

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

**FMAT 187 OF 2023
WITH
CAN 1 OF 2023
&
CAN 2 OF 2023**

**Subrata Sarkar
Vs.
Subrata Roy & Ors.**

Appearance:

For the Petitioners : **Mr. Sourav Sen, Adv.**

Judgment On : **07.07.2023**

PRASENJIT BISWAS, J.:

The instant appeal is filed by the applicant assailing the impugned order dated 25.06.2018 passed by the learned Civil Judge (senior

Division) Balurghat, Dakshin Dinajpur in connection with Partition Suit No. 121 of 2017.

The facts and circumstances giving rise to this case are that that the respondents no(s) 1 and 2/ plaintiffs filed a suit before the trial court praying for partition of the subject property against this applicant and the respondents no(s) 3 to 10 coupled with an application for injunction filed under Order 39 Rule 1 (a) (b) and (c) and section 151 of the Code of Civil Procedure. Defendants entered appearance in the suit and contested the application by filing written objection. The plea has been taken by the plaintiffs that the respondents are making construction over the case property which he cannot do as the property is joint and has not been partitioned by metes and bounds. After hearing of both sides trial court disposed of the application on 25.06.2018 directing both the parties to maintain *status quo* relating to the nature, character, and possession of the suit property till disposal of the suit.

It is the specific stand of this applicant that he preferred an appeal before the District Judge, Dakshin Dinajpur challenging the order dated 25.06.2018 on advice of his learned Advocate which in turn transferred the same to the Additional District and Sessions Judge, Fast Track Court Balurghat for disposal by an order dated 21.01.2022. The Additional District and Sessions Judge, Fast Track Court by an order dated 25.08.2022 returned the memo of appeal to this applicant with observation that the court has no jurisdiction to proceed with the appeal. Thereafter this instant appeal has been preferred by this applicant causing a delay of 1657 days.

Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On perusal of the

said Section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;
- (3) The failure of the prior 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.

The policy of the Section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not

affect a person honestly doing his best to get his case tried on merits. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or law or defect of procedure. Having regarded to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded. 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.

In order to attract the application of Section 14(1) the parties seeking its benefit must satisfy the Court that (i) that the party as the plaintiff was prosecuting another civil proceeding with due diligence; (ii) that the earlier proceeding and the later proceeding related to the same matter in issue and (iii) the former proceeding was being prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature is unable to entertain it.

The defect of Jurisdiction goes to the root of the matter as the Court is incompetent to entertain the proceedings. It is well-settled that if a litigant is pursuing a bona fide civil proceeding with due diligence and in good faith in any appeal or revision he is entitled to the exclusion of the time taken in such proceeding. The combined effect of Sections 5 and 14 of the Limitation Act would, therefore, undoubtedly entitle the appellants to exclude the time taken by them while the appeal was pending before the Additional District Judge Fast Track Court provided it would be pleaded in the application. It is true that Section 14 in terms applies to suits and not to appeals but in substance the same principle

may be applied. The present application has been made under Section 5 of the Limitation Act. Even for successfully invoking the benefit of Section 5, the appellant has to make out sufficient cause and therefore, reckless or grossly negligent conduct of the appellant would be inconsistent with such sufficient cause.

It is apparent on the face of the application that the memo of appeal was returned to the applicant by order of the Additional District Judge Fast Track Court dated 25.08.2022 but the applicant sat idle on it. The bona fide and prudent course may well have been for the applicant to promptly withdraw the appeal from the District Judge or Additional District Judge, Fast Track Court and to seek remedial measures if any such remedy was available to them. The petitioner's conduct show a cavalier approach to the strict law of limitation and betrays a lack of requisite diligence. Thus, the appellant has utterly failed to show that he had been prosecuting with due diligence another civil proceeding and that he had acted in good faith. His conduct falls short of the standard of due care and attention attributed to an ordinary and prudent person. Therefore, the appellant is not entitled to the benefit of Section 14 of the Limitation Act. It is true that Section 14 in terms applies to suits and not to appeals but in substance the same principle may be applied.

Thus the petition is without merit and is liable to be dismissed.

CAN 2 of 2023 is hereby dismissed.

There shall, however, be no order as to costs.

Consequently appeal is not admitted. CAN 1 of 2023 is also rejected accordingly.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)