



2023:DHC:8083



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 16th October, 2023**
+ **C.R.P. 36/2023 and CM APPL. No.6047/2023**

SUBHASH WADHWA Petitioner
Through: **Mr.Rajesh Yadav, Senior Adv with**
Mr.Varun Mehlawat and
Mr.Dhananjay Mehlawat , Advocates

versus

GURPREET SINGH Respondent
Through: **Mr.Ravi Sharma, Advocate**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

CHANDRA DHARI SINGH, J (Oral)

1. The present Civil Revision Petition has been filed by the petitioner under Section 115 of the Code of Civil Procedure, 1908 ('CPC' hereinafter), seeking the following reliefs:

- “ a) Call for records of the suit bearing CS SCJ 1335 of 2021 titled “Gurpreet Singh Versus Subhash Wadhwa”, pending in the Court of Sh. Pritu Raj, Civil Judge, North, Rohini, Delhi;*
- b) allow the present revision petition thereby setting aside the order dated 13.12.2022 passed by the court of Sh.Pritu Raj, Civil Judge, North, Rohini, Delhi in suit bearing CS SCJ 1335 of 2021 titled “Gurpreet Singh Versus Subhash Wadhwa”*
- c) allow the application of the petitioner filed under*



*Order VII Rule 11 read with Section 151 CPC filed by rejecting/dismissing the Civil suit No. 1335 of 2021 titled as “Gurpreet Singh Versus Subhash Wadhwa”;
d) Pass such other/further orders as this Hon’ble Court deem fit and proper in the facts and circumstances of the case.”*

2. The petitioner (defendant before the learned Trial Court) has filed the present petition against the impugned order dated 13th December, 2022, passed by the learned Trial Court, whereby, the learned Court below rejected the application filed by the petitioner under Order VII Rule 11 of the CPC.
3. In the year 2000, a land admeasuring 7 biswas, 350 sq. yards bearing Khasra no. 48/11 Min, situated at Krishna Nagar, village, Mamurpur, Narela, Delhi (‘suit property’ hereinafter) was purchased for the construction of Gurudwara by taking loans from various means and the General Power of Attorney (‘GPA’ hereinafter) dated 22nd May, 2000, was signed in the name of the donors including both petitioner and the respondent.
4. In the year 2001, the petitioner filed a civil suit bearing no. 326/2001 for perpetual injunction alleging that the respondent had fraudulently inserted his name in the GPA. In the year 2014, the said suit was dismissed by the Trial Court on merits.
5. Thereafter, the respondent filed a suit bearing no. 1335/2021 before the learned Trial Court for declaration, permanent & mandatory injunction *qua* the suit property by claiming himself as the owner of the land in the year 2021. During the pendency of the said suit, the petitioner filed the application under Order VII Rule 11 of the CPC, for rejection of the respondent’s plaint on grounds of delay of more than 20 years.



6. The learned Trial Court dismissed the said application *vide* the impugned order dated 13th December, 2022 and held that the contents of the plaint suggest that the plaintiff/respondent was under genuine impression about the pendency of a similar suit and therefore, Section 14 of the Limitation Act, 1963 ('the Act' hereinafter), shall be applicable.

7. Aggrieved by the same, the petitioner has preferred the present petition seeking revision of the impugned order.

8. The learned counsel appearing on behalf of the petitioner submits that the impugned order passed by the learned Trial Court is bad in law as the learned Court below failed to consider the cumulative effect of the pleadings of the respondent whereby the plaint itself suggest that the respondent was well aware of the alleged act of the petitioner in the year 2001, and still chose to file the suit in the year 2021, thereby leading to a delay of 20 years.

9. It is submitted that the learned Trial Court failed to take into consideration the entire facts and circumstance available before it and did not appreciate the settled legal principles of law as per which in the event, it is apparent from the face of the record that the plaint is liable to be rejected on the grounds mentioned in Order VII Rule 11 of the CPC.

10. It is submitted that the cause of action for the relief claimed under the suit arose in the year 2001 itself, and therefore, the suit filed in the year 2021 is barred by time.

11. It is also submitted that it is a settled position of law that an issue of limitation is not always a mixed question of law and fact and rejection of the suit under Order VII Rule 11 of the CPC, can be made out whenever a suit



appears to be barred by time from the contents of the plaint.

12. It is further submitted that the learned Court below failed to consider that the earlier suit filed by the respondent was rejected on merit and not due to the defect of jurisdiction, and the Hon'ble Supreme Court has clarified that the 'other cause of like nature' is *ejusdem generis* to 'defect of jurisdiction' therefore, the passing of impugned order has resulted in grave miscarriage of justice.

13. Therefore, in view of the foregoing submissions, it is prayed that the present petition may be allowed, and reliefs be granted, as prayed.

14. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the present petition submitting to the effect that the learned Court below rightly dismissed the application filed by the petitioners.

15. It is submitted that the scope of rejection of plaint under Order VII Rule 11 of the CPC is very limited, whereby, the learned Trial Court only needs to refer to the plaint filed by the parties and not any other record.

16. It is also submitted that the contention raised by the petitioner regarding the issue of limitation is covered by Section 14 of the Act, where the petitioner had filed a suit bearing no. 326/2001, before the Trial Court and therefore, the respondent was under genuine impression that he cannot file a suit of similar nature.

17. It is further submitted that the respondent/plaintiffs were under genuine impression that no separate suit for cancellation of the sale deed is needed as he would have gotten the same relief in the suit which was already



pending before the Trial Court.

18. Therefore, in view of the foregoing submissions, the learned counsel appearing on behalf of the respondent submitted that the present petition, being devoid of any merits, may be dismissed.

19. Heard learned counsel for the parties and perused the records.

20. The petitioner has preferred the instant petition against the impugned order of the learned Trial Court, whereby, the Court rejected the application filed for dismissal of the suit filed by the respondent seeking declaration and permanent injunction for the suit property.

21. Before delving into the impugned order, it is apposite to reiterate the settled principle regarding the rejection of plaint under Order VII Rule 11 of the CPC. The said aspect is not a *res integra* rather prevail as the settled principle of law, where the Trial Court need to adjudicate the issue on the basis of the averments made in the plaint.

22. The underlying object of Order VII Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that judicial time is not wasted.

23. It is well settled that the Court, while deciding such an application must have due regard only to the statements made in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement.



24. Therefore, the consideration before this Court is whether the plaint filed by the respondent suggests the suit to be barred by limitation. The relevant extracts of the plaint reads as follows:

“4. That the defendant fraudulently inserted his name in the said documents, such as registered General Power of Attorney, Will, Agreement to Sell, Receipt, Possession Letter, Affidavit, all dated 22.05.2000 and after execution of the sale deed, he kept the original documents with himself. As before, he kept working in the Gurudwara as Sewadar. However in addition, he started supervising the construction of the Gurudwara. He also used to keep account of the Gurudwara.

5. That the fraud committed by defendant came into limelight only when the defendant filed a Suit bearing No.326/2001 in the Court of Ms. Madhu Jain, the then Civil Judge, Delhi.

6. That the defendant filed the aforesaid suit for Perpetual Injunction, in which he alleged that he is the owner of the said suit land, which he had purchased and got inserted the name of plaintiff herein, as he had allegedly stated that the father of the plaintiff had done mesmerism upon him, resulting of which the name of the plaintiff was inserted in the said sale-purchase documents whereas the fact is that the entire sale consideration was paid by the plaintiff and his brother. The further defendant stated in his plaint that he had taken the money from his father, late Shri Tola Ram.

7. That the plaintiff herein filed his written statement in the said suit on 29th October, 2001, wherein the plaintiff had specifically taken the plea that the defendant herein had fraudulently inserted his name in the said title papers, wherein the Sangat of the Gurudwara had paid the money for the purchase of the said suit land. The name of the contributors, who had paid for the purchase



of the said land, on which the Gurudwara has been constructed, has been stated in para No.2 of the plaint.

8. That the said suit filed by defendant was dismissed by the Ld. Court of Ms. Prabhdeep Kaur, the then Civil Judge, on 13.05.2014.

9. That the defendant preferred an appeal against the said judgment and decree dated 13.05.2014 and the said appeal was dismissed by the Ld. Court of Ms. Vandana, the then Senior Civil Judge, vide order dated 08.05.2018.”

25. On perusal of the aforesaid paragraphs of the plaint, it is clear that the cause of action to file the suit arose in the year 2001 and the suit filed by the petitioner suffers from an inordinate delay of 20 years.

26. The paragraph no. 7 of the plaint clearly suggests that the respondent had filed their written submissions in the said suit filed by the petitioner, therefore, the issue of limitation does arise in the suit filed by the respondent as he was well aware of the dispute in 2001 itself.

27. Section 5 of the Act, provides for extension of prescribed period for filing an application under any provision except Order XXI of the CPC, thereby, giving powers to the Court to admit the application by condoning the delay after the prescribed period of limitation. The said provision is reproduced herein:

"Section 5. Extension of prescribed period in certain cases.

Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not



preferring the appeal or making the application within such period.

Explanation.--The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

28. On perusal of the aforesaid provision, it is clear that the phrase 'sufficient cause' is a necessary condition for the extension of the prescribed period under the Act. Therefore, the petitioner/applicant needs to satisfy the Court that there did not arise 'sufficient cause' for delay in filing the suit after 20 years.

29. The term 'sufficient cause' as mentioned in the provision has been interpreted in different manner by different Courts and it is well settled that the question of what constitutes sufficient delay cannot be laid down by hard and fast rule, rather the same is to be decided by the courts on facts of the intervening circumstances of each case.

30. In the instant case, the delay of 20 years has been duly mentioned in the plaint, raising the issue of limitation however, the learned Trial Court failed to take the said aspect into consideration while dismissing the application filed by the petitioner. The operative part of the impugned order is reproduced below:

"7. Further it is a establish rule of law that (missing) the rejection of a plaint at a very outset is a drastic step, the condition enumerated under Order VII Rule 11 CPC are to be adhere to strictly. Further it is also an establish



*rule of law that while considering an application under Order VII Rule 11 CPC, the court has to go through the entire plaint and the same cannot be rejected by reading only a few para/ lines while ignoring the other relevant paragraphs. Reliance in this regard is based on **Sh. Biswanath Banik & anr. VS. Smt. Sulanga Bose & Ors., (2022) 7 SCC 731** wherein it was held as follows:*

7. Now, so far as the issue whether the suit can be said to be barred by limitation or not, at this stage, what is required to be considered is the averments in the plaint. Only in a case where on the face of it, it is seen that the suit is barred by limitation, then and then only a plaint can be rejected under Order VII Rule 11(d) CPC on the ground of limitation. At this stage what is required to be considered is the averments in the plaint. For the aforesaid purpose, the Court has to consider and read the averments in the plaint as a whole. As observed and held by this Court in the case of Ram Prakash Gupta (supra), rejection of a plaint under Order VII Rule 11(d) CPC by reading only few lines and passages and ignoring the other relevant parts of the plaint is impermissible. In the said decision, in paragraph 21, it is observed and held as under:-

“21. As observed earlier, before passing an order in an application filed for rejection of the plaint under Order 7 Rule 11(d), it is but proper to verify the entire plaint averments. The abovementioned materials clearly show that the decree passed in Suit No. 183 of 1974 came to the knowledge of the plaintiff in the year 1986, when Suit No. 424 of 1989 titled Assema Architect v. Ram Prakash was filed in which a copy of the earlier decree was placed on record and thereafter he took steps at the earliest and filed the suit for



declaration and in the alternative for possession. It is not in dispute that as per Article 59 of the Limitation Act, 1963, a suit ought to have been filed within a period of three years from the date of the knowledge. The knowledge mentioned in the plaint cannot be termed as inadequate and incomplete as observed by the High Court. While deciding the application under Order 7 Rule 11, few lines or passage should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import. We are of the view that both the trial court as well as the High Court failed to advert to the relevant averments as stated in the plaint.”

o 7.1 From the aforesaid decision and even otherwise as held by this Court in a catena of decisions, while considering an application under Order VII Rule 11 CPC, the Court has to go through the entire plaint averments and cannot reject the plaint by reading only few lines/passages and ignoring the other relevant parts of the plaint.”

8. Coming to the facts of the present case, as discussed above, the court has to restrict itself only to the averments made in the plaint while dealing with application under Order VII Rule 11, CPC. The entire crux of the case of the defendant is that since the plaintiff had knowledge about the alleged fraud in the year 2001 itself, the suit for cancellation ought to have been filed within time frame of three years as mandated by article 58/59, Limitation Act, 1961 (hereinafter called Limitation Act).

9. A perusal of the plaint filed by the plaintiff shows that even though the plaintiff has averred in his plaint that the alleged fraud of the defendant came to his



knowledge only upon the filing of the suit bearing no. 336/2001, he has also averred that in para 13 of his plaint that he ***“was always under the realm of faith that he will get justice by not filing any other suit earlier against defendant for the cancellation of the name of the defendant from the title documents...”***. Hence, upon a conjoint reading of the plaint, it becomes clear that the defendant, while admitting the knowledge of alleged fraud in the year 2001, has also averred that he was under the impression that no separate suit for cancellation needed to be filed as he would get the relief in the suit which was already pending between the parties.

10. In the considered opinion of this court, the plaint of the plaintiff cannot be read in part and has to be read in full and upon doing so, the irrefutable conclusion which comes out is that the plaintiff has claimed the defence of pursuing a case, bonafide, in a court which could not grant the relief claimed by him in terms of Section 14 of the Limitation Act. Now the question as to whether the defence claimed by the plaintiff would fall under the purview of “cause of like nature”, it is settled law that the said terms has to be interpreted in regard to the subject matter of the suit. Reliance in this regard is placed on ***Shakti Tubes Ltd. Vs. State of Bihar (2009) 1 SCC 786***. In the considered opinion of this court, the defence for claiming exemption of period of limitation claimed by the plaintiff falls within the purview of cause of a like nature given the factual matrix of the case and the specific averments made by the plaintiff that he had contested the earlier case of the defendant (plaintiff therein) on the premise that he would set the relief claimed by him as stated above, which ought to be proved by both the parties leading evidence to the said effect during the course of trial.



*11. Furthermore, given the aforesaid factual matrix and the specific averments raised by the plaintiff in his plaint, the issue of limitation becomes a mixed question of facts and law and such being the case, the plaint cannot be rejected at the preliminary stage of consideration of an application under Order VII Rule 11 CPC. Reliance in this regard is placed on **Saleem D. Agboatwala and Ors. Vs. Shamalji Oddhavji Thakkar and Ors. (Civil Appeal No. 5641/21, SC, DOD 17.09.2021)**.*

12. The reliance is placed by the Ld. Counsel for the defendant on documents other than the plaint is misplaced in light of the settled preposition of law that during consideration of an application under Order VII Rule 11, CPC, it is only the contents of the plaint which has to be looked into.

13. In light of the aforesaid observations the present petition is hereby dismissed as being devoid of merits. However, an issue regarding limitation is hereby framed, “Whether the present suit is within limitation? OPD”.

31. The aforesaid paragraphs of the impugned order clearly suggests that the learned Court below erred in stating that the issue regarding the limitation cannot be adjudicated in an application filed under Order VII Rule 11 of the CPC, as the said aspect is covered under Section 14 of the Act.

32. The perusal of the impugned order also makes it clear that the learned Trial Court agreed with the contention of the respondent and did not reject the suit on the grounds of the said delay rather deems it fit to apply Section 14 of the Act, which provided exemption to the plaintiff/respondent.

33. Therefore, this Court needs to analyse the purpose and intent of the said provision and need to decide whether the said provision can be made



applicable to the suit filed by the respondent before the learned Trial Court.

Section 14 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. (2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. (3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature. Explanation.—For the purposes of this section,— (a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted; (b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding; (c) misjoinder of



parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

34. On perusal of the said provision, it is clear that there are certain ingredients which have to be met for application of the said provision on the suit. As per the said provision, the plaintiff needs to first establish that they were prosecuting the civil suit with due diligence, second, that the former proceedings were prosecuted in a Court which, from defect of jurisdiction or other cause of like nature, is unable to entertain it and lastly, that the earlier suit should be related to the same issue and the same reliefs must have been sought by the plaintiff.

35. The nature and scope of the said provision has been expounded and enunciated by the Hon'ble Supreme Court in a catena of judgments, whereby, the Hon'ble Court has delved into the aspects related to the said provisions and the situations where it can be attracted. In ***Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169***, the Hon'ble Court discussed the scope of the said provision and held as follows:

“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.”

36. In **Ganga Devi v. S.S. Singh, 2018 SCC OnLine All 5794**, the Allahabad High Court summarized the settled position regarding the application of Section 14 of the Act, and held as follows:

“43. Nature and scope of Section 14 of Limitation Act.

44. In Uppala Subbaiah v. Chitralla Narsimloo, AIR 1956 Hyderabad 161, the Court said that:

“8. The principle underlying section 14 Limitation Act is to protect against the bar of limitation a person honestly doing his best to get



his case tried on the merits but failing through the Court being unable to give him such trial.”.

45. In Azam Jung v. Mohd. Abdul Razzack, AIR 1957 Hyderabad 4, the Court said that:

“2. The short point to be determined in this case is as to whether the plaintiff could avail himself of Section 14 of Limitation Act. To entitle the plaintiff to the benefit of the terms of Section 14 Limitation Act, it is sufficient to show that he prosecuted the suit bona fide with due diligence. It was urged by the learned counsel for the petitioner that there was considerable doubt as to whether the suit land was within the municipal limits of Secunderabad and the notifications issued by Government in this regard were not precise.

It was therefore urged that as it was not clear as to within what Municipality this particular area came the plaintiff on the legal advice tendered to him then filed the suit initially in the City Civil Court and later on when he was informed that the land was within the jurisdiction of the Secunderabad Court he presented it in the District Court at Secunderabad. In support of this contention the petitioner has filed an affidavit. Section 14, sub section (1) Limitation Act is as follows:

It would appear from the wording of the section that the Court is not given any discretion but the litigant is entitled as of right, to exclude the period spent in infructuous proceedings where he satisfies the Court that he was prosecuting the suit bona fide with due diligence. In the instant



case the mistake that has been made is he filing of the suit in the Court which had no territorial jurisdiction and this mistake had been occasioned by the advice tendered to the petitioner by his legal adviser.

It may be straightway pointed out that a mistake made unintentionally would be taken as having been made in good faith. Where therefore from a bona fide mistake of fact the litigant has been misled into litigation in a wrong Court such party could avail himself of Section 14, Limitation Act. The question would be, did the plaintiff sue in the wrong Court knowingly.

A person would be said to be suing in a wrong Court knowingly where for example he deliberately undervalues the subject matter of the suit to save court fee or for any other reason. This is not a case like that. The other ingredient necessary for relief under Section 14 Limitation Act is that the suit should have been prosecuted in good faith. A person cannot be said to be acting without good faith where he relies upon the advice of a person whose status entitled him to give advice to litigants. As has been observed above, in this case the petitioner wholly relied upon the advice of his legal adviser.

It was argued that the objection to the jurisdiction of the Court was raised at the earliest stage in the City Civil Court where the plaint was presented for the first time. Although the objection was taken by the defendant the Court did not give any decision but the matter was pending in the lower Court for a long time and undoubtedly the plaintiff could not be held responsible for the



delay in the Court disposing of the case. If a finding had been given early and the plaint returned immediately thereafter the plaintiff could have presented it in the proper Court early. This objection in my opinion is of no avail.”

46. In Firm Bansi Baldeo Pershad v. Firm Alopi Pershad and Sons Ltd., AIR 1963 Punjab 556, the Court said that:

“7. I am not unmindful of the position that normally speaking section 14 Indian Limitation Act should be liberally construed and trials on merits of controversies should not be shut out on unsubstantial or technical grounds. I am further aware that unlike section 5 of the Limitation Act, section 14 is couched in language which appears prima facie to be mandatory for form and, therefore, if a plaintiff succeed in suing good faith in instituting a suit in a Court without jurisdiction and due diligence in prosecuting the same, then he is entitled as of right to claim exclusion of the time spent in diligent prosecution of the said suit.”

47. In Lokanath Biswal v. Union of India, AIR 2008 Orissa 33, the Court said that:

“9. Section 14 of Limitation Act contains a general principle based on justice, equity and good conscience and the said principle should be applied without strict regard to the period of limitation prescribed. A person prosecuting under a mistake of law is entitled to the benefit of Section 14 whereas while dealing with a petition filed under Section 5 of Limitation Act, a Court has to be satisfied that there was reasonable ground for approaching the Court late and that



each day of delay is more or less explained. Thus exclusion of time under Section 14 of Limitation Act is mandatory whereas the Court powers under Section 5 of the Limitation Act is discretionary. ...”

48. *In Raghunath Das. v. Gokal Chand, AIR 1958 SC 827, the Apex Court said that:*

“10. ... The period of limitation fixed by Art. 120 is six years from the date when the right to sue accrues. In order, therefore, to be within the period of limitation the plaintiff claims to exclude the period November 15, 1939, to March 15, 1945, spent in the execution proceedings. Section 14 (1) of the Indian Limitation Act runs as follows:

The respondent contends that the above section has no application to the facts of his case. We do not think that such contention is well-founded. The execution proceedings initiated by Raghunath Das were certainly civil proceedings and there can be no doubt that he prosecuted such civil proceedings with due diligence and good faith, for he was obviously anxious to have his share of the G.P. Notes separately allocated to him. He lost in the execution court but went on appeal to the High Court where he succeeded before a Single Judge, but eventually he failed before the Division Bench which reversed the order the Single Judge had passed in his favour. Therefore, there can be no question of want of due diligence and good faith on the part of Raghunath Das. In the next place the section excludes the time spent both in a court of first instance and in a court of appeal. Therefore, other conditions being



satisfied, the entire period mentioned above would be liable to be excluded. The only questions that remain are (1) whether the proceedings were founded upon the same cause of action and (2) whether he prosecuted the proceedings in good faith in a court which for defect of jurisdiction “, as unable to entertain it. The execution proceedings were founded upon his claim to enforce his rights declared under the decree upon the award. The cause of action in the present suit is also for enforcement of the same right, the only difference being that in the former proceedings Raghunath Das was seeking to enforce his rights in execution and in the present instance he is seeking to enforce the same rights in a regular suit. There is nothing new that he is asking for in the present suit. That he prosecuted the execution proceedings in the Subordinate Court as well as in the High Court in good faith cannot be denied, for the Single Judge of the High Court actually upheld his contention that the court had jurisdiction to entertain his application. The execution proceedings failed before the Division Bench on no other ground than that the executing court had no jurisdiction to entertain the application, because the decree sought to be executed was a nullity having been passed by a court which had no jurisdiction to pass it. Therefore, the defect of jurisdiction in the court that passed the decree became, as it were, attached to the decree itself and the executing court could not entertain the execution proceeding on account of the same defect. The defect of jurisdiction in the executing court was finally determined when the Division Bench



reversed the decision of the Single Judge who had entertained the execution proceeding. In our opinion Raghunath Das is entitled to the benefit of s. 14 (1) of the Indian Limitation Act and the period here in before mentioned being excluded, there can be no doubt that the suit was filed well within the prescribed period of limitation and the judgment of the Division Bench cannot be sustained.”

(Emphasis added by this Court)

49. *In Lal Bihar Lall v. Bani Madhava Khati, AIR 1949 Patna 293 (F.B.), after considering large number of judicial pronouncement on the subject, the Court said that:*

“7. In Radhakishun v. Firm Srinivas Ram Kumar, A.I.R. 1944 Pat. 225, (to which the facts of the present case are closely analogous) there was no reason to doubt that the plaintiffs had prosecuted the former proceeding with due diligence and in good faith. Order 21 Rule 103, no doubt provides that where an order is made under Rule 98.99 or 101, the party against whom the order is made may institute a suit to establish the right with he claims, but, subject to the result of such suit, if any, the order shall be conclusive. Instead of filing a suit the plaintiffs had appeared against the order of the executing Court. It is manifest that the plaintiffs had acted under mistake of law. But that mistake is bona fide is supported by the circumstance that the High Court admitted the appeal and issued notice. In the order sheet it is indeed stated that if it is found at the time of hearing that no appear lies, the application might be treated as an application for revision. On



appellants' behalf it was pleaded that they were misled by wrong advice given bond fide by their lawyer. In my opinion, such a plea, if established, would entitle the plaintiffs to claim the benefit of Section 14. This view is supported by high authorities. In Brij Inder Singh v. Kansin Ram, A.I.R. 1917 P.C. 156 the aggrieved party had presented an application for review of judgment within the ordinary period limited for appealing. Since review was not the proper remedy for abatement, the proceeding by way of review instead of by appeal was a mistake in law. Lord Dunedin nevertheless held that the judicial discretion given by Section 5 Limitation Act should be exercised and that the time occupied by an application in good faith for review, although made upon a mistaken view of the law, should be deemed as added to the period allowed for pressing the appeal. Again in Sunderbal v. Collector of Belgaum, A.I.R. 1918 P.C. 135 the Judicial Committee held that the fact that an appellant had acted on mistaken advice as to the law in appealing to the High Court did not preclude him from showing that it was owing to his reliance on that advice that he had not presented the appeal to the Court of the District Judge within the period of limitation. In Radhahishun v. Firm Srimvas Ram Kumar MANU/BH/0053/1943 as also in the pre-sent case the admitted facts establish that the plaintiff had prosecuted the previous proceeding in good faith and with due diligence.

8. It is next necessary to investigate whether previous proceedings in the High Court were abortive "for defect of Jurisdiction or other cause



*of like nature”. It is obvious that in dismissing the appeal or civil revision the High Court was not acting from any defect of jurisdiction. But the question is—was the High Court unable to entertain the application from “other cause of like nature” to defect of jurisdiction? Before construing the phrase, it is of importance to bear in mind the essential object of Section 14, and the principle which underlies it. The principle is that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but falling through the Court being unable to give him such a trial. The principle is clearly applicable not only to cases in which a man brings his suit in the wrong Court, that is, a Court having no jurisdiction to entertain it but also where he brings the suit in the wrong Court in consequence of a bona fide mistake of law or defect of procedure. It is moreover established by the authorities that given good faith and due diligence, a cause is not prevented from being a like nature to defect of jurisdiction merely because it was in the plaintiff's own power to avoid or resulted from his own act or from a bona fide mistake of law or procedure which prevented the ‘Court’ in limine from entertaining the suit. In *Deo Prasad Singh v. Pertap Kairee*, 10 Cal. 86 a Division Bench of the Calcutta High Court held that dismissal of a suit on the ground of misjoinder of cause of action was a cause of like nature to defect of jurisdiction. The learned Judges observed that the test was not whether the cause was one within the plaintiff's own power to avoid because it was equally in plaintiff's own power to avoid suing in a Court which for defect*



of jurisdiction was unable to entertain the suit. In the Full Bench case of Brij Mohan Das. Manu Bibi, 19 All. 348 the plaintiff bona fide believed that having regard to the value of the property his suit was not within the jurisdiction of the Munsif and brought his suit in the Court of the Subordinate Judge of Allahabad, Subsequently, the Subordinate Judge held that the suit should have been valued with reference to the amount of the decree sought to be executed and not with reference to the value of the property sought to be sold. He, therefore, returned the plaint to the plaintiff to be presented to the proper Court. The Full Bench held that the maxim Ignorantia legis neminem excusat was not applicable to the case. They held that where a plaintiff had prosecuted his suit in a wrong Court in consequence of a bona fide mistake of law he was entitled to the benefit of Section 14, Limitation Act.

9. In Yepuri Venhamma v. Tabbisetii Parthasarathis and Bros, A.I.R. 1926 Mad. 1081 a prior suit for a declaration of title was dismissed as not maintainable because in prosecuting the suit court be deducted under Section 14, Limitation Act, as the defect was of a like nature with defect of jurisdiction. In Hem Chunder Chowdhary v. Kali Prosumno Bhaduri, 30 I.A. 177 the facts were that in 1890 a suit was brought against certain talukdars claiming to enhance the rent and to recover rent at an enhanced rate for a particular year. The first prayer was allowed but the second claim was rejected upon the ground that it was premature. Five years thereafter the plaintiff brought a suit to recover, inter alia, rent at the enhanced rate for



the same year. The Subordinate Judge held that this claim was barred by res judicata. In appeal, the High Court did not accept this view but held that it was barred by limitation. The Judicial Committee held that there was no bar of limitation. They observed:

In the opinion of their Lordships the proceedings in the earlier suit stayed the operation of the law of limitation and as the appellant claimed the arrears of 1298 in that suit, but his claim was then disallowed as premature, he is now entitled to the benefit of the decree for enhancement and to recover the arrears at the enhanced rate.

10. In Marasimma v. Muttayan, 13 Mad. 451, the obligees interest under a hypothecation bond had vested in six person, of whom three brought a suit in District Court and three brought a similar suit in a Munsif's Court to recover with interest their due shares of the sum secured. The former suit was dismissed as not being tenable and the latter was withdrawn. The present suit was brought by all six persons. The High Court held that in computing the time within which the plaintiffs had to sue, the time occupied by them in prosecuting the former suits should be deducted. In Ganpatrao Sultanrao v. Anandrao Jagdeorao, A.I.R. 1920 Bom. 208 the plaintiff had filed a suit against the defendant to recover excess amount levied in execution. The Court dismissed the suit on the ground that the applicant's proper remedy was to apply to the execution Court. Thereupon the plaintiff applied to the execution Court to obtain refund of the money recovered in excess from him. The learned Judges held that the



application for refund was property made under Section 47 Civil P.C., to the executing Court and that the application was not time barred because the time taken in prosecuting the previous suit should be deducted under Section 14, Limitation Act. In Keshori Mal v. Jagdish Narayan, 1923 SCC OnLine Pat 138 an application for execution was dismissed on the ground that the prayer for execution of the decree was joint with a prayer which related to relief in another decree and which the Court thought that it is not competent to grant. In a second application to execute the decree, Mullick and Bucknill JJ., held that the period spent in prosecuting the previous application should be deducted under Section 14, Limitation Act.”

(Emphasis added by this Court)

50. In Syed Ahmed v. Qadir Unnissa Begum, AIR 1954 A.P. 225, the Court said that:

“2. The question for determination in this appeal is whether the word “Court of appeal” is wide enough to include a revisional court and whether prosecuting a revision in the High Court against an adverse order in a claim petition could be said to be 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 learned advocate for the Appellant has cited before us the case of - Lal Bihari Lall v. Bani Madava, 1949 SCC OnLine Pat 108 : AIR 1949 Pat 293 at P. 295 (FB) (A) and Venkataswami v. Sara Bai, 1943 SCC OnLine Mad 310 : AIR 1943 Mad 633 (B), in support of his contention that the time spent in pursuing the remedy by way of revision



before the High Court ought to be allowed in computing the period of limitation for a suit filed under Order 21, Rule 63.

In the case of - Ramdutt Ramkissen Dass v. E.D. Sassoon and Co., 1929 SCC OnLine PC 3 : AIR 1929 PC (C), their Lordships of the Privy Council observed that: In Indian litigation it is consistent with the experience of their Lordships that the time necessary for the decision in a suit may be of much longer duration than one is accustomed to in the Courts of Great Britain. Hence the necessity for some provision to protect a bona fide Plaintiff from the consequence of some mistake which had been made by his advisers in prosecuting his claim.

In that case their Lordships allowed time spent before arbitrators under Section 14, Limitation Act. In the Full Bench judgment in - AIR 1949 Pa 296 (A)', after an exhaustive review of the case law it was observed:

The principle is that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing through the Court being unable to give him such a trial. The principle is clearly applicable not only to case in which a man brings his suit in the Wrong Court, that is, a Court having no jurisdiction to entertain it, but also where he brings the suit in the wrong Court in consequence of a bona fide mistaken of law or defect-' of procedure. It is moreover established by the authorities that given good faith and due diligence, a cause is not prevented from being of a like nature to defect of jurisdiction merely because it was in the



Plaintiff's own power to avoid or resulted from his own act or from a bona fide mistake of law or procedure which prevented the Court in limine from entertaining the suit.

3. In that case also the suit was filed under Order 21 Rule 63 after a revision petition against an order under Order 21 Rule 58 Code of Civil Procedure had been rejected. It was held that the period spent by the Plaintiff in preventing his abortive civil revision petition should be allowed under Section 14, Limitation Act in computing limitation. The principle that time spent by the litigant to pursuing a remedy which is open to him should be allowed in computing the period of limitation is implicit in Section 14, Limitation Act which ought to be construed liberally.

This is the trend of decisions in the other Indian High Courts where it has been observed that a cause of like nature need not be always one which the Plaintiff could have avoided, because it is equally in the Plaintiff's own power to avoid suing in a Court without jurisdiction. Merely because it was in the Plaintiff's own power to avoid, or the dismissal resulted from his own act or from a bona fide mistake of law or procedure, it cannot be said that the cause is not prevented from being of a like nature to defect of jurisdiction, provided there is good faith and due diligence.

This is evident from the observations of several pronouncements of their Lordships of the Privy Council to which reference has been made in the Full Bench judgment of the Patna High Court referred to above. We do not, therefore, propose to deal with all these cases as it would merely be



a repetition. It will, however, be sufficient to serve that an examination of the case law shows that the words “other cause of like nature” occurring in Section 14 has been treated as being wide enough to cover the case where a litigant is bona fide litigating rights but has been unsuccessful in obtaining them.

In-- Hurro Chunder Roy v. Shoorodhone Debia, 9 WR 402 (D) Peacock, C.J. Was of the opinion that there was no difference between not having power by law to decide upon a question and being unable for want of jurisdiction to decide upon it and that at all events not having power or authority by law was a cause of a like nature with defect of jurisdiction.

A Full Bench of the Labore High Court consisting of Harries C.J., Abdur Rahman and Mahajan JJ. in - Jai Kishen v. Peoples Bank of Northern India, AIR 1944 Lah 136 (E), held that if the words “or other cause of like nature” are read alongwith the expression “is unable to entertain” they would denote that the defect must be of such a character as to make it impossible for a Court to entertain the suit or application either in its inception or at all events as to prevent it from deciding it on merits. It cannot be denied that a Court of revision is precluded from deciding any question on merits and at any rate it is only limited to the scope of Section 115, Code of Civil Procedure.

Somayya, J., in ‘1943 SCC OnLine Mad 310 : AIR 1943 Mad 633 (B)’, dealing with a similar question namely, whether the time spent in prosecuting the proceedings in revision against



an adverse order under Order 21, Rule 58 observed:

As it was the practice of the Madras High Court to admit revisions against claim orders passed under Order 21, Rule 58, Code of Civil Procedure it could not be said that the decree holder had not acted bona fide and in good faith in filing the revision petition against the claim order especially when the revision was admitted by the High Court. Section 14 (1), Limitation Act, therefore, applied and the time taken in prosecuting the revision petition, i.e., the time between the date of its filing and the date of its dismissal should be deducted in computing the period of limitation for the suit.”

51. Hon'ble Apex Court and other High Courts held in their judgments following proceedings as another civil proceedings for the purpose of Section 14 of Limitation Act.:

- 1. Proceedings before Writ Court - In the case of J.M. Bhansali v. The State of Madras, AIR 1968 Mad. 373. (Para 2 and 3).*
- 2. Proceedings before Arbitrator - In the case of United India Insurance Co. Ltd. v. J.A. Infra Structure Pvt. Ltd.(Para 12).*
- 3. Proceedings before Consumer Courts - In the case of Saushish Diamonds Ltd. v. National Insurance Co. Ltd., (1998) 8 SCC 357 (Para 2).*
- 4. Proceedings before Registrar Co-operative Societies - In the cases of Thakur Jugal Kishore Sinha v. Sitamarhi Central Co-operative Bank Ltd., 1967 Cri. LJ 380 (Para-13) and in Defence*



Colony Co-operative Housing Society Ltd. Bangalore v. Lt. Col. B.J. Shantharaj, AIR 1998 Kar. 20 (Para 32).

5. Proceedings before Collector under Redemption of Mortgages (Punjab) Act - In the case of Pritam Kaur v. Sher Singh, (Para 14).

6. Proceedings before Deputy Commissioner of Labour (Appeal) - in the case of P. Sarathy v. State Bank of India (Para12).

7. Proceedings of miscellaneous remedy - in the case of Etasseri Munootta Mangalath Illath Kesavan Nambudri v. Puthusseri Theva Amma, AIR 1938 Mad 41 (Para 2).

52. Even proceedings before Revenue Court are held on other proceedings of civil nature and eligible under section 14 of Limitation Act for excluding of time consumed in those.

53. In Mt. Ananti v. Chhannu, AIR 1930 All 193 (FB) and in Second Appeal No. 28 of 1952 (Yasin Mohammad v. Mirza Ahsan Beg) decided on 17.11.1953.

54. It is settled law that time consumed in pursuing the remedy of revision will also be excluded under Section 14 of Limitation Act as has been held in following cases:

1. Lal Bihar Lall v. Bani Madhava Khati, AIR (1949) Patna 293 (F.B.) (Para 11)

2. Chhuttan Lal v. Dwarka Prasad, AIR 1938 All 78, (Para 2)

3. Syed Ahmed v. Qadir Unnissa Begum, AIR (1954) A.P. 225 (Para 6)



4. *M. Dorrappa v. Sri. Baleshwaraswami Varu and Sri. Venugopalswamy Varu a Deity Reptd. by its Trustee A. Adinarayana Murty*, AIR (1966) A.P. 259. (Para 3).

5. *Raghubir Jha v. State of Bihar*, 1986 Supp SCC 372 : AIR (1986) SC 508 (Para 2).

55. Moreover, Section 14 (2) of Limitation Act, itself provides exclusion of time consumed in pursuing the remedy in a Court of first instance or of appeal or revision while counting period of limitation be excluded.”

37. On perusal of the aforesaid paragraphs of the cited cases, it is crystal clear that the parties can plead for application of Section 14 of the Act, only if the previous suit filed by one of the parties was due to the jurisdictional error and not any other reason.

38. It is also clear from the foregoing paragraphs that the Courts, even though need to act liberally while construing the said provision, however, the Court needs to establish that the plaintiff did not file the suit due to *bona fide* belief that they would get the same remedy from the previous suit filed by them.

39. In the instant case, the said provision cannot be attracted primarily due to two reasons. *Firstly*, the former suit filed by the petitioner was dismissed on merits and not on the jurisdictional grounds and the same cannot be taken as a ground as the said suit was filed by the petitioner and not the respondent. *Secondly*, the paragraph no. 7 of their own plaint clearly indicates that they were well aware of the dispute in the year 2001 and



therefore, cannot claim *bona fide* mistake on their part.

40. It is well settled that the object with regard to the applicability of the said provision is to provide protection to a litigant against the bar of limitation when he institutes a proceeding which by nature of a technical defect cannot be decided on merits, however, the previous case filed by the petitioner was decided and dismissed on merits and not on the question of jurisdiction.

41. Therefore, the learned Trial Court erred in applying the said provision on the suit filed by the respondent, thereby, leading to dismissal of the application filed under Order VII Rule 11 of the CPC.

42. At last, it is also imperative for this Court to explain the primary difference between Section 5 and 14 of the Act, and analyze whether the question of condonation of delay under Section 5 of the Act, can be left open to the learned Trial Court for adjudication.

43. As per settled position of law, there lies a clear distinction between Section 5 and 14 of the Act, where the former one provides discretionary powers to the Court to condone the delay and latter makes it mandatory to exclude the time period if the necessary conditions are met.

44. It is no doubt that Section 5 of the Act, is broader in its sweep than Section 14 of the Act, in the sense that a number of widely different reasons can be advanced and established to show that there was sufficient cause in not filing the appeal or the application within time. The ingredients in respect of Sections 5 and 14 of the Act, are different. The effect of Section 14 of the Act, is that in order to ascertain what is the date of expiration of the



‘prescribed period’, the days excluded from operating by way of limitation, have to be added to what is primarily the period of limitation prescribed.

45. On perusal of the plaint filed by the respondent, it is also clear that the respondent never prayed for condonation of delay in filing the suit, rather the learned Trial Court has applied Section 14 of the Act, on its own during the adjudication of the application filed by the petitioner under Order VII Rule 11 of the CPC. Therefore, the issue of condonation of delay under Section 5 of the Act, cannot be raised.

46. In light of the aforementioned paragraphs, this Court finds merit in the arguments advanced by the petitioner. Therefore, this Court is of the view that the learned Trial Court erred in not appreciating the law laid down by the Hon’ble Supreme Court and failed to apply the same while adjudicating upon the petitioner’s application under Order VII Rule 11 of the CPC.

47. In view of the above, this Court arrives at the conclusion that the suit filed by the respondent cannot be covered under Section 14 of the Act, and is liable to be rejected on grounds of inordinate delay of 20 years.

48. Therefore, there is infirmity in the impugned order passed by the learned Trial Court and this Court deems it fit to exercise its powers prescribed under Section 115 of the CPC, and accordingly the impugned order dated 13th December, 2022, passed by the Trial Court, in the Civil Suit bearing no. 1335/2021, is hereby set aside.

49. In view of the above discussions of facts and law, the present petition is allowed and the suit filed by the respondent which is pending before the learned Trial Court stands dismissed.



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50. Accordingly, the instant petition stands disposed of.
51. Pending applications, if any, also stands disposed of.
52. The order be uploaded on the website forthwith.

OCTOBER 16, 2023.
SV/AV/RYP

CHANDRA DHARI SINGH, J

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed By: SARIKA
BHAMOO VERMA
Signing Date: 06.11.2023
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