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

% ***Reserved on: 13th March, 2026***

Pronounced on: 05th June, 2026

\+ **RSA 111/2019**

SHRI NAVEEN GUPTA, PROPRIETOR
M/s Star Power Centre,
Having it's Office at:
RZ-B/78, Mahavir Enclave,
Palam Road, New Delhi. .....Appellant
Through: Mr. Arvind Kumar, Advocate.

versus

SHRI SATISH JANGRA, PROPRIETOR/PARTNER
M/s Jangra Batteries & Auto Electric Works
Old Delhi Gurgaon Road,
Smalka, New Delhi. .....Respondent
Through: Mr. Prateek Gupta & Mr. Deepayan Mandal, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular Second Appeal under Section 100 read with Order XLII of CPC has been preferred against the Judgment dated 31.01.2019, whereby the learned ADJ has upheld the Judgment of the Learned Civil Judge, rejecting the Suit of the Plaintiff, under Order VII Rule 11 CPC and under Order XXIII Rule 1 CPC.

2. **The** Plaintiff, Mr. Naveen Gupta, had instituted a ***Civil Suit No. CS SCJ 49/2016 (25888/16)*** *for seeking recovery of a sum of ₹2,54,348/-.*

3. **The facts, as stated in the Plaint, are that** the Plaintiff was an authorised distributor of ACDelco Automobile batteries. The Defendant, who was engaged in the business of sale of batteries, had purchased ACDelco batteries of various specifications, from the Plaintiff on different dates between 30.05.2011 and 21.11.2011, subject to the manufacturer's guarantee and warranty terms.

4. The Plaintiff asserted that the goods were supplied to the complete satisfaction of the Defendant and that an amount of ₹1,67,334/- remained outstanding and payable by the Defendant. Despite repeated demands, the Defendant failed to discharge the said liability.

5. Consequently, the Plaintiff instituted the aforesaid Suit *seeking recovery of ₹2,54,348/-, comprising the principal outstanding amount along with interest calculated at the rate of 24% per annum, and pendente lite and future interest.*

6. The ***Appellant/Defendant filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908*** seeking rejection of the Plaint on the grounds that it *disclosed no cause of action* and was ex facie, *barred by limitation.* It was contended that all amounts allegedly due and payable to the Plaintiff, had already been cleared in December, 2011.

7. The Defendant further submitted that the *Invoices relied upon by the Plaintiff, pertained to the year 2011 and, therefore, the claim was hopelessly time-barred.*

8. It was further contended that although the earlier Suit had been withdrawn with liberty to institute a fresh suit under Order XXIII Rule 1(3) CPC, such liberty did not arrest or suspend the running of limitation.

9. Consequently, the subsequently instituted Suit was required to satisfy the law of limitation independently and had to be filed within the same limitation period applicable to the original cause of action. The Defendant further contended that the period during which the earlier suit remained pending, could not be excluded under Sections 14(1) and 14(3) of the Limitation Act, 1963, as the Plaintiff could not be said to have prosecuted the previous proceedings with *due diligence and in good faith*.

10. The ***Application was contested by the Plaintiff*** who contended that the Suit has been filed within the period of limitation, since *firstly*, the earlier Suit was withdrawn with liberty to file a fresh Suit on the same cause of action and *secondly*, the previous Suit was pursued with due diligence and in good faith. Therefore, the Plaintiff is entitled to exclusion of the time spent in the previous Suit under Section 14 Limitation Act.

11. The ***learned SCJ in the Order dated 23.04.2018***, observed that the Plaintiff was unable to demonstrate that the previous Suit had been prosecuted in good faith or with due diligence, since it got dismissed in default for non-prosecution. Moreover, the earlier Suit could have been amended without withdrawing the same, as the withdrawal of the Suit was only on account of the Suit having been instituted in the name of the Proprietorship Firm, rather than the Proprietor. It was thus, held that the Plaintiff was not entitled to exclusion of the time taken in pursuing the previous Suit as it was neither with due diligence nor with good faith. **Consequently, it was held that the Suit was barred by limitation and the Suit was rejected under Order VII Rule 11 CPC**.

12. The Plaintiff/Appellant **preferred a Regular Civil Appeal No.43/2018 before the learned ADJ**. However, he concurred with the learned SCJ that the previous Suit had not been pursued in good faith and with due diligence and, therefore, **the Appeal was dismissed, as without merit**.

13. Aggrieved by the said Judgment, the present Regular Second Appeal has been preferred by the Plaintiff/Appellant.

14. The grounds of challenge are that the learned Trial Court and the First Appellate Court, failed to consider and adjudicate the crucial legal issue *as to whether the earlier suit had been prosecuted by the Plaintiff with due diligence and in good faith.* It is contended that while deciding an Application under Order VII Rule 11 CPC, the learned Trial Court embarked upon an examination of disputed questions of fact and, in a summary manner, virtually subjected the parties to a trial, without framing any issue or recording evidence. Such an approach, is contrary to the settled principles of law laid down in a catena of judgments of the Apex Court.

15. It is stated that the ratio of the Judgment of *Consolidated Engineering Enterprises vs. Irrigation Department* (2008) 7 SCC 169 has not been appreciated in the correct perspective. It provided that Section 14 Limitation Act deals with exclusion of time of proceeding *bona fide* in a Court without jurisdiction. It is evident that the following conditions must be satisfied before Section 14 can be invoked: (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 mater in issue and; (5) Both the proceedings are in a Court.

16. It was further held in *Consolidated Engineering Enterprises* (supra) that the policy of the Section is to afford protection to a litigant against the bar of limitation, when he institutes a proceeding which, by reason of some technical defect, cannot be decided on merits and is dismissed. While considering Section 14 of the Limitation Act, proper approach should be adopted and the provision must be interpreted so as to advance the cause of justice, rather than to abort the proceedings.

17. Similarly, in *Harbans Singh vs. Juggat Pharma* 2013 LawSuit (Del) 5119, it was held that to be entitled to the benefit under Section 14 of the Limitation Act, the Appellant has to establish and prove that he was prosecuting the proceedings before the labour Court with due diligence and in good faith, which cannot be decided without evidence. If after the trial it is held that the Appellant/Plaintiff was so prosecuting the proceedings, he shall be entitled to the benefit of Section 14 CPC.

18. Likewise, in the case of *Jaswant Kaur vs. Surjit Singh and Ors*. MANU/DE/2748/2017, it was held that this aspect cannot be decided without trial and the impugned Order was liable to be set aside and an Issue framed in respect of Section 14 Limitation Act.

19. Similarly, in *Firm Khushi Ram Behari Lal vs. Firm Jagan Nath Kuthiala* MANU/DE/0082/1969 it was held that Section 14 had been enacted with the object of affording protection against the bar of limitation to a person in *good faith*, doing his best to get his case tried on merits, but failing through the Court, being unable to give him such a trial. Similar observations were made in the case of *Basdeo Prasad Khemka vs. Union of India* MANU/WB/0018/1978.

20. It was, therefore, submitted that the findings of the Appellate Court are in contradiction to Section 14(3) Limitation Act, and specifically overturn Order XXIII Rule 2 CPC. The learned ADJ has mis-appreciated the Judgment of *Harbans Singh* (supra), as it is not applicable to the facts of the present case. The impugned Judgment is, therefore, liable to be set aside and the Suit be remanded to be tried on merits.

21. The **Appellant** in support of his assertions, had submitted the ***Written submissions,*** wherein the similar contentions were raised.

22. Written submissions were also filed on behalf of the Respondent, wherein it was contended that the Suit instituted by the Appellant/Plaintiff, was not maintainable in law. In the Suit filed in the year 2016, as well as in the first Appeal, the Appellant had specifically pleaded that the last cause of action arose on 21.11.2011. Since the suit was instituted only in the year 2016, it was ex facie barred by limitation and was, therefore, rightly rejected by the learned Civil Judge.

23. It was further submitted that although the earlier Suit had been instituted in the year 2014, i.e. within the prescribed period of limitation, the same came to be dismissed for non-prosecution on 05.11.2014. Thereafter, an Application for restoration was filed and the Suit was restored on 28.07.2015.

24. On the very same date, the counsel for the Appellant sought withdrawal of the Suit on the ground of a *technical defect*; namely that the Suit had been instituted in the name of the proprietorship concern instead of the sole proprietor. Consequently, permission was granted to withdraw the Suit, with liberty to file a fresh suit under Order XXIII Rule 1(3) CPC.

25. The Respondent contended that the original Suit was itself not maintainable in the eyes of law, as is evident from the observations made by the learned Predecessor Civil Judge, in the Order dated 28.07.2015. The Suit would have otherwise, been dismissed on that date itself; however, realizing the defect, the Plaintiff allowed the matter to be dismissed in default. Subsequently, he moved an Application under Order IX Rule 9 CPC in February, 2015, securing restoration of the Suit on 28.07.2015. According to the Respondent, this course of action effectively kept the defective proceedings pending for more than one and a half years, until its eventual withdrawal.

26. It was, therefore, submitted that the benefit of Section 14 of the Limitation Act, 1963 was not available to the Plaintiff and that the Plaintiff remained bound by the prescribed period of limitation. Since the fresh Suit was not instituted within three years from the date on which the last cause of action arose, *the same was liable to be dismissed as being barred by limitation.*

27. Furthermore, the Respondent had taken a defence that the Appellant had an option of seeking an amendment of the Plaint, to correct the technical defect. However, whenever there is a technical defect, the Plaintiff has the option either to amend or to withdraw with liberty to file a fresh. Herein, the Plaintiff had chosen to avail the second option and it cannot be said to be mala fide or not in accordance with law.

28. However, it is stated that the counsel engaged by the Plaintiff, was not duly diligent to pursue the case. The Plaintiff as well as the Counsel, failed to appear, *resulting the Suit being dismissed for non-prosecution*. The

Suit is barred under Article 26 of Limitation Act, having been filed beyond the period of three years.

29. The present Suit on the same cause of action is, therefore, not maintainable and the Suit has been rightly rejected.

30. The Respondent has relied upon the judgments of *Deena (Dead) through Lrs vs. Bharat Singh (Dead) Thr. Lrs*. Decided on 29.07.2002 by DB of the Apex Court; *Rabindra Nath Samuel Dawson vs. Sivakami and Others* AIR 1972 SC 730; *Vijay Kumar Rampal and others vs. Diwan Devi and Ors*. AIR 1985 SC 1669 to assert that the benefit of Section 14 Limitation Act has been rightly denied to the Plaintiff.

31. In the end, it is stated that this Court is the second Court of Appeal and cannot re-appreciate the facts. Moreover, there is no perversity in the impugned Judgment. In view of the aforesaid it is stated that the present Appeal, is, liable to be dismissed.

Submissions heard and record perused.

32. The ***Substantial Question of Law framed by this court on 13.09.2023*** are as under :

> (i) *Whether the Courts below ignored the provision of Section 14 (2) of the Limitation Act, 1963 inasmuch as it failed to consider that the Civil Court in the Former Civil Suit vide order dated 28.07.2015 had held that the said suit was bound to fail due to a formal defect, which finding had become final and, therefore, failed to exclude the time spent by the Appellant in prosecuting the said suit?*
>
> *(ii) Whether the Courts below failed to take into consideration explanation (c) of the Section 14 of the Limitation Act, 1963 while deciding the issue of defect of jurisdiction as regards the filing of the Former Civil Suit in the name of sole proprietorship firm?"*

33. The Plaintiff admittedly had earlier filed a *Civil Suit CS SCJ 49/2016 (25888/16) for Recovery on 14.02.2014*, in the name of the Proprietorship Firm of the Plaintiff. The Suit was *Dismissed in Default* and for non-prosecution, on 05.11.2014. However, it was restored to its original number, *vide* Order dated 28.07.2015. However, because the Suit suffered from a formal defect, the Appellant was permitted to withdraw the Suit and liberty was granted to the to file a fresh Suit on the same cause of action, under Order 23 Rule 1(3) CPC.

34. It is a settled principle of law that every Suit must be instituted within the period of limitation prescribed under the Limitation Act, 1963. In the present case, the Plaintiff instituted a suit for recovery of ₹2,54,348/- on 14.02.2014, wherein it was specifically pleaded that the last cause of action had arisen on 21.11.2011. Admittedly, the first Suit was filed within limitation.

35. The Plaintiff, however, failed to appear in the proceedings, resulting in the Suit being dismissed in default on 05.11.2014. It is an admitted fact that he subsequently, filed an Application under Order 9 Rule 9 CPC, seeking restoration of the suit. The said Application was allowed, *vide* Order dated 28.07.2015, whereby the delay in filing the Restoration Application was condoned, and the Suit was restored to its original position. Significantly, on the very same date, the Plaintiff was permitted to withdraw the suit with liberty to institute a fresh suit on the same cause of action, as prayed for by him.

36. Merely because the first Suit was dismissed in default in between, cannot be an ipso facto ground to believe and hold that the conduct of the Plaintiff, lacked bona fide or due diligence, especially when the Court had condoned the delay in moving the Restoration Application and also permitted the restoration of the Suit.

37. It cannot also be ignored that the earlier Suit *did suffer from a technical defect*, inasmuch as it had been instituted in the name of the Proprietorship Firm, rather than in the name of the sole proprietor. Such a defect was of a legal nature, and rendered the suit vulnerable to fail on that ground.

38. However, the Plaintiff cannot be faulted for the said defect, as the Suit was instituted on the basis of legal advice received from counsel. A litigant cannot reasonably be expected to possess knowledge of the procedural and technical requirements governing the institution of legal proceedings, and any bona fide mistake committed in this regard cannot, *by itself, be attributed to a lack of diligence or good faith on the part of the Plaintiff. Therefore, the withdrawl of Suit with liberty, was rightly allowed by the Ld. Civil Judge.*

39. **The next question,** which is infact, a legal question, that arises is the scope of S.14 Limitation Act and the meaning of words "due diligence" and "good faith".

40. The legal position governing the grant of benefit under Section 14 of the Limitation Act, is well settled. To avail such benefit, the Plaintiff is required to establish that the earlier proceedings were prosecuted *with due diligence and in good faith.*

41. The Supreme Court in the case of *Consolidated Engineering Enterprises* (supra) had explained the essential conditions for applicability of Section 14 which are:

> *(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 mater in issue; and*
>
> *(5) Both the proceedings are in a Court.* "

42. The concept of ***"due diligence"*** was explained by the Supreme Court in <u>*Consolidated Engineering Enterprises*</u> (supra), wherein it was observed that *due diligence and due care* are indispensable prerequisites, for invoking the benefit of Section 14 of the Limitation Act. The Court explained that ***"due diligence"*** is not susceptible to any rigid or absolute standard; rather, it denotes the degree of *prudence, care* and activity that may reasonably be expected from an ordinarily prudent person in the facts and circumstances of a particular case. It was further observed that where a matter remains pending before a court, and subsequently concludes that it lacked jurisdiction or that the proceedings ought to have been instituted elsewhere, *the period consumed during such pendency is liable to be excluded, as any delay attributable to the court cannot be construed as a lack of diligence on the part of the litigant.*

43. Section 14 Limitation Act, further requires that a prior proceeding should have been prosecuted in *good faith*. The definition of good faith as found in *Section 2(h) of the Limitation Act*, would indicate that "*nothing* *shall be deemed to be done in good faith which is not done with due care and attention."*

44. The Supreme Court in *Madhavrao Narayanrao Patwardhan v. Ramkrishna Govind Bhanu & Ors.*, 1959 SCR 567, clarified that since the Limitation Act itself contains a specific definition of the term ***"good faith,"*** recourse to the definition contained in the General Clauses Act, 1897, is neither necessary nor permissible. It is true that Section 14 Limitation Act 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 from the facts of each case.

45. Similar observations have been made in *Harbans Singh* (supra), *Jaswant Kaur* (supra), *Firm Khushi Ram Behari Lal* (supra), wherein it was held that Section 14 Limitation Act is intended to provide relief to one who initiates proceedings, which by reason of some technical defect, are thrown out.

46. In *Basdeo Prasad Khemka* (supra) it was held that Section 14 Limitation Act must be construed liberally and a litigant who has acted with due diligence is entitled as a matter of right to the exclusion of the period spent in infructuous proceedings, provided that the conditions laid down in Section 14 Limitation Act are satisfied.

47. The judgment of *Consolidated Engineering Enterprises* (supra) has been followed consistently by the Supreme Court in the case of *Sesh Nath Singh v.s Baidyabati Sheoraphuli Coop. Bank Ltd*. (2021) 7 SCC 313 ,*Laxmi Srinivasa R and P Boiled Rice Mill vs. State of Andhra Pradesh and Anr*. 2022 SCC OnLine SC 1790 and *Purni Devi & Anr. Vs. Babu Ram & Anr*. (2024) INSC 259 decided by the Apex Court on 02.04.2024.

48. Applying the aforesaid principles to the facts in the present case, there is nothing to show that the *proceedings had not been initiated* and pursued by the Plaintiff in good faith or with due diligence. The earlier Suit in fact, suffered from a technical defect as was also observed by the learned Civil Judge in the Order dated 28.07.2025, when the withdrawal of the Suit with liberty was passed. This technical defect cannot be termed as bad faith or lack of due diligence.

49. **The learned Civil Judge as well as the learned ADJ fell in error in not appreciating Section 14 Limitation Act, in the correct perspective in the light of the facts of this case** and observing that dismissal in default of the Suit lacked due diligence. The Section 14 Limitation Act has been wrongly applied to the facts of this case and, **therefore, the impugned Order of learned ADJ dated 31.01.2019, is liable to be set aside**.

Conclusion:

50. In view of the aforesaid discussion, **the impugned Order of the learned ADJ dated 31.01.2019 is hereby, set aside and the suit is restored to its original number, to be tried on merits, in accordance with law**.

51. The parties are directed to appear before learned District Judge, South-West District, Dwarka on 13.07.2026, for further proceedings.

52. **The Appeal is allowed and stands disposed of accordingly, along with the pending Application(s).**

(NEENA BANSAL KRISHNA)
JUDGE

JUNE 05, 2026
va