



2026:DHC:465-DB



\$~

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

%

Judgment reserved on: 08.01.2026
Judgment pronounced on: 20.01.2026
Judgment uploaded on: 20.01.2026

+ RFA(OS)(COMM) 34/2025, CM APPL. 70773/2025, CM APPL. 70774/2025 and CM APPL. 70775/2025

DIRECTORATE OF ESTATES MINISTRY OF HOUSING
AND URBAN AFFAIRSAppellant

Through: Mr. Syed Abdul Haseeb, CGSC
with Ms. Nasreen Khatoon,
Adv.

versus

RAJIV SARIN & ORS.Respondents

Through: Mr. Sidhant Kumar, Ms.
Shagun Chopra, Mr. Vinayak
Thakur, Mr. Om Batra, Adv.
for R-1.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

ANIL KSHETARPAL, J.

1. The present appeal has been filed assailing the judgment and decree passed by the Learned Single Judge [hereinafter referred to as 'LSJ'] on 02.05.2025, whereby the civil suit instituted by the Respondent Nos.1, 2 and 3 herein, came to be decreed in their favour and against the Appellant [hereinafter referred to as 'IJ'].

Signature Not Verified

Signed By: JAI
NARAYAN
Signing Date: 20.01.2026
15:33:11

RFA(OS)(COMM) 34/2025

Page 1 of 24



2026:DHC:465-DB



2. For the sake of clarity, consistency and ease of reference, the parties in the present appeal shall be referred to in accordance with their respective status before the LSJ.

FACTUAL BACKGROUND:

3. In order to comprehend the issues involved in the present case, the relevant facts in brief are required to be noticed.

4. The present proceedings trace its genesis to Flat No. 1108, Ansal Bhawan, Kasturba Gandhi Marg, New Delhi [hereinafter referred to as 'the suit property'], which admittedly belongs to the Plaintiffs, who came to acquire the ownership rights in the suit property through their mother, Mrs. Veera Sarin, acting as their constituted attorney, by virtue of Articles of Agreement dated 06.03.1972.

5. The suit property was leased out to Defendant No.1, Government authority, and remained under its lawful tenancy pursuant to various deeds executed from time to time. The possession of the suit property was handed over to the Defendant No.1 on 01.09.1976, against which the rent was regularly paid to the Plaintiffs and their predecessor-in-interest upto April 1999.

6. In the intervening period of 1974 to 1976, proceedings were initiated against Late Mr. H.K. Sarin, father of the Plaintiffs, under the Customs Act, 1962. Thereafter, on 12.07.1975, a preventive detention order was passed against him under the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 [hereinafter referred to as 'COFEPOSA']. Consequently, on



2026:DHC:465-DB



29.04.1980, Defendant No.3 issued a Show Cause Notice (SCN) under Section 6 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 [hereinafter referred to as 'SAFEMA'], calling upon Late Mr. H.K. Sarin to provide an explanation with respect to the sources of income and acquisition of various assets, including the suit property.

7. Following which, on 05.08.1998, Defendant No.3 passed an order under Section 7 of the SAFEMA [hereinafter referred to as 'Forfeiture Order'], forfeiting the suit property amongst other properties belonging to Mr. H.K. Sarin. Consequent upon the forfeiture, Defendant No.1 admittedly stopped paying rent to the Plaintiffs w.e.f. 01.05.1999, despite being in a continuous possession of the suit property. Parallely, the order dated 05.08.1998 was challenged by the Plaintiffs before the Appellate Authority, however, the same was rejected under SAFEMA on 19.12.2001. Thereafter, the Plaintiffs, along with their mother, Mrs. Veera Sarin, by way of ***W.P. (Crl.) No. 1606 of 2008*** titled ***Veera Sarin & Ors. v UOI & Ors.***, challenged the detention order dated 12.07.1975 as well as the proceedings initiated under the SAFEMA. The Division Bench of this Court *vide* judgment dated 01.12.2014 set aside and quashed the proceedings under SAFEMA on account of lack of jurisdiction by the government authorities.

8. Pursuant thereto, the Defendant No. 3, by order dated 28.03.2016, formally closed the proceedings under SAFEMA in respect of the suit property. Subsequently, upon failure of the Defendant No.1 to handover the possession of the suit property, the



2026:DHC:465-DB



Plaintiffs filed **W.P. (C) No. 10395/2019** titled **Rajiv Sarin v UOI & Ors.**, wherein the Court in its Order dated 16.07.2020 recorded that the possession of the suit property has been handed over to the Plaintiffs. Whereas *vide* order dated 28.07.2020, the Court directed the Defendant No.1 to pay the arrears of rent with effect from 01.05.1999 till 02.07.2020 at the rate of Rs 20,500/- per month. Additionally, the Court also granted a liberty to the Plaintiffs to pursue appropriate proceedings for recovery of market rent/*mesne* profits/compensation and interest in accordance with law.

9. Accordingly, the Plaintiffs preferred the CS (Comm) 12/2021 seeking recovery of *mesne* profits/market rent/compensation and interest in respect of the period during which the Defendants remained in the possession of the suit property, i.e., from 01.05.1999 to 02.07.2020. The LSJ by way of the IJ decreed the suit in favour of the Plaintiffs for a sum of Rs. 1,76,79,550/- along with an interest at the rate of 6% per annum.

10. The Defendant No.1 has now approached this Court in Appeal, seeking to challenge the correctness of the judgment rendered by the LSJ.

11. This Court has heard learned counsel representing the parties and with their able assistance perused the paperbook.

12. The submissions advanced by the learned counsel for the parties pertain to both the procedural aspects including the objection with respect to the maintainability of the civil suit as well as the substantive



2026:DHC:465-DB



merits of the case. Therefore, this Court deems it appropriate to bifurcate the submission under two distinct heads:

- (I) Submissions relating to the maintainability of the Civil Suit; and
- (II) Submissions concerning the merits of the case.

13. Before delving into the examination of the arguments raised by the parties, this Court deems it appropriate to reproduce the relevant provisions of SAFEMA and the Commercial Courts Act, 2015 [hereinafter referred to as ‘CC Act’], which forms a substantial part of the arguments advanced by the learned counsel for the parties:

“CC ACT

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(c) “commercial dispute” means a dispute arising out of—

(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;

(ii) export or import of merchandise or services;

(iii) issues relating to admiralty and maritime law;

(iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;

(v) carriage of goods;

(vi) construction and infrastructure contracts, including tenders;

(vii) agreements relating to immovable property used exclusively in trade or commerce;

(viii) franchising agreements;

(ix) distribution and licensing agreements;

(x) management and consultancy agreements;

(xi) joint venture agreements;

(xii) shareholders agreements;



2026:DHC:465-DB



- (xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;
- (xiv) mercantile agency and mercantile usage;
- (xv) partnership agreements;
- (xvi) technology development agreements;
- (xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;
- (xviii) agreements for sale of goods or provision of services;
- (xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;
- (xx) insurance and re-insurance;
- (xxi) contracts of agency relating to any of the above; and
- (xxii) such other commercial disputes as may be notified by the Central Government.

Explanation.—A commercial dispute shall not cease to be a commercial dispute merely because—

- (a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;
- (b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;

11. Bar of jurisdiction of Commercial Courts and Commercial Divisions.—Notwithstanding anything contained in this Act, a Commercial Court or a Commercial Division shall not entertain or decide any suit, application or proceedings relating to any commercial dispute in respect of which the jurisdiction of the civil court is either expressly or impliedly barred under any other law for the time being in force.

SAFEMA

7. Forfeiture of property in certain cases.—(1) The competent authority may, after considering the explanation, if any, to the show-cause notice issued under section 6, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties.



(2) Where the competent authority is satisfied that some of the properties referred to in the show-cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and record a finding accordingly under sub-section (1).

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Act, stand forfeited to the Central Government free from all encumbrances.

(4) Where any shares in a company stand forfeited to the Central Government under this Act, then, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or the articles of association of the company, forthwith register the Central Government as the transferee of such shares.

14. Bar of jurisdiction.—No order passed or declaration made under this Act shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the Appellate Tribunal or any competent authority is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

23. Protection of action taken in good faith.—No suit, prosecution or other proceeding shall lie against the Central Government or any officer of the Central or State Government for anything which is done, or intended to be done, in good faith, in pursuance of this Act or the rules made thereunder.”

(I) SUBMISSIONS RELATING TO THE MAINTAINABILITY OF THE CIVIL SUIT

Arguments raised on behalf of the Defendant No.1/Appellant

14. While challenging the maintainability of the civil suit, it has been argued that the LSJ lacked the competence and the jurisdiction to entertain the civil suit, preferred by the Plaintiffs, as a ‘commercial dispute’ within the meaning of Section 11 of the Commercial Courts Act, 2015 [hereinafter referred to as ‘CC Act’]. It has been argued that the suit property, was not used by the Defendant No.1 for the purposes of trade or commerce and as such the dispute did not fall within the



2026:DHC:465-DB



ambit of a commercial suit. On the aforesaid premise, it has been argued that the IJ is rendered without jurisdiction and is a nullity in the eyes of law.

15. Further, reliance has also been placed on Section 14 of SAFEMA, to argue that the LSJ could not have entertained the civil suit, and/or granted any consequential relief, since the said provision bars the institution and adjudication of civil proceedings in respect of any property dealt under the Act.

16. Lastly, it is the case of the Defendant No.1 that during the pendency of the civil suit one of the Plaintiffs, Ms. Radhika Sarin, passed away, resulting in abatement of the suit of qua the deceased Plaintiff.

Response to the arguments raised on maintainability on behalf of the Plaintiffs

17. *Per contra*, it has been argued that the LR of the deceased Plaintiff, Mrs. Veera Sarin, was duly brought on record, thereby ensuring the continuity of the proceedings and preserving the maintainability of the suit.

18. Further, while relying upon Paragraph no.89 of the plaint it has been argued that the suit property was leased and utilised for commercial purposes exclusively in terms of Section 2(1)(c)(vii) of the CC Act. Additionally, reliance has been placed on the judgment dated 01.12.2014, wherein the Division Bench of this Court quashed the Forfeiture Order under SAFEMA, to argue that the by virtue of



2026:DHC:465-DB



such quashing the proprietary interest of the Plaintiffs in the suit property was recognised.

SUBMISSIONS CONCERNING THE MERITS OF THE CASE

Arguments raised on behalf of the Defendant No.1/Appellant

19. It has further been argued by learned counsel for the Defendant No.1 that by virtue of Forfeiture Order passed under Section 7(3) of SAFEMA, the suit property vested absolutely in the Central Government, free from all encumbrances. It is his case that during the subsistence of the Forfeiture Order, the Plaintiffs were not entitled to any right, title or interest in the suit property and, as a necessary corollary, were not legally entitled to assert or claim any rent/*mesne* profits/compensation or any similar reliefs in respect thereof.

20. Further reliance has also been placed on Section 23 of SAFEMA to argue that the Defendant No. 1 is protected from any civil liability, since the said provision provides a complete statutory immunity to the Central Government in respect of actions taken in good faith. It has been argued that the suit property during the relevant period was referable to statutory authority provided under the SAFEMA, and therefore no liability could have been imposed upon the Defendant No.1 for acts performed in discharge of its statutory functions.

Response on behalf of the plaintiffs

21. *Per contra*, learned Counsel for the Plaintiffs has placed reliance on order dated 28.07.2020 in W.P. (C) 10395/2019, to argue that the Court recorded that, pursuant to its order dated 16.07.2020,

Signature Not Verified

Signed By: JAI
NARAYAN
Signing Date: 20.01.2025
15:33:11

RFA(OS)(COMM) 34/2025

Page 9 of 24



2026:DHC:465-DB



the rights of the Plaintiffs, including the right to claim *mesne* profits, compensation and interest were expressly reserved to be adjudicated by the competent court. Further reliance is placed on paragraph nos.3 and 4 of the aforesaid order, to argue that the Defendant No. 1, by way of affidavit before the Writ Court, had itself reflected arrears of rent payable from 01.05.1999 to 02.07.2020 at the rate of Rs. 20,500/- per month, and that no objection was raised by it at that stage.

ANALYSIS & FINDINGS:

22. Having heard the rival submissions advanced by the learned counsel for the parties and upon careful consideration of the record, this Court deems it appropriate to deal with the dispute at hand under four primary issues:

- A. Whether the civil suit was maintainable as a ‘commercial dispute’ and within the jurisdiction of the Commercial Court?
- B. Whether the suit was barred by SAFEMA, and to what extent does Sections 14 and 23 of SAFEMA limit civil remedies against the government?
- C. Whether the suit was procedurally maintainable in light of the death of one of the Plaintiffs?
- D. Whether the Defendant No.1 is liable to pay rent/*mesne* profits/compensation for the period of 01.05.1999 to 02.07.2020?

- A. **Whether the civil suit was maintainable as a ‘commercial dispute’ and within the jurisdiction of the Commercial Court?**



2026:DHC:465-DB



23. In order to examine the present issue, reference is made to Section 2(1)(c)(vii) of the CC Act, which specifically includes within its ambit ‘agreements relating to immovable property used exclusively in trade or commerce’. Additionally, reference is also made to the explanation to Section 2(1)(c) of the CC Act, which further clarifies that a dispute does not cease to be a commercial dispute merely because one of the parties thereto is the State or its instrumentalities, or because the relief sought pertains to the recovery of, or rights in relation to, immovable property.

24. In the present case at hand, undisputedly the civil suit arose out of a lease deed in respect of the suit property, whereas the Plaintiffs sought monetary relief by way of *mesne* profits/market rent/compensation etc for the period during which the Defendant No.1 continued to be in the possession thereof. In this regard, reference is made to Paragraph no.89 of the Plaint and the written statement filed by the Defendant No.1 in the civil suit. The relevant paragraphs are produced hereinbelow:

Plaint

“89. The present cause of action is a ‘commercial dispute’ as the Property is meant for commercial use exclusively in terms of Section 2(c)(vii), Commercial Courts Act, 2015. The present Suit is therefore a commercial suit in terms of the aforesaid Act and the Code of Civil Procedure, 1908 as applicable to commercial disputes.”

Written Statement filed by the Defendant No.1

“40. That the contents of paragraph 86 to 89 of the plaint are denied. It is stated that the flat was in possession with the Defendant No.2. There was no lease agreement during seizure period. In absence of lease as well as direction from Seizure Deptt, the monthly rent was not paid. Obeying the Court's decision, Defendant No.1 has already paid rent an amount of Rs. 52,08,323 as rent. So the question of interest payment is not arises.”



2026:DHC:465-DB



25. A perusal of Paragraph no.89 of the Complaint shows that the Plaintiffs have clearly established their cause of action, while contending that their case falls under the ambit of a commercial dispute, since the suit property is used exclusively for a commercial purpose. However, the Defendant No.1 in its written statement, has merely issued a bald and evasive denial of the contents of the aforesaid paragraph of the complaint, without controverting the specific plea taken by the Plaintiff as to the nature of the use of the suit property.

26. Additionally, in this regard, reliance is also placed on the 19 lease deeds pertaining to the properties situated in Ansal Bhawan, 16 Kasturba Gandhi Marg, New Delhi, produced before the LSJ by PW2/Mr. Shankar Singh, Sub-Registrar. Upon perusal of these lease deeds, it is evident that the properties situated in Ansal Bhawan, are used exclusively for commercial purposes. Therefore, the consistent pattern of usage of properties situated in Ansal Bhawan from the year 2005 to 2020, conclusively establishes that the suit property, being similarly situated, was also used for commercial purposes.

27. Notably, it also holds importance that the statutory touchstone, for a dispute to be classified as commercial in nature, is the exclusive use of the immovable property in trade or commerce. In absence of any pleading or any material contrary to the said plea raised by the Plaintiffs, particularly, taking into consideration the 19 lease deeds and in view of the fact that no such objection was raised before the



2026:DHC:465-DB



LSJ, Defendant No.1 cannot be granted a benefit of doubt at the appellate stage.

28. Moreover, upon a holistic consideration of the pleadings, the nature of the reliefs sought and the governing statutory scheme, this Court is of the view that the gravamen of the present dispute lies in the liability of a lessee/Defendant No.1 to pay rent and *mesne* profits in respect of a premises forming part of commercial usage. Whereas, the underlying transaction itself pertains to the leasing of an immovable property for commercial usage. Therefore, this Court, finds that the dispute at hand falls well within the description of a commercial dispute under Section 2(1)(c)(vii) of the CC Act and as such falls well within the jurisdiction of the Commercial Court.

B. WHETHER THE SUIT WAS BARRED BY SAFEMA, AND TO WHAT EXTENT DOES SECTIONS 14 AND 23 OF SAFEMA LIMIT CIVIL REMEDIES AGAINST THE GOVERNMENT?

29. Section 14 of SAFEMA provides that no civil court shall have jurisdiction in respect of any matter which the Appellate Tribunal or any competent authority is empowered by or under this Act to determine, and no injunction shall be granted, in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. In this regard, it has been argued by the learned counsel for the Defendant No. 1 that, once the suit property stood forfeited under Section 7(3) of the SAFEMA by the Forfeiture Order, any civil proceedings in respect of the suit property or consequential reliefs stood excluded by virtue of Section 14 of the SAFEMA.



2026:DHC:465-DB



30. In the opinion of this Court, the contention raised by the Defendant No.1 not only overlooks the subject matter and the reliefs actually sought in the civil suit but also turns a blind eye towards the subsequent developments that undertook with respect to the Forfeiture Order. It is pertinent to note that the civil suit does not impugn the validity of the Forfeiture Order nor does it seek any declaration or injunction directed against the proceedings initiated under SAFEMA. Rather, the claim of the Plaintiffs is purely with respect to a money decree against the continued unauthorised possession of the suit property.

31. Further, the SAFEMA proceedings already stands quashed by the Division Bench of this Court for lack of jurisdiction, therefore, the vesting of property in the Central Government by virtue of Section 7(3) of the SAFEMA, stood negated and the proprietary rights of the Plaintiffs revived and were recognised. Against the aforesaid, the bar as stipulated under Section 14 of the SAFEMA, cannot be read widely so as to preclude independent civil remedies for compensation of *mesne* profits accruing between the parties from use and occupation of the property, particularly since the proceedings have been annulled. The said provision does not create a blanket immunity against all civil suits that may have similar factual nexus with a property once subjected to SAFEMA proceedings.

32. It is trite law that the jurisdiction of civil courts is plenary and can be excluded only by express words of necessary implications, however, Section 14 of SAFEMA, does not expressly bar, nor does it impliedly exclude, the jurisdiction of civil courts in respect of claims



2026:DHC:465-DB



for *mesne* profits or damages arising out of an unauthorised occupation, particularly where the foundational proceedings under a special statute have already been set aside. The scope of Section 14 must be construed strictly and narrowly, consistent with the well-established rule that the provisions excluding civil jurisdiction are exceptions to the general rule, and therefore, admit of no expansive interpretation. In this regard, any ambiguity must necessarily operate in favour of the continuance of civil court jurisdiction, rather its exclusion.

33. In the present case, by the time the civil suit was instituted, (i) the Forfeiture Order and SAFEMA proceedings had been quashed by this Court, (ii) the competent authority had closed the proceedings, and (iii) the Writ Court, in ***W.P. (C) 10395/2019***, had noted restoration of possession to the Plaintiffs and directed Defendant No.1 to pay arrears of rent for the entire disputed period, while reserving the liberty to the Plaintiffs to pursue *mesne* profits, compensation and interest. Thus, the monetary claim arises in the post-quashing legal regime, founded on the Plaintiffs restored title. Therefore, there is, no matter pending or determinable under SAFEMA which could attract the bar of Section 14. Accordingly, the objection of the Defendant No.1 based on Section 14 must accordingly be rejected.

34. With respect to the other grounds raised by the learned counsel for the Defendant no.1, stating that no action can be initiated against the Central Government, since they are exempted for any liability as per Section 23 of the SAFEMA on account of acting in good faith. This contention, in the opinion of this Court, is devoid of merit, to the



2026:DHC:465-DB



extent that the entire dispute and any/every consequential proceedings that has undergone between the parties, including the writ petition, was an offshoot of the Detention Order passed under COPEFESA and subsequent Forfeiture Order issued by the Defendant No.3, which ultimately came to be quashed by the Division Bench of this Court, vide judgment dated 01.12.2014 in *W.P. (Crl.) No. 1606 of 2008* (Supra). Additionally, the LSJ has dealt with each and every aspect surrounding the contention raised with respect to Section 23 of the SAFEMA in detail, and this Court concurs with the findings rendered by the LSJ in paragraph nos. 30 to 41 of the IJ.

35. The LSJ has rightly held that the continued occupation of the suit property by the Defendants without payment of rent, even after the quashing of the SAFEMA proceedings, and in absence of any *bona fide* explanation provided for the occupation of the suit property for a period of seven years, does not exhibit any *bona fide* conduct or good faith on their part. As highlighted in the preceeding paragraph, this Court finds no infirmity with the finding of the LSJ.

C. WHETHER THE SUIT WAS PROCEDURALLY MAINTAINABLE IN LIGHT OF THE DEATH OF ONE OF THE PLAINTIFFS?

36. It has been argued by the learned counsel for the Defendant that death of the Plaintiff, Ms. Radhika Sarin, resulted in abatement of suit qua her, however, in view of this Court, the said contention is devoid of merit to the extent that as per Order XXII of the Code of Civil Procedure, 1908, a suit can be said to be abated only when the right to



2026:DHC:465-DB



sue does not survive and no legal representative of the deceased Plaintiff is brought on record within the prescribed period, rendering the continuation of proceedings legally untenable. However, in the present case, the civil suit has been filed in respect of the suit property jointly owned by the Plaintiffs, who are the brother and sister of the deceased Plaintiff No.3. As far as the share of the deceased Plaintiff No.3 is concerned, it has been apprised by the learned counsel for the Plaintiffs that, her legal representative, Mrs. Veera Sarin, the mother, is on record and entitled to prosecute the said share. In these circumstances, the plea of abatement is more technical than substantive and does not vitiate the maintainability of the suit.

D. WHETHER THE DEFENDANT NO.1 IS LIABLE TO PAY RENT/MESNE PROFITS/COMPENSATION FOR THE PERIOD OF 01.05.1999 TO 02.07.2020?

37. Now turning to the issue with respect to the time period for which the decree of *mesne* profit is to be granted, this Court consciously highlights that the aforesaid issue has not been argued by learned counsel for the Defendants, however, during the course of argument the said question was posed to the learned counsel for the Plaintiffs and due assistance was provided thereof. Even if objection with regard to the limitation has not been taken by the Defendant, still it is the duty of the Court to examine whether the rent/*mesne* profit is time-barred or not.

38. A suit for recovery of *mesne* profit is governed by Article 51 of the Limitation Act, 1963 [hereinafter referred to as 'Limitation Act'] which prescribes a limitation of three years, commencing from the



2026:DHC:465-DB



date when the profits are received. Ordinarily, a suit instituted in the year 2021 would permit the recovery of *mesne* profit only from the year 2018 onwards. However, such general rule is subject to statutory exclusions, notably, under Section 14 of the Limitation Act.

39. Before delving into the controversy pertaining to Section 14, it is pertinent to appreciate the nature of the cause of action being triggered in the present factual matrix. The Supreme Court in ***Rushibhai Jagdishbhai Pathak v. Bhavnagar Municipal Corporation (2022) 18 SCC 144***, has defined the principles of continuing wrongs and recurring/successive wrongs, while continuing wrong was referred to as a single wrongful act which causes a continuing injury, recurring/successive wrongs were classified as such wrongs that occur periodically, each wrong giving rise to a distinct and separate cause of action. Whereas the co-ordinate Bench of this Court in ***RSA 110/2013*** titled ***Sant Kirpal Singh v. Sobha Singh and Sons Pvt. Ltd.***, observed that in cases of continuing trespass or unlawful occupation, limitation does not run rigidly from a single historical date, and a fresh suit filed promptly after the crystallization of rights is maintainable.

40. The above cited judgments bear importance in view of the peculiar facts and circumstances that have unfolded in the present dispute at hand. Admittedly, the Forfeiture Order stood quashed on 01.12.2014. Consequently, the Defendant No.3 on 28.03.2016, formally nullified the said forfeiture. Thereafter, the Plaintiffs continuously pursued the restoration and settlement of dues through various correspondences spanning from 2017 to 2019. Following



2026:DHC:465-DB



which and upon failure of the Defendant to handover the possession, **W.P. (C) No. 10395/2019**, was filed by the Plaintiff No.1, *inter alia* seeking restoration of the suit property. The Writ Court *vide* Order dated 16.07.2020 recorded that the possession of the suit property was restored, whereas *vide* Order dated 28.07.2020, the Defendants were directed to pay the arrears of rent w.e.f. 01.05.1999 to 02.07.2020 being the date on which the Defendant No.1 removed its good from the suit premise.

41. Notably, the Court by way of Orders dated 16.07.2020 and 28.07.2020 reserved the rights of the Plaintiffs with respect to the claims of *mesne* profits, compensation and interest, declining to adjudicate the said issue under the writ jurisdiction on account of disputed questions of fact. Consequently, the Plaintiffs filed the civil suit.

42. It is pertinent to note that while the wrongful occupation subsisted since the date of quashing of the Forfeiture Order, the right of the Plaintiff to pursue *mesne* profits before the civil court crystalised immediately. Against this backdrop, the prolonged and unauthorised possession of the suit property by Defendant No.1, despite quashing of Forfeiture Order, constitutes a continuing wrong, and each day of such unauthorised occupation of the suit property, deprived the Plaintiffs right to possession, use and lawful income from the suit property but right to recover *mesne* profits is to be treated as a recurring cause of action, accruing month after month or day after day. The law of limitation cannot be applied in a mechanical or rigid



2026:DHC:465-DB



manner so as to penalise a litigant who was *bona fide* pursuing possession and consequential relief before a constitutional court.

43. Accordingly, the question that now falls for consideration of this Court is whether the proceedings instituted before the Writ Court is subject to exclusion as per Section 14 of the Limitation Act, for the purpose of calculation of time period for which the Plaintiffs is entitled to the claim of *mesne* profits. Before proceeding to examine the aforesaid, the said provision is reproduced hereinbelow:

“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;



2026:DHC:465-DB



(c) *misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.*”

44. Section 14(1) of the Limitation Act, in principle, mandates the exclusion of time spent in pursuing a prior civil proceeding, while computing the period of limitation in case of filing of any suit, provide that: (i) the prior and subsequent proceedings relate to the same matter in issue or arise of the same cause of action; (ii) the prior proceeding was prosecuted with due diligence and in good faith by the party instituting the suit, (iii) the prior proceeding was pursued before a court which, owing to defect of jurisdiction or other cause of a like nature, was unable to entertain it.

45. The Supreme Court in *Deena (dead) through LRs v Bharat Singh (dead) thr LRs & Ors., (2002) 6 SCC 336*, held that the expression ‘other cause of a like nature’ must be construed *ejusdem generis* with ‘defect of jurisdiction’, meaning thereby it covers any other legal or technical bars which prevent the court from entertaining the matter on the merits.

46. Thus, the provision codifies an equitable principle that a party should not be prejudiced by the bar of limitation where it has *bona fide* pursued a remedy before a forum which, for jurisdictional or similar reasons, was unable to adjudicate the dispute. The Supreme Court has consistently characterised Section 14 as a remedial provision, warranting a liberal construction to advance the cause of justice rather than defeating it in a pedantic or technical manner.

47. Adverting now to the fact that, whether the writ remedy pursued by the Plaintiffs is subject to exclusion as per Section 14 of the



2026:DHC:465-DB



Limitation Act. Reference in this regard is placed on the judgment of Supreme Court in *Shakti Tubes Limited Through Director v. State of Bihar and Others*, (2009) 1 SCC 786, wherein the Court, while relying on the liberal interpretation of Section 14 of the Limitation Act, excluded the time spent in pursuing the writ remedy, while reckoning the limitation period.

48. Similarly, the *Kerala High Court in Kerala State Civil Supplies Corporation v M.G.M. Transports*, (2005) 1 KLJ 211, held that the proceeding under Article 226 of the Constitution of India, falls within the definition of a civil proceeding.

49. Applying the aforesaid principles to the present case, the entire period beginning from the date of institution of the writ petition till the date on which possession was restored, i.e., 02.07.2020, is liable to be excluded while computing limitation for grant of *mesne* profits. However, once such exclusion is granted the Plaintiffs are entitled to reach back three years prior to the institution of the writ petition. Consequently, the Plaintiffs are merely entitled to the claim of *mesne* profits for the period commencing from 23.09.2016 to 02.07.2020. Their claim with respect to the period before 23.09.2016 has become time-barred.

50. In consideration of the aforestated, this Court would now proceed to examine the computation of the *mesne* profit undertaken by the LSJ in paragraph no.68 of the IJ. The LSJ assessed the notional lease value by applying the prevailing rate per sq. ft. to the area of 820 sq. ft. for each year from 2005 to 2020, on the basis of lease deeds



2026:DHC:465-DB



produced for the corresponding years, noting the annual fluctuation in rates. This Court finds no infirmity in the methodology adopted by the LSJ, accordingly, while relying upon the said lease deeds, the *mesne* profits payable are recalculated for the period commencing from 23.09.2016, on the basis of lease deeds produced for the year 2016, 2017, 2019, 2019 and 2020. The computation is set out in the tabular format hereinbelow:

S. No.	Year of Lease Deed	Price per sq. ft. (Rs.) (rounded of)	Area of the suit property	Notional rent of the suit property
1.	8 February 2016	1956/-	820	Rs. 16,03,920/-
2.	13 January 2017	1749/-	820	Rs. 14,34,180/-
3.	12 February 2018	1824/-	820	Rs. 14,95,680/-
4.	04 February 2019	1660/-	820	Rs. 13,61,200/-
5.	18 February 2020	2123/-	820	Rs. 17,40,860/-
Total- Rs. 76,35,840/-				

51. Therefore, the total amount of *mesne* profit for unauthorised use and occupation of suit property, calculated by applying the applicable rate per sq. ft. to the area admeasuring 820 sq. ft. for each year from 2016 to 2020, amounts to Rs. 76,35,840/-. Since some amount towards rent from 01.05.1999 to 22.09.2016 stands paid by the Defendants under the order of writ court. This amount cannot be adjusted because it has already been paid, even if its recovery has now

Signature Not Verified

Signed By: JAI
NARAYAN
Signing Date: 20.01.2025
15:33:11

RFA(OS)(COMM) 34/2025

Page 23 of 24



2026:DHC:465-DB



become time barred because limitation bars the remedy but does not destroy the right.

52. Consequently, the amount of rent payable for the period from 23.09.2016 to 02.07.2020, amounting to Rs. 9,22,500/- for a duration of 45 months at the rate of Rs. 20,500/- per month, having already been paid by the Defendants, is liable to be deducted by way of set-off. Resultantly, the Plaintiffs are entitled to *mesne* profits amounting to Rs. 67,13,340/- along with an interest at the rate of 6% per annum, as rightly awarded by the LSJ, to be calculated for the period from 23.09.2016 to 02.07.2020.

CONCLUSION:

53. In view of the foregoing discussions, this Court is of the considered view that the impugned judgment warrants no interference.

54. Accordingly, having found merit, the present Appeal, along with pending applications, stands partially allowed. The impugned judgement and decree is modified to the limited extent that the Plaintiffs shall be entitled to *mesne* profits only for the period commencing from 23.09.2016 upto 02.07.2020.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

JANUARY 20, 2026/sp/hr