



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

% **Judgment reserved on : 17 May 2024**

Judgment pronounced on: 16 July 2024

+ **C.R.P. 26/2024 & CM APPL. 3835/2024**

T.R. SAWHNEY SHOPPING PVT. LTD. Petitioner

Through: **Mr. Pradeep Kumar Arya, Mr. Raj Karan Sharma, Mr. Aditya Kumar Yadav, Mr. Priyanshu Malik, Mr. Sachin B., Mr. Gaurav Chuadhry, Mr. Varun Jawla, Mr. Arpit Bamal and Mr. Vaibhav Chaudhry, Advs.**

versus

NAGENDER SINGH & ANR. Respondent

Through: **Mr. Ravish Kumar Singh, Mr. Pawan Kaushik and Mr. Naresh Kumar, Advs.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide the instant civil revision petition filed by the petitioner under Section 115 of the Code of Civil Procedure, 1908¹ assailing the impugned order dated 07.10.2023 passed by the Learned Additional District Judge, Shahdara, Karkardooma Courts, Delhi², in CS No. 505/2017³ titled as “*Nagender Singh v. T.R. Sawhney Shopping Mall Pvt. Ltd.*”, wherein the application of the respondents/plaintiffs under Section 14 of the Limitation Act, 1963 was allowed.

¹ CPC

² Trial Court

³ Civil Suit



FACTUAL BACKGROUND:

2. The petitioner/defendant herein is a private company and is a builder and real estate developer, duly registered with the Registrar of Companies. The respondents/plaintiffs were employed in Bharat Heavy Electricals Ltd., PSU, Government of India.

3. Shorn off unnecessary details, allured by the advertisement in March 2006 in leading newspapers about benefits of booking of commercial space in a shopping mall known as 'T.R. Sawhney Heritage 23 Mall' in Sector-23, Rohini, Delhi, that was supposed to be having all the modern amenities, the respondents/plaintiffs applied for registration and purchase of Shop No. G-40, measuring 8 feet & 7.5. Inches x 12 feet⁴, in the mall for a total sale price of Rs. 14,00,000/-/. The petitioner/defendant issued the booking for the commercial plot in the mall to the respondents/plaintiffs *vide* order booking dated 27.03.2006 and the respondents/plaintiffs paid an amount of Rs. 10,50,000/- out of the total sale price through cheques.

4. The parties entered into an Agreement to Sell⁵ on 03.04.2005, and the respondents/plaintiffs made payments within the stipulated time. However, since the possession of the commercial space was delayed, the respondents/plaintiffs instituted a Complaint Case No. 82/2010 under the Consumer Protection Act, 1986⁶ before the learned District Consumer Disputes Redressal Forum (East), Delhi⁷, seeking reliefs in the nature of non-payment of interest as agreed in the ATS at

⁴ Commercial Plot

⁵ ATS

⁶ CP Act

⁷ District Forum



the rate of 9% on the amount of Rs. 10,50,000/- by the petitioner/defendant, as per Clause 27 of the ATS, besides handing over of the physical possession of the commercial plot to the respondents/plaintiffs.

5. The learned District Forum in Case No. 82/2010 on 24.09.2010 dismissed the complaint on the grounds that the respondents/plaintiffs used the petitioner/defendant's services for commercial purposes, thereby disqualifying them as 'consumers' under the CP Act. The learned District Forum did not address the merits of the claim but granted the respondents/plaintiffs the liberty to pursue their grievance in an appropriate forum. The respondents/plaintiffs filed an appeal against the order dated 24.09.2010 in the learned State Commission and the appeal was decided on 11.07.2016, wherein the findings of the learned District Forum were upheld.

6. The respondents/plaintiffs assert that they were not given possession of the commercial plot and, consequently, filed a civil suit against the petitioner/defendant seeking the recovery of Rs. 10,50,000/- with interest at 18% per annum. They also filed an application under Section 14 of the Limitation Act, 1963, read with Section 151 of the CPC, requesting the exclusion of the period from 02.02.2010 to 11.07.2016.

PROCEEDINGS BEFORE THE LEARNED TRIAL COURT AND THE IMPUGNED ORDERS:

7. The respondents/plaintiffs argued before the learned Trial Court that their civil suit was within the limitation period, claiming that the builder's duty to complete construction and hand over possession is



continuous, creating a new cause of action each day. They filed their application to cavil any legal objections. When the petitioner/defendant failed to deliver possession of the commercial plot, the respondents/plaintiffs, on their counsel's advice, filed a complaint with the learned District Forum against the petitioner/defendant. They further submitted that their complaint was dismissed by the learned District Forum because they had availed the petitioner/defendant's services for commercial purposes, excluding them from the CP Act. Following the legal advice of their counsel, they appealed the dismissal to the learned State Commission, which on 11.07.2016 upheld the learned District Forum's order dated 24.09.2010. The respondents/plaintiffs maintain that, as laymen unfamiliar with legal nuances, they acted diligently on their counsel's advice.

8. The respondents/plaintiffs further contended that the definition of a person as a 'consumer' is a legal issue. They argued that if their previous counsel held a particular legal opinion on this issue, their actions were in good faith. Therefore, they are entitled to the benefit of excluding the period spent in the wrong forum, from 02.02.2010 to 11.07.2016, under Section 14 of the Limitation Act, 1963.

9. The petitioner/defendant opposed the application, arguing that the respondents/plaintiffs have not justified their cause of action and have distorted the facts. They claimed that the application was strategically filed, as the respondents/plaintiffs knew the correct forum to approach when the learned District Forum ruled against them in 2010. Despite this, they chose to appeal to the learned State



Commission, which dismissed their appeal on 11.07.2016. After the appeal's dismissal, the respondents/plaintiffs filed the civil suit in June 2017. Thus, the petitioner/defendant argued that each day of delay was intentional and deliberate. They further contended that ignorance of the law does not negate its existence and requested that the application be dismissed.

10. The said application was decided by the learned Trial Court by way of the impugned order dated 07.10.2023, wherein the application under Section 14 of the Limitation Act, 1963, filed by the respondents/plaintiffs was allowed. The learned Trial Court relied on the judgement by the Apex Court in the matter of *Laxmi Engineering Works v. PSG Industrial Institute*⁸ and held that the respondents/plaintiffs will be entitled to exclusion of the period spent before the District Forum and State Commission.

11. It would be apposite to reproduce the findings of the learned Trial Court below: -

“I have gone through the judgment of Hon’ble Supreme Court of India in matter of Laxmi Engineering Works Vs. PSG Industrial Institute (Supra). The relevant para of this judgment is reproduced as under: -

“26. The appeal accordingly fails and is dismissed but without costs. If the appellant chooses to file a suit for the relief claimed in these proceedings, he can do so according to law and in such a case he can claim the benefit of Section 14 of the Limitation Act to exclude the period spent in prosecuting the proceedings under the Consumer Protection Act, while computing the period of limitation prescribed for such a suit”.

The plaintiffs filed a complaint against the defendant before the Consumer Disputes Redressal Forum (East) and then against the order of Consumer Disputes Redressal Forum (East), they

⁸ (1995) 3 SCC 583



approached to State Commission. Admittedly, the plaintiffs have filed their dispute before wrong forums and spent there about 6.5 years. No wise person would approach to a wrong forum and would waste his hard earned money in litigation before a wrong forum. Record reveals that plaintiffs were prosecuting their dispute with due diligence before the Consumer Forum and State Commission in bonafide manner.

Therefore, in view of the above discussion and also in view of law laid down by Hon'ble Supreme Court of India in matter of Laxmi Engineering Works Vs. PSG Industrial Institute (supra), the plaintiffs will be entitled to exclusion of the period spent before the Consumer Forum & State Commission.

Accordingly, it is held that the suit filed by the plaintiffs is within limitation.

Application stands disposed of.”

GROUND OF THE PETITION:

12. The petitioner/defendant has assailed the impugned order dated 07.10.2023, asserting that the learned Trial Court overlooked critical facts. Specifically, the respondents/plaintiffs initially filed a complaint under Section 12 of the CP Act, before the learned District Consumer Disputes Redressal Forum (East), Delhi, on 02.02.2010. This complaint was dismissed on 24.09.2010, with the direction to seek remedy from the appropriate court. However, the respondents/plaintiffs did not promptly pursue a Civil Court remedy and instead filed an appeal under Section 15 of the CP Act before the learned State Commission, which continued for six years before being dismissed on 11.07.2016. They then waited an additional year before filing a civil suit, rendering it highly time-barred and unsustainable.

ANALYSIS & DECISION:

13. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties at the Bar. I have also gone through the relevant record of the case.



14. The broad facts of the instant matter are not in dispute. The question is whether the time period spent in litigating before the Consumer Courts should be excluded? It would be apposite to reproduce section 14 of the Limitation Act, which provides as under:

“14. Exclusion of time of proceeding bona fide in court without jurisdiction. —

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil 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.”

15. Avoiding the long academic discussion, suffice it to invite reference to the decision in the case of *Consolidated Engg.*



Enterprises v. Irrigation Deptt.⁹, wherein after examining a plethora of case laws, certain conditions were set down to consider relief under section 14 of the Act, which reads as follows:

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

16. We may then refer to decision in the case of ***M.P. Steel Corpn. v. CCE***¹⁰, wherein it was held that the phrase “*due diligence and good faith*” only means that the party who invokes section 14 should not be guilty of negligence, lapse, or inaction. Furthermore, there should be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party.

17. Reverting back to the instant matter, there is not an *iota* of doubt that in the instant matter the conditions which are spelled out hereinabove are met, except for determination as to whether or not the prior ‘civil proceedings’ had been prosecuted with *due diligence and in good faith*. Needless to state, the burden of showing that earlier proceedings were prosecuted with *due diligence and in good faith* is upon the respondents/plaintiffs. Unhesitatingly, the prior matter had

⁹ [(2008) 7 SCC 169]

¹⁰ (2015) 7 SCC 58



not been proceeded with due diligence and certainly with lack of good faith. The expression ‘due diligence’ refers to conducting a meaningful exercise to understand what are the legal rights and where does the remedy lie. There is no gainsaying that ‘good faith’ means ‘exercise of care and attention’. It can never mean subjective belief without any objective basis.

18. The decision in the case of *Laxmi Engineering Works (supra)* involved a plaintiff/complainant who has been supplied with certain machines for commercial purposes, which were alleged to have some mechanical and functional issues. The company filed a complaint with the Maharashtra State Consumer Dispute Redressal Commission. The complaint was dismissed by the Forum, based on the interpretation of Section 2(d) of the CP Act, with liberty to the plaintiff/complainant company to seek appropriate remedy before the ordinary Civil Court. Aggrieved by the dismissal, the plaintiff/complainant filed a SLP¹¹, which was dismissed upholding the decision of the State Commission and it was held that plaintiff/complainant was not a consumer within the meaning of Section 2(d)¹² of the CP Act.

¹¹ Special Leave Petition

¹² (d) “consumer” means any person who,— (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) [hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who 8 [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person 2 [but does not include a person who avails of such services for any commercial purpose].



19. It is pertinent to mention that above said decision was rendered on 04.04.1995. The instant complaint was instituted on 02.02.2010 before the learned District Forum, wherein, *inter alia* vide paragraph (7) it was averred that despite more than 1036 days from the date of completion of construction i.e. 31.03.2007, possession of the booked site had not been delivered, consequent to which demand/legal notice dated 04.01.2010 was given issued. A careful perusal of the order passed by the learned District Forum would show that the jurisdiction of the learned District Forum was contested vehemently agitated by the petitioner/defendant and yet the respondents/plaintiffs did not consider their option in law. Eventually, the parties led evidence by way of filing their affidavits and the learned District Forum, *vide* order dated 24.09.2010, held that the complaint under the CP Act was not maintainable for want of jurisdiction in view of Section 2(d) of the CP Act.

20. What this Court finds baffling is that despite extensive law on the subject since the decision in the case of ***Laxmi Engineering Works (supra)*** and the categorical definition of Section 2(d), which clearly excludes a person who buys any goods or services for commercial purposes from the scope of the term “consumer”, the respondent/plaintiff, purportedly on wrong legal advice, filed an appeal before the learned State Consumer Dispute Redressal

[Explanation.—For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;]



Commission¹³. Eventually, after six years, the learned SCDRC upheld the decision by the District Forum *vide* order dated 11.07.2016.

21. It is borne out from the record that even before the learned SCDRC, the petitioner/defendant had challenged the jurisdiction of the learned District Forum to entertain and adjudicate upon the matter. Yet the respondents/plaintiffs did not reconsider his legal action and pursued remedies before the wrong forum. So, the question that begs an answer is whether the respondent/plaintiff exercised ‘due diligence’ and pursued the remedy in ‘good faith’, based on certain objective parameters that were well established after the decision in *Laxmi Engineering Works (supra)*, *Meerut Development Authority v. Mukesh Kumar Gupta*¹⁴, *Deena Thr. Lrs v. Bharat Singh Thr. Lrs.*¹⁵ and *Assistant Commissioner v. Amtek India Ltd.*¹⁶

22. The answer should be an emphatic ‘no’. There is no proposition of law that wrong advice or mistake on the part of the counsel shall always be an excuse to give any leverage to the party concerned. When the law is crystal clear and unambiguous on the subject, having been interpreted and explained in numerous decisions by the Superior Courts, the defaulting party should be held accountable ignoring the law, particularly when the party is educated and not hailing from an underprivileged class. Ordinarily, a party seeking legal advice and setting out on legal recourse cannot be allowed to shield behind the excuse of being guided by the wrong legal advice in pursuing the

¹³ SCDRC

¹⁴ 2012 LawSuit (SC) 1026

¹⁵ 2002(6) SCC 336

¹⁶ (2007) 6 VST 242



remedies before the wrong Forum or Court unless it has resulted in miscarriage of justices.

23. To my mind, having regard to the manner in which the justice delivery system is clogged with frivolous and vexatious cases, the party seeking the benefit of the exclusion of time under Section 14 of the Limitation Act, 1963 must show that it exercised reasonable care and caution at every stage of the prior proceedings to be aware of its legal rights and remedies in law and thereby *bonafidely* pursued the remedies before a wrong forum/court. Nowadays, even for a small ailment, we consult more than one doctor, so why that aspect be also not borne in mind? May be not necessarily but then merely because the deficiency in the services provided by the lawyers cannot be brought within the ambit of CP Act, does not mean that wrong advice or mistake on any aspect of law including jurisdiction, shall lay down a foundation to seek relief of some other kind or another provided under the law to the party concerned. A time has come in the system of administration of justice in this country, where we must make sure that the party who seeks legal recourse must not be allowed to clog the justice system with half-baked, ill-conceived or mis-conceived cases. It must be realised that such kind of misadventures in pursuing legal remedies entails huge loss of time and efforts apart from involving irreparable costs to the exchequer.

24. In the instant case, the plea by the learned counsel for the respondents/plaintiffs, that since there was a deficiency in service and the allotted site had not been provided, it would be construed as a continuous cause of action, is clearly not sustainable. The learned



SCDRC dismissed the suit on 11.07.2016, and after waiting for almost a year, the respondents/plaintiffs filed the suit on 14.05.2017. A bare perusal of the plaint shows that vide clause (17) of the plaint sets out the 'cause of action' stretching it from 31st July, 2007 to April, 2017. The purpose of the Limitation Act, 1963 is to avoid stale, obsolete and redundant cases being brought before the Courts. A party that has been found not diligent enough about his legal rights for so long and made no endeavour to do a course correction even after the decision by the learned District Forum *vide* order 14.09.2010, cannot be allowed the relief of exclusion of time to enable him to file a suit on the same cause of action. It is apparent from the face of the record that the approach of the respondents/plaintiffs has been very casual and alarm should have been ringing on dismissal of the complaint by the learned District Forum for want of jurisdiction. The crux of the matter is that respondents/plaintiffs cannot be allowed to evergreen his claim for an indefinite period of time. Notwithstanding the merits of the matter, such a long course of misguided civil proceedings does lead to palpable harassment of the opponent.

25. In view of the foregoing discussion, this Court finds that the impugned order dated 07.10.2023 passed by learned Trial Court suffers from patent illegality and an incorrect approach in law, and therefore, the same deserves to be set aside and quashed. Accordingly, the civil revision is allowed and the impugned order dated 07.10.2023 is hereby set aside. It is also held that the respondents/plaintiffs are not entitled to exclusion of time under Section 14 of the Limitation Act,



1963. The plaint shall stand rejected in terms of Order VII Rule 11 CPC.

26. The parties are left to bear their own costs.

DHARMESH SHARMA, J.

JULY 16, 2024

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