
(2007) 02 MP CK 0039
In the Madhya Pradesh High Court

Khemchand Motilal Jain

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 08-02-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 14

Citation : (2007) 3 JLJ 80 : (2007) 2 MPLJ 257

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Mishra, J.

These appeals have been preferred by the plaintiff aggrieved by dismissal of the suits as barred by limitation by the First Addl. District Judge, Raisen as per the common judgment and decree dated 21-4-1994 passed in consolidated Civil Suits No. 13-A/1986 and 16-A/1986.

The plaintiff, M/s. Khemchand Motilal Jain, a registered partnership firm instituted a Civil Suit No. 13-A/1986 for declaration and injunction challenging the recovery fastened by the DFO, Raisen of Rs. 47,250.47. The other Civil Suit No. 16-A/1986 was filed assailing recovery of Rs. 33,352.71. Both the civil suits were consolidated by the Trial Court.

It is not in dispute that initially a writ petition--M.P. No. 143/73 was filed assailing the aforesaid recoveries. It was filed on 16-2-1973 and was decided on 24-1-1979 by the Division Bench of this Court. It was held by this Court that question raised in the writ petition was purely question of facts and disputed question could only be decided on evidence. The writ petition was dismissed, an interference was not made. Thereafter, it was claimed in the plaint that a notice u/s 80, CPC was served. Date of serving of notice has not been mentioned in the

plaint. It was mentioned that the cause of action arose on October, 1972 at Sagar. Cause of action also arose on 24-1-1979 and 22-11-1979 when notice of demand of aforesaid amount was served by the defendants.

After the decision of the writ petition on 24-1-1979 civil suits were filed on 18-12-1979 in the Court of First Addl. District Judge, Sagar, after lapse of about 11 months from the date of decision of the writ petition.

Both the civil suits were ordered to be returned on 22-9-1984 by Court at Sagar for presentation to the Court at Raisen as no part of cause of action arose in the District of Sagar. Suits were presented in the Court of District Judge, Raisen on 1-10-1984, the complaints were ordered to be returned on 22-9-1984.

Trial Court as per the impugned judgment and decree has held that both the suits were barred by limitation. There was inordinate delay in filing the suits after dismissal of the writ petition on 24-1-1979. Suits were filed in the Court of First Addl. District Judge, Sagar on 18-12-1979 and after return of the complaints from the Court at Sagar on 22-9-1984 after 8 days complaints were presented in the Court at Raisen. There was delay in that also. Thus, the suits have been rightly dismissed as per the common judgment and decree. Aggrieved thereby these appeals have been preferred.

Shri K.N. Agrawal appearing with Ms. Prabal Gupta on behalf of the appellant has submitted that as the period spent while pursuing the writ petition has to be excluded u/s 14 of the Limitation Act, 1963 and a notice of 60 days u/s 80, CPC was required to be served after decision of the writ petition after service of the notice both the suits were filed and the period of 8 days spent after return of the complaints from the Court at Sagar and presentation at Raisen was not an inordinate delay in any manner. Thus, the suits ought to have been held within period of limitation. Period of Limitation of one year commenced on decision of writ petition, hence, suits filed were within limitation.

Shri Om Namdeo, GA, appearing on behalf of the respondents/State has supported the judgment and decree passed by the Court below. He has submitted that the period of limitation was one year as provided under Article 100 of the Limitation Act. The demand notices were initially issued on 30-12-1972. The limitation to file the suit was upto 30-12-1973, that stood expired. A writ petition was filed on 16-2-1973 assailing the demand raised, that writ petition was decided on 24-1-1979 on the ground that the civil suit was the proper remedy, disputed question of fact could not have been gone into in the writ petition. Even if the said period of six years is excluded the civil suit was filed belatedly on 18-12-1979 after 10 months 25 days whereas the notice period required u/s 80, CPC, which could be excluded was at the most 2 months only. Thus, both suits filed on 18-12-1979 were barred by limitation. He has further submitted that even after dismissal of the writ petition suits were presented in a wrong Court at Sagar, that was not having any jurisdiction to entertain. Both the complaints were returned on 22-9-1984, thus, the period spent from 18-12-1979 to

22-9-1984 could not have been excluded, as it could not be covered within the ken of Section 14 of the Limitation Act. After return of the plaints at Sagar while presenting it in the Court at Raisen, there was delay of 8 days, which could not have been excluded in the facts and circumstances of the case u/s 14 of the Act, it should have been presented on the next very date. Thus, no case for interference in these appeals is made out.

I find no merit in the submission raised by Shri K.N. Agarwal that the period of limitation has to be counted w.e.f. 30-12-1972 to 16-2-1973 till filing of writ, thereafter it stood checked during pendency of the writ petition and after exclusion of the period spent in writ petition the period of limitation again commenced on 24-1-1979. Thus, by exclusion of the period u/s 80, CPC the suit was within the period of limitation of one year.

In my opinion, the period of limitation had expired during the pendency of the writ petition, once period of limitation started it was not checked at the most exclusion could be claimed. Once the period of limitation had expired during the pendency of the certain proceedings which was not entertained, exclusion of the period spent in the proceedings is permissible, but, the fresh period of limitation would not start after termination of the proceedings. There has to be exclusion only of the period spent in the writ petition, but, no extension of the period of limitation to file the suit owing to the pendency of the writ petition decided on 24-1-1979 after adding the period of notice of two months required u/s 80, CPC, suits sought to have been preferred maximum after expiry of two months period after decision of the writ petition. Limitation to file suit did not restart w.e.f. 24-1-1979 as claimed by appellant, it already stood expired. No notice u/s 80, CPC has been placed on record, even the date of issuing it could also not be stated by the learned Counsel appearing on behalf of the appellant on being specifically asked. Whatever that may be even if the notice period of two months is further given as a grace period so as to file the suit after exclusion of the period spent in the writ petition. The suits ought to have been filed in the last week of March, 1979, but, both the plaints were presented on 18-12-1979, not before the Competent Court of jurisdiction having territorial jurisdiction to entertain the suits. The period from 1-4-1979 till 18-12-1979 could not have been excluded. Both the suits were hopelessly barred by limitation.

It passes comprehension that even after dismissal of the writ petition. Suits were presented in the wrong Court at Sagar. It is submitted that it was mistaken legal advice that the suit was presented at Sagar. Whatever that may be as period of limitation had already expired before the suits were filed in the Court at Sagar on 14-12-1979, both the suits were presented in the Court at Sagar after lapse of period of limitation after exclusion of the period spent in writ petition and notice period u/s 80, CPC. Suits have been rightly held to be barred by limitation by the Court below.

In Firm Jiwan Ram Ramchandra v. Jagernath Sahu and Anr. AIR 1937 Patna 495, a Division Bench has laid down that once the plaint has been returned for

presentation before the proper Court it has to be filed expeditiously and plaintiff is not entitled to exclude the time granted by the Court for re-presentation, rule of equity cannot help plaintiff, not being diligent in filing suit. In Ramchandra and Others Vs. Union of India (UOI), , it has been laid down that for exclusion of the period u/s 14, period required by the Court for return of the plaint after passing of the order could also be excluded. If the period elapses due to laches of plaintiff in taking back plaint, it cannot be excluded u/s 14. In Deshrath Singh v. Managing Director, M.P. State Co-operative Oilseed Grower's Federation Ltd. and Ors. 2003(5) M.P.H.T. 529, a Single Bench of this Court has laid down that the only period spent in the proceedings has to be excluded. In State of West Bengal Vs. Satyanarayan Rice Mill, , a Division Bench has opined that the proceedings under Article 226 of the Constitution ascertaining the vires, is a civil proceeding and as such it cannot be said that Section 14 of the Limitation Act does not apply. This Court also in M.P. State Co-operative Marketing Federation Ltd., Bhopal v. Union of India 2001 (1) MP 331, has held that in case any proceeding has been prosecuted by plaintiff for vindication of civil right, such proceeding shall be covered by words "civil proceeding" used in Section 14 of the Limitation Act.

Section 14 of the Limitation Act, 1963 makes it clear that the period spent in prosecuting the case with "due diligence" another civil proceedings may be excluded. It further requires that proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature has not entertained it. Period spent in writ proceedings can also be excluded.

No doubt about it that the writ petition was prosecuted with due diligence. It was admitted by this Court. Thus, after exclusion of the period the suit ought to have been preferred with reasonable diligence, but, there was laches on the part of plaintiff, writ was decided on 24-1-1979, suits were filed on 18-12-1979, period of limitation stood lapsed, it commenced on 30-12-1972, fresh period of limitation did not run again after decision of the writ petition on 24-1-1979 it stood expired a long back. Thus, I find that the decision rendered by the Court below is proper. Both the suits were barred by limitation.

Resultantly, I find no merit in these appeals. Appeals are dismissed. However, I leave the parties to bear their own costs as incurred.