



2024 : DHC : 2964



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

+ EX.F.A. 11/2023 and CM APPL. 18422/2023

SARDA SOLVENT EXTRACTION PVT. LTD. Appellant

Through: Mr. Saurabh Sharma, Advocate

versus

M/S BANGA KNITTING AND DYEING
MILLS

..... Respondent

Through:

+ EX.F.A. 41/2023 and CM APPL. 52426/2023

M/S SARDA SOLVENT EXTRACTION
PVT. LTD.

..... Appellant

Through: Mr. Saurabh Sharma, Advocate

versus

M/S NEXUS CLOTHING CO. & ORS. Respondents

Through: Mr. Sandeep Thukral, Advocate
for Respondent 4.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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10.04.2024

1. The issue involved in these appeals is identical. The appellant in both these appeals instituted execution proceedings beyond a period of 12 years from the date of the decree which was sought to be executed. In Ex.F.A. 11/2023, the decree under execution was passed on 14 August 2006 and in Ex.F.A. 41/2023, the decree under execution was

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passed on 13 March 2008. Ex. Pet. 226/21 from which Ex.F.A. 11/2023 emanates was filed on 7 April 2021 and Ex. Pet. 30/2021 from which Ex.F.A. 41/2023 emanates was filed on 8 April 2021.

2. Thus, in each case, the execution petitions were filed beyond the maximum period of twelve years stipulated under Article 136 of the Limitation Act, 1963 for filing of an execution petition.

3. The learned Additional District Judge (as the Executing Court) has, in each case, held that an execution petition preferred more than 12 years from the date of the decree being sought to be executed is *ex facie* barred by law and cannot be entertained. He has relied on the judgment of this Court in *Subhash Chand Grover v. Charanjit Singh*¹.

4. The only submission of Mr. Saurabh Sharma, learned counsel for the appellant, is that the appellant company was struck off from the rolls of the Registrar of the Companies in 2017 and it was only in 2020, consequent on the appellant moving the learned National Company Law Tribunal, that the Company was revived and brought back on the rolls on the Registrar of Companies. Thus, he submits that for the period of three years from 2017 to 2020, during which period the name of his client was struck off from the Register of the ROC, it was impossible for the appellant to file these execution petitions. The aforesaid period of three years, he submits ought, in the interests of justice, to be condoned. He seeks to invoke for this purpose, Sections

¹ 1992 (46) DLT 188



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15(2) and 15(3)² of the Limitation Act.

5. Original civil litigation proceeds strictly as per the dictates of the Civil Procedure Code, 1908, and other cognate procedural statutes, including the Limitation Act. The Limitation Act is a statute of repose. The stipulation of periods of limitation is intended to foster certainty in legal affairs, so that parties know where they stand, and are aware of their sanctified legal rights. Condonation of delay, and execution, from the stipulated limitation period, to any extent, has to be only as is statutorily permitted. The Court cannot, *ex debito justitiae*, condone delay, or exclude any duration of time from the limitation period within which an action is to be instituted, if the statute does not so envisage or permit. The Court, it is trite, cannot legislate.

6. Section 5³ of the Limitation Act, which provides for condonation of delay for sufficient cause, does not apply to execution proceedings⁴ and indeed, Mr. Sharma, too, does not seek to invoke

² (2) In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation.—In excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted.

(3) In computing the period of limitation for any suit or application for execution of a decree by any receiver or interim receiver appointed in proceedings for the adjudication of a person as an insolvent or any liquidator or provisional liquidator appointed in proceedings for the winding up of a company, the period beginning with the date of institution of such proceeding and ending with the expiry of three months from the date of appointment of such receiver or liquidator, as the case may be, shall be excluded.

³ 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, 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.

Damodaran Pillai v. South Indian Bank Ltd, (2005) 7 SCC 300



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Section 5.

7. In so far as Sections 15(2) and 15(3) of the Limitation Act are concerned, they, on the plain terms, have no application to the present case.

8. Section 15(2) excludes the period of notice or the time required to obtain sanction from Government or any other authority, where the CPC requires the institution of the suit to be preceded by such notice or sanction. The institution of the execution petitions in the present cases were not required to be preceded in law by any notice or sanction from the Government or any other authority. Section 15(2) has, therefore, no application.

9. Section 15(3) applies only to cases where the suit or execution petition is instituted by a receiver, an interim receiver, liquidator or provisional liquidator. The appellant does not fall in any one of these four categories. Section 15(3) too, therefore, cannot come to his rescue.

10. The period for filing execution proceedings is even otherwise of considerable length. As many as 12 years are available to file execution proceedings. Even if the petitioner company was struck off from the rolls of the ROC for three years, there were nine more years within which the execution proceedings could be filed.

11. That, of course, is merely an aside. Had there been any provision for excluding the period during which the period should

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struck off from the rolls of the ROC, the appellant would justifiably be entitled to seek exclusion in that regard. There is, however, no such provision and the Court cannot step into the shoes of the legislature and craft a provision on the basis of which the execution petition instituted by the appellant could be maintained.

12. For the aforesaid reasons, this Court is in entire agreement with the learned ADJ that these execution petitions, being barred by time, could not be entertained. The impugned orders are, therefore, upheld in their entirety.

13. These appeals stand dismissed accordingly.

C.HARI SHANKAR, J

APRIL 10, 2024/yg

Click here to check corrigendum, if any

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