
(1963) 04 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 121-D of 1955

Firm Bansi Dhar Baldeo Pershad and Another	APPELLANT
Vs	
Firm Alopi Pershad and Sons Ltd.	RESPONDENT

Date of Decision : 09-04-1963

Acts Referred:

Limitation Act, 1908 — Section 14

Citation : AIR 1963 P&H 556

Hon'ble Judges : R.P. Khosla, J;I.D. Dua, J

Bench : Division Bench

Advocate : H.L. Bhagat and Raghunath Sahai, for the Appellant; S.K. Kapur, Bishamber Lal and B.N. Kirpal, for the Respondent

Final Decision : Dismissed

Judgement

Inder Dev Dua, J.—This is a plaintiffs appeal from the judgment and decree of the Court of learned Subordinate Judge 1st Class dismissing the suit as barred by time.

2. It appears that the present plaint was originally presented in the Court of a Civil Judge Kheri in U.P. on 31st August, 1950, but the same was returned later, on the ground that Civil Courts at Kheri had no jurisdiction to entertain the suit and that it were Delhi Courts which alone could entertain the suit. This order is said to have been passed on 7th January 1953, and the plaint was re-presented in the Civil Court at Delhi on 9th January, 1953.

3. The suit was resisted by the defendant inter alia on the plea of limitation. The plaintiffs in reply relied on Section 14 of the Indian Limitation Act urging that the time during which the suit in the Kheri Court was prosecuted should be excluded.

4. The pleadings of the parties gave rise to the following two issues :

1. Is it a fit case for exclusion of the time from 31st August, 1950, to 9th January, 1953, from computation for limitation purposes u/s 14 of the Indian

Limitation Act?

2. If issue No. 1 is decided in favour of the plaintiff is the suit within limitation?

5. The lower Court found both the issues against the plaintiffs. On issue No. 1 it held that the plain was returned to the plaintiffs on 7th January, 1953, and though on the plaintiffs' case the other papers were returned, on 8th of January, 1953, there was nothing on the record to substantiate this assertion, in this result, the suit was held in any case to be barred by one day. The Court further took the view that there was not sufficient material to show that the plaintiffs had been prosecuting with due diligence the civil proceedings in the Kheri. Court in good faith. On issue No. 2 also the Court found the suit to be barred by time and not saved by the acknowledgments on which the plaintiffs had placed reliance.

6. On appeal before us the learned counsel for the appellants has drawn our attention to the endorsement at the back of the documents returned by the Civil Court of Kheri which clearly shows that they were returned to the plaintiffs on 8th January, 1953. In view of this endorsement it must be held that the Court below was in error in observing that there was no explanation showing as to why the suit was not instituted in Delhi on 3th January, 1953. If the papers were returned on 8th January then time up to that date must be excluded and it would obviously not be necessary to institute the Suit at Delhi on 8th January. The question of limitation would thus have to be considered after excluding this period, provided Section 14 is applicable.

7. Coming to the applicability of Section 14 of the Indian Limitation Act it appears to me that the plaintiffs have not shown good faith in initially instituting the suit in the Court at Kheri. The onus of bringing his case within the purview of this Section is on the party claiming its benefit and it is clearly incumbent on him to show that the mistake or error committed by him is not the result of absence of good faith but has been occasioned in spite of due care and attention having been devoted by him. It is of course not possible to lay down any hard and fast rule for excluding time under this section : however a fair working rule by and large accepted by the Courts is that exclusion of time under this section can be allowed only when the mistake leading to the institution of a suit in a wrong Court might be committed by a reasonably prudent man exercising due caution and diligence.

In the case in hand, the agreement, Exhibit D.1, executed between the parties on 27th October, 1942, at Delhi unequivocally provides that

"if for any reason Court proceedings are taken then only the Courts at Delhi shall have jurisdiction to hear those cases which shall be tiled in regard to the disputes arising out of the agreement because it has been executed and completed at Delhi and all amounts have been agreed to be paid at this very place".

This was signed by Ram Rattan on behalf of the plaintiff-firm Banshidhar

Kanhaiya Lal. Ram Narain Gupta (P. W. 1) has admitted in his cross-examination that the "talks of the transaction in dispute took place at Lakhimpur with the defendant and some talks were written at Delhi". Exhibit D.1 was admitted to have been signed by Ram Rattan, the plaintiffs' munini Exhibit D.2, another agreement, dated 27th October, 1942, also contains identical terms and was signed by Gurcharan Lal, munim of firm Banshi Dhar Baldeo Prasad. Execution of this agreement has also been admitted by Ram Narain Gupta. In view of the unequivocal term in the two agreements restricting the jurisdiction of Courts to Delhi Courts alone, I do not think the plaintiffs can be considered to have instituted the suit at Kheri "in good faith" which has been defined by the Indian Limitation Act to mean "with due care and attention". The argument that the proprietors of the plaintiff-firm did not know about the terms of the agreements would also suggest that the plaintiffs did not pay due attention or devote due care to the matter. This contention, therefore, instead of helping the appellants would seem to go against them. I am not unmindful of the position that normally speaking Section 14, Indian Limitation Act, should be liberally construed and trials on merits of controversies should not be shut out on unsubstantial or technical grounds. I am, further aware that unlike Section 5 of the Limitation Act, Section 14 is couched in language which appears prima facie to be mandatory in form and, therefore, if a plaintiff succeeds in showing good faith in instituting a suit in a Court without jurisdiction and due diligence in prosecuting the same then he is entitled as of right to claim exclusion of the time spent in diligent prosecution of the said suit. But at the same time, as observed earlier, the standard of a reasonably prudent man is expected of every litigant who comes to Court to have his controversy adjudicated upon with the result that approach to a Court lacking in jurisdiction etc. has to be measured with the yardstick just mentioned. Section 14 can thus hardly help a party guilty of negligence and undue indifference and inaction which seems to be the case before us.

8. For the foregoing reasons I am unable to differ from the order of the Court below and must in agreement with it hold that the plaintiffs have not succeeded in showing good faith and due diligence in approaching the Court in Kheri and in prosecuting the proceedings there. In this view of the matter it is hardly necessary to express any opinion on the correctness or otherwise of the decision on issue No. 2.

9. For the aforesaid reasons, the appeal fails and is hereby dismissed but, without any order as to costs.

R.P. Khosla, J.

10. I agree.