



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 13th December, 2023

Pronounced on: 2nd March, 2024

CS(COMM) 668/2018

DR. BRIJ MOHAN GANDHI

..... Plaintiff

Through: Mr. Navdeep Singh, Advocate.

versus

M/S EMPROCELL CLINICAL RESEARCH PRIVATE LIMITED

..... Defendant

Through: Mr. Pankaj Bhagat, Mr. Sadre Alam,
Ms. Prerna Raman & Mr. Ritwik
Prasad, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

I.A. 6003/2021(u/O VII Rule 11 r/w Section 151 of CPC by defendant for rejection of Suit)

I.A. 8685/2021(u/O VII Rule 11 r/w Section 151 of CPC by defendant for rejection of Suit)

1. The present Applications under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) has been filed on behalf of the applicant/defendant seeking rejection of the Plaintiff.

2. The case of the plaintiff *as stated in his plaint*, is that *vide* Letter of Appointment dated 04.09.2006 and 08.09.2006, the defendant Company which is a Joint Venture between M/s Citi Pharm K/s, Copenhagen, Demark



and the Lok-Beta Pharmaceuticals (I) Pvt. Ltd Mumbai, offered him 3% shares as intellectual service and Directorship of the Company. Accordingly, he was issued 21,588 shares by Lok-Beta Pharmaceuticals Indian Limited (a shareholder of the defendant Company) which amounted to just over 0.888% of the total paid up capital.

3. According to the plaintiff, when he addressed the non-compliance of Governmental and Statutory Rules by the defendant Company with its other members, a Special Notice was issued against him for his removal, as per Section 284 of the Companies Act, 1956 (*now section 169 of Companies Act, 2013*). However, this Notice was not served to the plaintiff. Thereafter, on 24.10.2012 he was summarily and unlawfully discharged from the office of Directorship that had allegedly harmed his reputation in the industry.

4. The plaintiff thus, *filed the present suit for the Recovery of money for the value of 51,273 shares of the defendant Company, as well as a compensation for the loss of reputation suffered due to termination of his Directorship in the defendant Company.*

5. **The defendant/applicant in the application** under Order VII Rule 11 CPC, has taken a plea that *the Suit is bad for non-joinder of necessary party* as the plaintiff has not made Lok-Beta Pharmaceuticals India Limited, the entity that issued shares in his favour, a party to the present Suit.

6. The second ground for rejection is that *the suit is miserably barred by limitation*. The plaintiff is seeking principal amount of Rs. 44,01,274/- along with interest at the rate of 24% from 31.03.2009. The plaintiff as per his own averments, has asserted that the cause of action arose in March, 2009, but the present Suit had been filed on 27.02.2018 i.e., after a lapse of about nine years.



7. The plaintiff has also alleged that he was removed from the Directorship of the Company on 24.10.2012. The plaintiff has further claimed that the cause of action had also arisen on 23.03.2013, when the defendant allegedly admitted to have issued 21,558 shares. Even if the cause of action is taken to have arisen in the year 2012-13 for filing the present suit, it would still be barred by limitation. ***Therefore, the suit is miserably barred by limitation.***

8. It is further submitted that the plaintiff is not entitled to the benefit under *Section 14 of the Limitation Act, 1963* as the Company Petition filed for the appointment of a Liquidator, was not a petition for recovery. The withdrawal of a Company petition to pursue a remedy of filing a suit for recovery, does not satisfy the conditions under Section 14 of the Limitation Act, 1963. The words “**or cause of a like nature**” would be required to be considered *ejusdem generis* with earlier words “**of defect in jurisdiction**”. Therefore, where the Court had jurisdiction to entertain the Company petition, but does not do so, it cannot be said that the Court did not grant the application due to defect similar to the want of jurisdiction.

9. Reliance has been placed on judgements in Narayan Ambaji Chavan vs Hari Ganesh Navare, AIR 1930 Bom 505; Ajab Enterprises vs Jayant Vegoiles & Chemicals Pvt. Ltd., AIR 1991 Bom 35; Gurdit Singh & Ors. vs Munsha Singh & Ors., AIR (1997) SC 640; Yeshwant Deorao vs Walchand Ramchand, 1950 SCR 852. It is, therefore, submitted that the present Suit is liable to be rejected.

10. **The plaintiff in his Reply** to the present application, has averred that the Suit for recovery of Rs. 1,54,10,305/- is on account of his unlawful removal from the Directorship, without adhering to the statutory provisions



prescribed under the Companies Act, 2013 and for non-payment of committed amount as well as other legitimate dues payable by the defendant-Company.

11. It is stated that the defendant had issued two letters, one dated 04.09.2006 and 08.09.2006 confirming that the plaintiff was nominated as the Director of the defendant Company and undertook to issue shares equivalent to 3% of the total paid up capital in lieu of the plaintiff's intellectual services to be rendered to the defendant Company. Accordingly, Defendant Company initially issued 4200 numbers of shares until 31.03.2007 to the Plaintiff which amounted to 0.89 % of the total paid up capital at that time. The number of shares were increased to 21558 from 31.03.2007 to 31.03.2008 which attained the threshold of 3% of the total paid up capital.

12. It is submitted that thereafter, despite an exponential surge in total paid up capital of the Defendant, number of shares provided to the Plaintiff remained constant. Thus, the total number of shares allotted to plaintiff amounted to 1.77% of the total paid up capital, which the defendant has admitted vide its letter dated 23.03.2013. This amounts to a clear admission of the unpaid shares.

13. It is further asserted by the plaintiff that the shares were transferred by the defendant under the Certificate of EmProCell Clinical Research Pvt. Ltd. and the plaintiff was given an impression that the transfer was a result of some internal arrangement. The letter of Appointment dated 08.09.2006 was on the letter head of EmProCell Clinical Research Pvt. Ltd, the defendant and the letter was issued by the Board of Directors of defendant Company. Therefore, the shares were transferred by the defendant and not by Lok Beta



Pharmaceuticals (I) Pvt. Ltd, Mumbai. Thus, Lok Beta Pharmaceuticals (I) Pvt. Ltd, Mumbai *is not a necessary or proper party* to the present suit.

14. With regard to the *cause of action for filing the suit*, it is submitted that the Suit has been filed on 19.02.2018 for which the cause of action arose on 24.10.2012 when the plaintiff was illegally removed from his Directorship without giving a Special Notice to him, tarnishing his well established reputation among the Biological Sciences fraternity and Healthcare Industry.

15. The cause of action is claimed to have further arisen in March, 2013 when the defendant Company pointed out that the plaintiff was acting against the interests of the defendant Company, when in fact the plaintiff was only making the defendant aware of the negligence in complying with statutory provisions.

16. Thereafter, plaintiff had issued Statutory Notice dated 21.11.2015 under the Companies Act, 2013 to the defendant to either allot the pending shares or make payment in lieu thereof. From the data pertaining to Financial year 2015 ending on 31.03.2015, the plaintiff calculated that he was entitled to get 32,527 more shares which the defendant continuously failed to issue or make payment of amount of Rs. 27,92,117/- in lieu of the shares, despite various reminders. It gave a reason to the plaintiff to believe that defendant was unable to pay its debts and thus, he filed the *Company Petition under Section 271 and Section 272 of the Companies Act, 2013 before the Bombay High Court in January, 2016*. The said Petition was filed within the period of three years as provided under Section 137 of the Limitation Act, 1963. However, the Petition was withdrawn on 04.08.2017 with liberty to file a Suit before the competent jurisdiction for recovery of



the amount claimed in the present petition.

17. The plaintiff has asserted that the petition under Sections 271 and 272 of the Companies Act, 2013 is a *civil proceeding* being a remedy against non-payment of legitimate dues coming under the definition of “*cause of like nature*” and the time spent in pursuing the said Petition before the Company Court, is liable to be excluded under Section 14 of the Limitation Act, 1963. Reliance has been placed on Tata Consultancy Services Ltd. v. Inspira IT Products (P) Ltd., 2018 SCC OnLine Bom 21382; S.A.L. Narayan Row vs. Ishwarlal, AIR 1965 SC 1818; Ramesh vs. Seth Gendalal Motilal Patni 1966 SCR (3) 198; M.P. Steel Corporation vs. Commissioner of Central Excise (2015) 7 SCC 58.

18. **The defendant/applicant in its rejoinder** has submitted that the Company Petition filed by the plaintiff was itself barred by limitation as the limitation period for a Company Petition for winding up, begins from the day the debt becomes due. The debt in the present case became due immediately on the day shares were offered to the plaintiff, in 2006. Section 14 of the Limitation Act, 1963 cannot be applied to revive the already expired limitation period.

19. It is further submitted that, though Winding up proceedings are civil in nature, it does not satisfy the ingredients under Section 14 of the Limitation Act, 1963. While in the Company Petition the plaintiff claimed only Rs.27,92,117/-, the claim in the present plaint is for recovery of Rs.1,54,10,305/-. It is submitted that the plaintiff cannot be permitted to raise a fresh enhanced claim in the garb of Section 14 of the Limitation Act. The suit of the plaintiff is therefore liable to be rejected.

20. **Submissions heard.**



Mis-joinder of Necessary Party:

21. The ***first*** ground raised by the defendant for the rejection of the plaint is the non-joinder of Lok-Beta Pharmaceuticals, which had been admittedly transferred its shares held in the defendant Company in favour of the plaintiff.

22. Admittedly, the Defendant Company is a Joint Venture between M/s Citi Pharm K/s, Copenhagen, Demark and the Lok-Beta Pharmaceuticals (I) Pvt. Ltd, Mumbai. It is apparent that the defendant Company is a separate legal entity in which Lok-Beta Pharmaceuticals (I) Pvt. Ltd and M/s Citi Pharm K/s were shareholders holding 6.23% and 92.88% shares as on 31.03.2007. The shares may have been of Lok-Beta Pharmaceuticals but they were transferred admittedly by the defendant Company as is evident from the Covering Letters dated 04.09.2006 and 08.09.2006. The defendant is a joint venture of Lok-Beta Pharmaceuticals and M/s Citi Pharm K/s. Therefore, even though the shares are of Lok-Beta Pharmaceuticals, i.e. *the consideration may be of third party*, but it was given by the defendant pursuant to the Service contract entered between the parties vide Letters dated 04.09.2006 and 08.09.2006. The claim of the plaintiff would thus, be only against the defendant Company, as it was they who promised the transfer of shares to the plaintiff. The very fact that the defendant had given the shares in performance of a part of its obligation, *the privity of contract is between the plaintiff and the defendant Company*. Therefore, Lok-Beta Pharmaceuticals is neither a necessary nor proper party.

23. **This objection taken by the defendant is therefore not tenable.**

I. Cause of Action:



24. The other ground on which rejection of suit is sought is that the reliefs claimed are barred by Limitation. By way of this Suit, the plaintiff has sought the recovery of money in lieu of the shares to which he claims he is entitled to, interest on the said amount, and has sought compensation for the loss of reputation due to the termination of his Directorship. The relief prayed by the plaintiff are as under: -

“a) Pass a decree for recovery of Rs. 44,01,274/- (Rupees Forty Four Lakhs One Thousand Two Hundred and Seventy Four) in favour of the Plaintiffs and against the Defendants;

b) Pass a decree directing the Defendants to pay interest at 24% per annum on the sum equivalent to the balance of shares year wise amounting to Rs. 50,09,031/- till 31.12.2017 and till the actual date of payment of the said sum by the Defendants;

c) pass a decree directing the Defendants to pay Plaintiff Rs. 60,00,000/- as compensation for loss of reputation in the Biological Science Fraternity and Health Care Industry caused due to his unlawful removal from the office of Director;

d) to award the cost of the proceedings in favour of the plaintiff and against the Defendants.”

25. In order to ascertain that whether the cause of action is beyond the period of limitation, it would be pertinent to reproduce the relevant Paragraphs of the Suit, describing the *Cause of Action* which are as under: -

“31. That the Cause of Action arose in the month of June, 2012 when the Defendant Company stopped adhering to the guidelines prescribed by Government of India and further failed to obtain clearance from the



agency of the Government of India for use of stem cells from fetal sources for clinical testing thereby exposing the Company and the Plaintiff to penal action by the Health Councils.

32. That the Cause of Action arose on 23.03.2013 when the Defendant in his letter had admitted that the Company has issued 21558 shares to the Plaintiff which amounts to 1.77% of the total paid up capital of the Company as this is discrepant to what was promised by the Defendant vide his letter date 08.09.2006.

33. That Cause of Action further arose in the month of March, 2013 when the Defendant Company pointed out that the Plaintiff was acting against the interest of the company while the Plaintiff was merely making the company aware that its negligence to comply with the statutory provision may result into serious penalties and actions from the Govt.

34. The Cause of Action also arose when the Plaintiff was not served with the Special Notice for his removal as required under sub-Section 3 of Section 284 of the Companies Act 1956 (now section 169 of Companies Act, 2013) and hence was deprived of his legal right under the said section to make representation before passing of any resolution of his removal.

35. The Cause of Action arose on 24.10.2012 when the Plaintiff was summarily and unlawfully discharged from the office of Director as the same has resulted in a serious blot to his reputation among the biological sciences fraternity and health care industry."

26. It is the case of the plaintiff that the cause of action for all the reliefs sought by filing the Suit for Recovery, arose on several occasions between October, 2012 to March, 2013. For the sake of convenience, the events prior to the filing of present suit has been chronologically tabulated below:



PARTICULARS	DATE OF EVENT
Appointment of the plaintiff as Director of the defendant Company	04.09.2006 and 08.09.2006
Allotment of for Shares to the plaintiff on 31.03.2007	4200
Allotment of for Shares to the plaintiff as on 31.03.2008	21,558
Termination of the plaintiff's Directorship	24.10.2012
Company Petition No. 609 of 2016 filed for the Winding up of defendant Company	January, 2016
Company Petition dismissed as withdrawn	04.08.2017
Suit for Recovery filed by the plaintiff	19.02.2018

Whether a cause of action arose in favour of the plaintiff for Prayer (a) claiming Rs. 44,01,274/- in lieu of balance Shares:

27. The plaintiff has sought the recovery of money in lieu of the shares that he is allegedly entitled to in the defendant Company. An offer for shares was first made to the plaintiff vide Letter dated 04.09.2006 which reads as under:

“Dated: 04/09/2006.



To,
Dr. B.M. Gandhi,
Delhi.

Sub: REGARDING BEING A PART OF OUR JOINT
VENTURE COMPANY

Respected Sir,

....

As we discussed on the same day with our Management team in your presence, we decided and agreed that some part of the shares will be issued in your name. We hereby require your full details in which the shares to be issued. Once we receive the same we will follow it up with our Chartered Accountants, to do the necessary changes in our Company. Regarding how much shares will go in your name, it will be reconfirmed in our second letter on 08th of this month. We have also decided that we will provide you some amount for day to day expenditure on monthly basis for doing the necessary work at your end.

....

With warm regards,

For EmProCell Research Pvt. Ltd.

(ALOK KUMAR)
DIRECTOR

(V. BABIY)
DIRECTOR

(OLGA DZHULAY)
DIRECTOR

Note: We will send you the second letter on 8th of this month."

28. Thereafter, as per Letter dated 08.09.2006, the defendant Company decided to issue shares equivalent to 3% of the total share against the



plaintiff's intellectual services. The relevant part of the letter has been reproduced below:

“Dated:08/09/2006.

*To,
Dr.B.M.Gandhi,
Delhi*

*SUB: Issue of Shares and Appointment of Director in the
Company:*

Dear Dr.Gandhi,

This is to inform you that after discussions held with Mr.Vladimir E. Babiy and Mr.Victor Radchenko who are the representatives of shareholders as well as nominated Directors of the Company EmProCell Research Pvt. Ltd., it has been decided to issue you with share equivalent to 3% of total share in your name against your intellectual services. We believe your association with the Company will help the Company to grow in the field desired by us.

It has also been unanimously decided to appoint you as the Director of the Company and taking this opportunity we would like to invite you as a member in the Board of Directors.

...

*On behalf of the Board of Directors
For EmProCell Research Pvt. Ltd.*

*(ALOK KUMAR)
DIRECTOR”*

29. The Letters clearly expressed that it *“has been decided to issue you with share equivalent to 3% of total share in your name against your*



intellectual services”. The plaintiff himself has stated in their plaint that Defendant Company initially issued 4200 number of shares in their favour until 31.03.2007, which amounted to 0.89 % of the total paid up capital at that time. The number of shares were increased to 21,558 from 31.03.2007 to 31.03.2008 which attained the threshold of 3% of the total paid up capital. *It is the admission of the plaintiff himself that the entire agreed 3% of shares amounting to 21558 were given to the plaintiff by 31.03.2008.*

30. Further, the plaintiff relies on a table showing the Pattern of Shareholding from 31.03.2007 to 31.12.2013, in support of his submission that he only owned 1.77% of the shares in the defendant Company from 31.03.2011 to 31.03.2012. The table has been reproduced below:

EMPROCELL CLINICAL RESEARCH PRIVATE LIMITED								
Sr. No.	Name of the Shareholder	No of Shares and Percentage of Shares held as at the end of the year -Date of Incorporation 24-04-2006						
		31-03-2007	31-03-2008	31-03-2009	31-03-2010	31-03-2011	31-03-2012	31-12-2013
(A)	No. of Shares Held							
	LOKBETA PHARMACEUTICALS (I) PVT.LTD.	28380	150910	150910	150910	185236	185236	185236
1	ALOK KUMAR	10	10	10	10	10	10	10
2	CITI PHARM K/S	436265	545170	686920	686920	686920	686920	942905
3	OLGA DZHULAY	10	10	10	10	10	10	10
4	B M GANDHI	4200	21558	21558	21558	21558	21558	21558
5	MALEBRAY PHARM GROUP LIMITED	0	0	0	300557	322714	322714	653220
6	Total No of Shares	471875	717658	859408	1159965	1216448	1216448	1802039
(B)	Percentage of Shares Held							
		31-03-2007	31-03-2008	31-03-2009	31-03-2010	31-03-2011	31-03-2012	31-03-2013
	LOKBETA PHARMACEUTICALS (I) PVT.LTD.	0.23	21.03	17.56	13.01	15.23	15.23	11.07
1	ALOK KUMAR	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2	CITI PHARM K/S	92.86	75.97	79.93	59.22	56.47	56.47	44.40
3	OLGA DZHULAY	0.00	0.00	0.00	0.00	0.00	0.00	0.00
4	B M GANDHI	0.89	3.00	2.51	1.86	1.77	1.77	1.20
5	MALEBRAY PHARM GROUP LIMITED	0.00	0.00	0.00	25.91	26.53	26.53	42.23
6	Total (%)	100.00	100.00	100.00	100.00	100.00	100.00	100.00

31. Pertinently, as per the plaintiff's own document showing the Pattern of Shareholding from 31.03.2007 to 31.12.2013, the plaintiff was admittedly issued 21,558 shares which was 3% of the defendant



Company's fully paid up share capital on 31.03.2008.

32. It is apodictic from the letters dated 04.09.2006 and 08.09.2006 that the defendant only promised to issue 3% of the Company's fully paid-up share capital and never promised to maintain the said 3% shareholding of the plaintiff in its Company.

33. The plaintiff never made any grievance thereafter of there being any kind of shortfall in allotting the share capital agreed at 3% in the subsequent years. The plaintiff first resorted to a Company Petition in January, 2016 to claim recovery of the alleged amount due in lieu of the alleged balance shares after the termination of his Directorship on 24.10.2012.

34. Rather, it is his own admission that he received the promised 3% of the share capital of the Company in 2008 and thereafter, no grievance was raised by the plaintiff till his termination on 24.10.2012. Clearly, as per the admissions of the plaintiff, he had been given 3% share capital in terms of his Letter of Engagement.

35. There was no Agreement between the parties that plaintiff would perpetually be entitled to 3% of the defendant Company's share capital as calculated annually. Thus, the defendant only promised to issue 3% of the Company's fully paid up share capital and never promised to maintain the said 3% shareholding of the plaintiff in its Company. As discussed above, neither was this the term in the Letter of Appointment dated 08.09.2006 nor did the plaintiff ever make any claim for shares as per the annual capital of the Company during his tenure. It is observed that the claim of the plaintiff, if accepted, would lead to an anomalous situation; in case the authorised capital of the defendant reduced in a given year, would the plaintiff had returned the proportionate number of shares for the given number?



36. Clearly, 3% of the Company's shares were given as one time allotment at the time of Engagement and was not subject to annual adjustment. Thereafter, the defendant company may have enlarged its Authorized Capital through issuance of fresh shares in subsequent years, and the present shareholding of the plaintiff may have come down to 1.77% of the entire paid up capital; however, in light of express terms of the Letter of Engagement, the plaintiff is not entitled to any additional allotment of shares.

37. The documents relied upon by the plaintiff coupled with his own assertions in the plaint, bely his claim for the compensation in lieu of shares. He is neither entitled to any balance shares, nor the amount claimed in lieu thereof. **Since 3% of Company's shares had already been issued in favour of the plaintiff as on 31.03.2008 as reflected in the Chart and also admitted by the plaintiff in his plaint, there is no cause of action for recovery of the amount of Rs.44,01,274/- on account of alleged deficit allotment of shares under Prayer (a).**

38. Further, the plaintiff has asserted that a fresh cause of action accrued in his favour in view of letters dated 04.01.2013 or 23.03.2013 wherein, the defendant Company had allegedly admitted that they had issued 21,558 shares to the plaintiff which amounts to 1.77% of the total paid up Capital of the Company which is discrepant to what was promised by the defendant. The relevant part of letter dated 04.01.2013, which is a Reply to letter dated 04.01.2012 has been reproduced below:

"Dear Dr. Gandhi,

Re: Your letter dated January 4, 2012



...

Please find below our para wise reply to your allegations:

1. ... In any event as clearly acknowledged by you the alleged issue of shares was towards certain intellectual services to be rendered by you. The Company has already issued 21558 shares to you amounting to 1.77% of the total paid up capital of the Company. The Company hereby calls upon you to kindly demonstrate and produce evidence of the services rendered by you to the Company, against which these shares have been issued. Furthermore the Company hereby places on record that from 2011 till date you have neither rendered any intellectual services to the Company not acted in the interest of the Company and consequently the Company is not liable to issue any further shares to you as and by way of sweat equity.

...

Yours sincerely,

*Mr.Vladimir Babiy
Director”*

39. Even if it is assumed for the sake of arguments that there was any fresh cause of action, it is observed that there is no admission in the letters dated 04.01.2013 or 23.03.2013. The said letters merely state that that the shareholding of the plaintiff was 1.77% of the total paid up Share Capital of the defendant Company. This is a factual statement about the value of the shares held by the plaintiff and cannot be construed as an admission on the entitlement of plaintiff to allotment of more shares. These letters do not yield any fresh cause of action in favour of the plaintiff.



40. The Letter dated 04.01.2013 also does not give a cause of action for calculating the limitation.

Limitation for the compensation for deficit share claimed under Prayer (a):

41. The plaintiff has claimed Rs. Rs. 44,01,274/- in lieu of allotment of deficit shares. It has already been held above that there is no cause of action for recovery of this amount. However, for the sake of arguments even if we consider the claim to be tenable, it needs to be further considered whether this claim is within limitation.

42. The residuary provision under **Article 113** of the Schedule to the Limitation Act, 1963 is applicable to the present case which states that ***any suit for which no period of limitation is provided elsewhere in this Schedule, the limitation period is three years from when the right to sue accrues.***

43. The phrase “*Right to Sue*” was succinctly explained by the Apex Court in the case of State of Punjab vs Gurdev Singh, (1991) 4 SCC 1 as under:

“The words “right to sue” ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted.”

44. Admittedly, the shares were offered vide letter dated 08.09.2006 and the promised 3% shares were allotted by 31.03.2008. In case there was any



deficit share allotment, it had to be claimed within three years i.e. upto March, 2011. Even if the assertion of the plaintiff is accepted, that the quantum of shares was ascertainable according to the capital of the defendant Company at the time of his termination on 24.10.2012, then too the claim is time barred as the suit has been filed on 19.02.2018 which is beyond the period of three years from the date of his termination on 24.10.2012.

45. Irrespective of whether cause of action is taken as 31.03.2008, 24.10.2012 or 23.03.2013 (the date on which the plaintiff claims that a fresh cause of action arose), the Claim under Prayer (a) is blatantly barred by limitation.

Limitation for the compensation claimed for illegal Termination, under Prayer (c):

46. A compensation of Rs. 60,00,000/- has been sought due to the alleged unlawful termination of the plaintiff from his position as the Director of the defendant Company which allegedly caused attrition to the reputation of the plaintiff in the Biological Science Fraternity and Health Care Industry.

47. The cause of action for the relief against his termination arose on 24.10.2012 i.e. date of Termination. The compensation for such a discharge could have been claimed within three years from 24.10.2012 i.e. upto 23.10.2015.

48. The plaintiff however, has sought enlargement of time under Section 14 of the Limitation Act, 1963. The relevant part of Section 14 of the Limitation Act, 1963, reads as under: -

“Section 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.”

49. The plaintiff claimed that he had filed the Winding up petition under Section 433 of the Companies Act, 2013 in January, 2016 for recovery of his dues and had withdrawn the same on 04.08.2017 and this period is liable to be excluded for calculating the limitation period *under Section 14 of the Limitation Act.*

Scope of Section 14 of the Limitation Act:

50. In the case of Suryachakra Power Corpn. Ltd. vs Electricity Deptt., (2016) 16 SCC 152 the Apex Court held that *the two main ingredients for attracting the principles under Section 14 of the Limitation Act, 1963 are that the party should be prosecuting another civil proceedings with due diligence and that the prosecution should be in good faith. Also, it should have been returned for defect in jurisdiction or similar defect.* It is not enough that one part is satisfied; both due diligence and good faith must be established.

51. In Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169 it was explained that Section 14 of the Limitation Act, 1963 enables the exclusion of the bonafide time spent in a court without jurisdiction. Conditions to be satisfied to avail the benefit under Section 14 were stipulated as under:



- “(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.”

52. From a plain reading of Section 14 of the Limitation Act, 1963, it is evident that the benefit under the section is available only when the proceeding before a wrong Forum results in the return of the plaint or withdrawal due to a defect of jurisdiction or such similar defects.

53. In the case of Narayan Ambaji Chavan vs. Hari Ganesh Navare (supra), the Bombay High Court held that Section 14 Limitation Act applies in cases where the court could not entertain an application due to *defects in jurisdiction or of similar nature*. The court refused to interfere on the ground that another remedy by way of Suit in the said matter was available and in such situation, the benefit of Section 14 of the Limitation Act, 1963 had not been extended.

Nature and Object of a Petition for winding up in comparison to a Suit for Recovery:

54. In order to avail the benefit of Section 14 of the Limitation Act, 1963, the nature and object of a winding up petition must satisfy the conditions specified in Section 14.

55. Perspicuously, any prior proceedings initiated must be with respect to the same matter in issue in the subsequent proceeding in order to avail the



benefit under section 14 of the Limitation Act, 1963.

56. The expression '**other cause of like nature**' came up for consideration of this Court in Roshanlal Kuthalia vs. R.B. Mohan Singh Oberoi (1975) 4 SCC 628 and it was held that Section 14 of the Limitation Act is wide enough to cover such cases where the defects are not strictly *jurisdictional*, but so-called others more or less neighbors to such deficiencies. Any circumstance, legal or factual, which inhibits entertainment or consideration by the court of the dispute on the merits comes within the scope of the section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has a right. This interpretation was followed in M.P. Steel Corporation (supra) and West Coast Paper Mills Ltd. (supra).

57. The counsel for the applicant/ defendant has relied on the Bombay High Court in Ajab Enterprises (supra), wherein it was held that the period in pursuing the Company Petition cannot be excluded under Section 14 of the Limitation Act, 1963. Even if the plaintiffs were pursuing a remedy of winding up proceeding under the Company Law, they ought to have filed suit for recovery of the amount due to them within the period of limitation.

58. On the other hand, the counsel for the plaintiff has placed reliance on Tata Consultancy Services Ltd. vs. Inspira IT Products Pvt. Ltd(supra) wherein it was observed that there is no legal requirement for the prior proceeding to be for the recovery of debt or that the same relief must be claimed in both the proceedings. In any case, a Winding up Petition is also a remedy for enforcing payment of a lawful debt as the end result of such petition is the winding up of the Company so that the assets and dividends of the Company can be declared towards payment of dues. It was also observed



that in view of the findings in West Coast Paper Mills Ltd. (supra), Ajab Enterprises (supra) is not good law.

59. The nature and object of a “Company Petition” under Sections 433 and 434 has to be analysed in contradistinction to a suit for recovery.

60. In the case of Rishi Pal Gupta vs S.J. Knitting and Furnishing Mills Private Limited, 1998 (45) DRJ 522, the maintainability of a Winding up petition when a suit for recovery was pending against the Company came up for consideration. It was held that a recovery suit and a winding up petition serve different purposes. While recovery suit would only serve the petitioner, a winding up petition can benefit the shareholders, creditors and contributors of the Company as well.

61. Similarly, in Indo Alusys Industries vs Assotech Contracts (India) Ltd. 2009 (110) DRJ 384, the learned Single Judge of this Court echoed the same principal that while a suit for recovery is a proceeding *in personam*, a winding up petition is a proceeding *in rem*. It was further expounded as under:

*“12. So far as the objection that the petitioner has filed a suit disentitling it to maintain the present petition is concerned, it is well settled that the **right to bring a winding up action is statutory conferred under Section 433 of the Companies Act, 1956.** However, no person has a statutory right to winding up of a company incorporated under the Companies Act, 1956. **Action to recover amounts and to winding up of the company are two wholly distinct and independent remedies. It is not necessary that every petition under Section 433 of the Companies Act, 1956 ends up in an order of winding up.** Several essential factors as public interest, justice and convenience enter into the consideration before the prayed for order results. **The nature of the defence and***



extent of dispute raised by the respondent also impact adjudication in winding up action. At the same time, limitation for seeking the remedy of recovery against the company continues to run. The two remedies are not alternative remedies. More often than not, as a matter of abundant caution, parties do not wait for final decision in one remedy before invoking the other.”

62. The Supreme Court in the case of Gurdit Singh & Ors. vs. Munsha Singh & Ors. (supra) held that the words “or cause of a like nature” would be required to be considered *ejusdem generis* with earlier words “of defect in jurisdiction” and, therefore, where the Court had jurisdiction to entertain the Company Petition, but does not do so, it cannot be said that the Court did not grant the relief due to defect similar to the want of jurisdiction.

63. Likewise, the Supreme Court in Yeshwant Deorao(supra) held that there can be no exclusion of the period spent in Insolvency proceedings against the Judgment Debtor while computing the period of limitation by giving the benefit of Section 14 of the Limitation Act, 1963.

64. The object of a petition under Section 433 of the Companies Act, 1956 is to wind up a Company that is unable to clear its debts or fails to comply with statutory requirements. It is thus not a typical process for debt recovery. The recovery of the dues or a part of the dues is only incidental to the winding up and liquidation of the company. In fact, even the quantum of dues recoverable is subject to the amount raised from the liquidation for which the priority of repayment is towards the dues payable to workmen and secured creditors as per Section 529A of the Companies Act, 1956.

65. **Therefore, in the event the court directs to wind up the Company, after the priority dues are cleared, the plaintiff would stand a chance to**



recover his alleged dues in the said petition.

66. Thus, in a *Winding up proceeding*, the scope of determination is confined to whether the Company is “*unable to pay its debts*”. This issue is answered in the affirmative as recovery of the debt is an incidental relief that would follow after the winding up of a Company. Thus, though, a Court or Tribunal, while adjudicating a Winding up petition does not determine the recovery of debts, recovery would be a consequence.

67. Therefore, a suit for recovery and a Winding up Petition are of a *similar cause or proceedings of like nature* as Winding up Petition may eventually result in recovery of dues.

68. Thus, the plaintiff is entitled to the exclusion of period from January, 2016 to 04.08.2017 spent in the Winding up proceedings, under section 14 of the Limitation Act, 1963, but the question is *would the suit of the plaintiff be still within the Limitation*.

69. As it has been held above, the cause of action with respect to the alleged balance shares in the defendant Company that the plaintiff is entitled, arose firstly on 08.09.2006 when the shares were agreed to be issued to the Plaintiff. It again arose in March 2008 when the promised 3% shares were admittedly allotted to him. The grievance of any shortfall arose then. Even if the claim of plaintiff is accepted that it finally arose on his day of resignation on 24.10.2012, the present has been filed only on 19.02.2018. Therefore, even if the period of about 20 months i.e. one and a half years from January, 2016 to 04.08.2017 (i.e. the period spent in pursuing the Company Petition) is excluded, then too, the present suit is barred by limitation, as having been filed beyond a period of three



years.

70. *Secondly*, the Company Petition for the winding up of the defendant company was filed only in January, 2016. The Apex Court in *Jignesh Shah vs Union of India*, (2019) 10 SCC 750 held that *though it is clear that a winding up proceeding is a proceeding 'in rem' and not a recovery proceeding, the trigger of limitation, so far as the Winding up petition is concerned, would be the date of default*. Section 137 of the Limitation Act, 1963 would be attracted in such cases which provides for a period of three years from when the right to apply accrues. The right to sue for the Company Petition also accrued on 24.10.2012. **Therefore, the said Company Petition was also barred by limitation as it has been filed in January, 2016 beyond three years from the date of default.**

71. Once the Winding Up Petition is itself beyond a period of three years, the time spent by the plaintiff in Winding Up Petition, would not save the limitation of the plaintiff to recovery of the claimed amount. Therefore, even if the period during which the plaintiff had pursued the Company Petition is excluded, the plaintiff would still not be able to bring his suit within the period of limitation.

Conclusion:

72. In view of the foregoing discussions, the two captioned applications are allowed, and the present Suit of the plaintiff is hereby rejected, as being barred by limitation.

73. Accordingly, the applications are disposed of in the above terms.

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74. In view of the Order passed in I.As. 6003/2021 and 8685/2021, the present Suit is hereby rejected, as being barred by limitation.

75. The pending applications are also dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 2, 2024
S.Sharma