decided as per law.

21. Petitioners filed applications under Order VII Rule 11 CPC before the Trial Court seeking rejection of the plaints on several grounds, as aforementioned. The applications have been dismissed by the Trial Court by a common order dated 05.08.2017, which has been assailed before this Court. Section 14(1) of the Act, reads as follows:

“14. Exclusion of time of proceeding bona fide in court without jurisdiction.—(1) *In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.”*

22. In ***Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and Others***, (2008) 7 SCC 169, the Supreme Court held as under:

“31. *To attract the provisions of Section 14 of the Limitation Act, five conditions enumerated in the earlier part of this judgment have to co-exist [Ed.: See para 21, above.]. There is no manner of doubt that the section deserves to be construed liberally. Due diligence and caution are essential prerequisites for attracting Section 14. Due diligence cannot be measured by any absolute standards. Due diligence is a measure of prudence or activity expected from and ordinarily exercised by a reasonable and prudent person under the particular circumstances. The time during which a court holds up a case while it is discovering that it ought to have been presented in another court, must be excluded, as the delay of the court cannot affect the due diligence of the party. Section 14 requires that the prior proceeding should have been prosecuted in good faith and with due diligence. The definition of good faith as found in Section 2(h) of the Limitation Act would indicate that nothing shall be deemed to be in good faith which is not done with due care and attention. It is true that Section 14 will not help a party who is guilty of negligence, lapse or inaction. However, there can be no hard-and-fast rule as to what amounts to good faith. It is a matter to be decided on the facts of each case. It will, in almost every case be more or less a question of degree. The mere filing of an application in wrong court would not prima facie show want of good faith. There must be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party. In the light of these principles, the question will have to be considered whether the appellant had prosecuted the matter in other courts with due diligence and in good faith.”*

23. From the reading of the aforesaid passage, it is clear that the purpose of enacting Section 14 of the Act is to give relief to a litigant, who approaches a wrong Forum as this is in the nature of a beneficial provision in the Limitation Act. It is an established principle of interpretation of a Statute that one must give such a construction to a

provision of Statute which furthers the intention of the Legislature behind its enactment. Therefore, if the Plaintiff in a given case is able to show that while he had wrongly instituted proceedings in a Court, but had prosecuted the same with due diligence and in good faith, benefit of exclusion of the period for which the suit remained pending in the earlier Forum must accrue to the Plaintiff, construing the provisions of Section 14(1) liberally.

24. It is equally true that limitation is a mixed question of law and facts and therefore, the question that arises before this Court is whether the Trial Court has rightly dismissed the applications under Order VII Rule 11 CPC, holding that limitation being a mixed question of law and facts cannot be decided at the threshold. Law on the parameters required to examine an application under Order VII Rule 11 CPC is no longer *res integra*. Court has to look into the averments in the plaint and the accompanying documents and the defence raised in the written statement is wholly irrelevant. The Supreme Court in case of ***Nusli Neville Wadia v. Ivory Properties and Others***, 2019 SCC OnLine SC 1313, held as follows:

“73. A Three-Judge Bench of this Court in Major S.S. Khanna v. Brig. F.J. Dillon, AIR 1964 SC 497, has held that jurisdiction to try issues of law apart from the issues of fact may be exercised by the court if the whole suit may be disposed of on the issue of law alone, but the Code confers no jurisdiction upon the court to try a suit on the mixed issue of law and facts as preliminary issues.

74. In Narne Rama Murthy v. Ravula Somasundaram, (2005) 6 SCC 614, this Court has held that even if it is apparent from the plaint averment only, that suit is barred by limitation, it can be tried as a preliminary issue even in the absence of plea of limitation raised by the defendants. However, in cases where the question of limitation is a mixed question of fact and law and suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation, which have been pleaded have to be proved, on issues raised and decided on evidence. However, in our considered opinion, question of limitation, in no case, can be said to be a question of jurisdiction of the Court in the context it has been used in Section 9A CPC.

75. *In Satti Paradesi Samadhi and Pillayar Temple v. M. Sankuntala (Dead) through Legal Representatives*, (2015) 5 SCC 674, it has been observed that issue of limitation requiring an inquiry into the facts, cannot be tried as a preliminary issue. The mixed questions of law and facts cannot be decided as a preliminary issue.

xxx

xxx

xxx

77. *In Vaish Aggarwal Panchayat v. Inder Kumar*, AIR 2015 SC 3357, the question came up for consideration of rejection of the plaint under Order VII Rule 11 on the ground that same being barred by limitation. Mere *ex facie* reading of the plaint, it could not be held that the suit was barred by time. The question of limitation becomes a mixed question of facts and law and cannot be decided as a preliminary issue as the framing of issues and taking evidence was necessary.

78. *In our opinion, it cannot be laid down as proposition of law under Order VII Rule 11(d) that the plaint cannot be rejected as barred by limitation. It can be said that it is permissible to do so mainly in a case where the plaint averment itself indicates the cause of action to be barred by limitation and no further evidence is required to adjudicate the issue.*"

25. I may usefully refer to a passage from the judgment of this Court in ***Tilak Raj Bhagat v. Ranjit Kaur & Ors.***, 2012 SCC OnLine Del 1675, which is as under:

"6. *It may be worthwhile to mention here that while considering an application under Order 7 Rule 11 CPC, the Court has to look at the averments made in the plaint by taking the same as correct on its face value as also the documents filed in support thereof. Neither defence of the defendant nor averments made in the application have to be given any weightage. Plaint has to be read as a whole together with the documents filed by the plaintiff.*"

26. It is also settled that while deciding an application under Order VII Rule 11 CPC, the averments in the plaint have to be taken to be true and correct and therefore, applying all the principles settled by judgments, as aforementioned, it is only when the averments in the plaint indicate the cause of action being barred by limitation that the Court can reject the plaint at the initial stage, which means that it must be on plain and *ex facie* reading of the plaint.

27. The complaints have been placed on record by the Petitioners. The averments and the narrative in the complaints show that Respondent has narrated all the necessary facts of how the cause of action has allegedly arisen for filing the suits for recovery against the Petitioners. Respondent has mentioned the dates from when the cause of action commenced in the respective suits and also given a chronology of dates and events from the time of filing the suits before the District Court, Faridabad till the filing of the Revision Petitions before the High Court of Punjab and Haryana and the order passed by the High Court. Significantly, Respondent has also mentioned the dates on which the Trial Court had rendered an endorsement for return of the complaints and the subsequent dates of filing of the suits, from which the present Revision Petitions arise. The orders of the respective Courts have also been placed on record. In the opinion of this Court, from a plain reading of the complaints on a mere demurer, it cannot be said at this stage that Respondent has failed to plead a cause of action or that the complaints are so outrightly barred by limitation, that nothing remains to be tried or argued by the Respondent.

28. Petitioners have raised objections to the maintainability of the suits on the ground of limitation and urged the Trial Court to reject the complaints contending that benefit of Section 14 of the Act cannot be given to the Respondent. The said claim is predicated on the plea that the present suits are fresh suits as they were not filed in accordance with the liberty granted by the High Court of Punjab and Haryana or within the time permitted to do so. Petitioners have also raised a plea that the present suits are between different parties and seek reliefs different from the ones in the earlier suits.

29. The Trial Court, in my view, has rightly held that these issues cannot be decided at the threshold and require evidence. It would well be open for the Petitioners to lead evidence to support their plea of the

suits being barred by limitation and the Respondent would have the opportunity to lead evidence to show otherwise. Since this Court is unable to conclude from an *ex facie* reading of the complaints that they are barred by limitation, no error has been committed by the Trial Court in dismissing the applications under Order VII Rule 11 CPC.

30. Insofar as the judgment in ***Hanamanthappa and Another (supra)***, relied upon by the Petitioners is concerned, the short issue before the Supreme Court was an objection by the Petitioner/Defendant that the Plaintiff had, after the return of the plaint for presentation to proper Court having territorial jurisdiction, materially altered the same, without seeking permission for amendment. In that context, the Supreme Court observed that plaint cannot be dismissed always on the ground that Plaintiff made averments which do not find mention in the original plaint presented in the wrong Court, as an amendment can always be sought under Order VI Rule 17 CPC and at best, it can be treated as a fresh plaint and matter can proceed in accordance with law. In the present cases, it is only an allegation of the Petitioners that the Respondent has altered the complaints and on this ground, rejection of the complaints is sought under Order VII Rule 11 CPC. The Trial Court has rightly held that this would be an arguable issue and on this ground alone, at this stage, complaints cannot be rejected.

31. The judgment in ***Alphabetics Pvt. Ltd. (supra)*** passed by this Court holds that under Order VII Rule 10-A CPC, the Court returning the plaint is required to intimate its decision to the Plaintiff to enable it to take appropriate steps in the matter and is wholly inapplicable to the controversy involved in the present case.

32. In ***Deena (Dead) Through LRs (supra)***, the Supreme Court has laid down that the main factor which would influence the Court in extending the benefit of Section 14 of the Act to a litigant, would be that the prosecution was with due diligence and in good faith. There

can be no quarrel with the binding dicta of the Supreme Court. In fact, the whole claim of the Respondent before the Trial Court is that it was prosecuting the suits before the District Court, Faridabad with due diligence and in good faith. Trial Court has dismissed the applications of the Petitioners under Order VII Rule 11 CPC only on the ground that limitation being a question of facts and law would require evidence. This judgment, therefore, does not come to the aid of the Petitioners in seeking setting aside of the impugned order by the Trial Court.

33. For all the aforesaid reasons, the Revisions Petitions are dismissed, upholding the impugned order dated 05.08.2017.

34. Revision petitions along with pending applications are, accordingly, disposed of.

JYOTI SINGH, J

DECEMBER 06, 2022/shivam/rk