
(2014) 01 MP CK 0002

In the Madhya Pradesh High Court

Case No : Civil Revision No. 167 of 2013

M.P. Financial Corporation and Another

APPELLANT

Vs

Shri Vallabh Bharadia

RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 21, Order 33 Rule 2, Order 7 Rule 11

Limitation Act, 1963 — Section 14 5

Citation : (2014) 01 MP CK 0002

Hon'ble Judges : M.C. Garg, J

Bench : Single Bench

Advocate : Shekhar Bhargava along with Mr. Romesh Dave, for the Appellant; Ajay Bagdiya, Learned Counsel, for the Respondent

Final Decision : Allowed

Judgement

M.C. Garg, J.—This order shall dispose of Civil Revision filed by the petitioners aggrieved of the order dated 26th August, 2013 passed by the learned 21st Additional District Judge, Indore in COS No. 4-A/2013 whereby, the said Judge allowed the application of the respondent u/s 5 of the Limitation Act by suo motu and wrongly treating the said application as an application u/s 14 of the Limitation Act. It is the case of the petitioner that this present revision petition arises out of a suit for declaration, specific performance and permanent injunction filed by the respondent against the petitioner Corporation. By the order impugned herein, the learned trial Court had allowed the respondent's application u/s 5 of the Limitation Act, filed for condoning the delay in filing the above suit. The petitioners opposed the said application on the ground inter-alia that Section 5 of the Limitation Act has no application to suits, and since the respondent's own case was that the suit was delayed by 72 days, the same was liable to be summarily dismissed as time barred.

2. The petitioners submit that initially the respondent had filed the suit claiming

the same to be within limitation (Annexure P/3). For its main relief of specific performance, the respondent relied entirely on the minutes of the meeting of the petitioner Corporation's Standing Committee which had considered the offers of the various prospective purchasers for the suit property, including the offer made by the respondent. According to the respondent, since his offer of Rs. 8.40 lacs for the suit property was the highest and the same had also been approved by the Standing Committee, the said minutes had brought into existence a binding contract between the parties. The respondent further submitted that the only thing remaining to be done under the said minutes was the issuance of the sale letter to him. The petitioners submit that the minutes of the Standing Committee meeting (Annexure-P/2) do not admit of the above interpretation sought to be placed on the same by the respondent. The said minutes neither constitute a concluded contract, nor show that any agreement for sale of the suit property by issuance of a sale letter had come into existence. In fact, from a bare perusal of the said minutes, it would be apparent that the same are no more than a bare record of the fact that out of the prospective purchasers who had submitted their respective bids, the respondent's bid of Rs. 8.40 lacs was the highest. Besides, even the approval of the respondent's said bid is shrouded in conditionality in as much as the approval was given subject to the owner of the suit property being notified for bringing a better offer. For ready reference, the relevant portion of the above minutes of the Standing Committee are reproduced below:

The bid not proceed further. The highest offered has offered to pay 50% of the sale price (at the time of issuing sale letter) and remaining 50% in one month. The owner of the House, Shri Thakur, was also advised to appear before the Committee, but he did not turn up. In view of this, the Committee decided to refer the best offer of Rs. 8.40 lacs to the owner of the House to bring better offer, if any, within a week, i.e. 7th Aug., 2001. In case no response is received, the sale letter is to be issued to the purchaser. In the meantime, the sale negotiation of the house may also be brought to the notice of the Hon''ble High Court Indore

3. From the above extract, it is also apparent that the above development was also required to be communicated to the Hon''ble High Court in the petition filed before this Hon''ble Court by the owner of the suit property (Shri A.K. Thakur) Though the above provisions regarding communication to the owner of the suit property to bring a better price, as also for informing this Hon''ble Court about the above development in the mortgagor-owner's writ petition filed before this Hon''ble Court, negated the existence of any concluded contract, yet the respondent persisted with the issuance of the sale letter so that he could continue to hold on to the suit property without payment of rent which he was liable to pay as a tenant of the suit property to the owner thereof, Shri A.K. Thakur.

4. The petitioners submit that since the facts pleaded as aforesaid in the plaint did not disclose a cause of action and the plaint was even otherwise liable for

rejection on other grounds also, the petitioner had filed an application under Order VII Rule 11 CPC seeking rejection of the plaint on the grounds stated therein. One of the other grounds on which rejection of the plaint was sought was the ground of limitation, that is to say that the suit was barred by limitation on the plaint allegations itself.

5. In his reply, the respondent vehemently opposed the petitioner's application under Order VII Rule 11 CPC. However, as regards the question of limitation, the respondent, even while reiterating that the suit was within limitation, also submitted that he was filing a separate application for condonation of delay of 72 days, so that the technical objection regarding limitation did not survive. Accordingly, the respondent filed the separate application u/s 5 of the Limitation Act for condonation of delay of 72 days. The petitioner opposed the said application on various grounds, including the ground that the delay in filing a suit could not be condoned u/s 5 of the Limitation Act, as the said provision had no application to suits. In fact, the said delay of 72 days can neither be condoned u/s 5 nor Section 14 of the Limitation Act. Besides, the said application could not also be considered as the question of limitation had to be decided on the plaint averments and not on the basis of a separate application.

6. The petitioners submit that instead of ignoring the respondent's application for condonation of delay and hearing only the petitioner's application under Order VII Rule 11 CPC for rejecting of the plaint, the learned Trial Court fixed the matter for consideration of the respondent's application for condonation of delay only. The said application was accordingly heard separately and allowed by the impugned order dated 26/08/2013. It is submitted that the separate hearing of the respondent's application for condonation of delay u/s 5 of the Limitation Act by itself vitiates the impugned order in as much as the question of limitation being an integral part of the application under Order VII Rule 11 CPC, the said question i.e. the question of limitation could not have been decided separately.

7. The petitioners submit that even otherwise the respondent's application u/s 5 of the Limitation Act was liable to be dismissed. It is submitted that instead of holding the suit to be time barred on the plaint averments alone, and rejecting the respondent's application u/s 5 of the Limitation Act as not applicable to suits, the learned Trial Court, illegally and without jurisdiction, treated the said application as being u/s 14 of the Limitation Act.

8. The petitioners submit that the respondent's application u/s 5 of the Limitation Act could not also have been treated as an application u/s 14 of the said Act, as the two sections are entirely different in scope and content, and entirely different considerations apply for deciding the questions arising under the said two provisions. Further, in the circumstances of the case, the respondent's application u/s 5 of the Limitation Act could neither have been converted into nor could it have been treated as an application u/s 14 of the Limitation Act, more so as to separate application lay under the said provision (i.e. Section 14 of the Limitation Act) Besides, the facts necessary for availing

the benefit of section 14 of the Limitation Act Would need to be pleaded in the plaint itself, and not by way of separate application. However, be that as it may, it is submitted that even on merits no case existed or was made out, for the grant of the benefit available u/s 5 of the Limitation Act.

9. It is submitted that admittedly the alleged agreement sought to be specifically enforced was of 28/07/2001 (Annexure P/2) and the limitation for enforcing the same would be no more than 3 years i.e. the limitation therefore ended on 27/07/2004. However, the respondent has erroneously claimed that the starting point of limitation was 02/11/2007. i.e. the date on which the petitioner Corporation is alleged to have refused to issue the sale letter to him. The petitioners submit that the respondent's claim that the starting point of limitation 02/11/2007, is clearly wrong, incorrect, against the record, and even otherwise untenable. It is submitted that a bare perusal of Annexure-P/9 filed with the present revision petition, would show that the petitioner Corporation had from the very beginning refused to issue the sale letter asked for by the respondent. In fact, a bare perusal of letter dated 13/05/2002 (being the 5th letter in Annexure P/9) would show that the petitioner Corporation was not interested in selling the suit property to the respondent in as much as it had even taken another prospective buyer to see the suit property, so that he would buy the same if he liked it. In fact, the said letter is sufficient proof of the fact that the sale proceedings of 28/07/2001 were treated as cancelled, and in any case not binding. In fact, the other letters also lead to the same inference/conclusion, more so as the very absence of any action thereon, is tantamount to refusal. The respondent is therefore wrong in contending that the starting point of Limitation is 02/11/2007, which is alleged to be the first date of refusal. Even otherwise, a party cannot be permitted to sit idle for more than 6 years after allegedly entering into a contract, and then contend that a refusal thereafter gives it a fresh cause of action. This is clearly not the intention of the law.

10. Besides, the other developments in the meantime are also proof of the fact that the alleged agreement was not to be performed. In fact in the alleged agreement itself there is mention of a stay order having been passed by this Hon'ble Court in W.P. No. 1501/2001 (A.K. Thakure v. MPFC) and the need to bring the auction proceedings and results of the bidding to the notice of this Hon'ble Court. The said petition, which had been filed by the owner of the suit property (in which the respondent admittedly resides as a tenant) was finally decided on 02/08/2005, and after that also nothing was done by the respondent for getting a sale letter issued in his favour. It is further submitted that though the respondent was very well aware of the aforesaid developments (as is evident from the correspondence Annexure P/9) he did not take any action for protecting his alleged rights. Besides, no right survived in favour of the respondent after the petitioner and the owner of the suit property had reached a settlement under which the suit property had to be released in favour of the owner on his paying the settled amount. In fact, the periods both before and after the issuance of the letter of refusal of 02/11/2007 (particularly upto the date of filing of the writ

petition, WP 95/2008 on 02/01/2008) are completely unexplained and therefore, for the said reason also, the respondent cannot derive any advantage from the letter dated 02/11/2007.

11. The respondent is also not entitled to the benefit of Section 14 of the Limitation Act in respect of the period spent litigating before this Hon"ble Court in the writ petition and the writ appeal, which had filed against the order dismissing his writ petition. As would be apparent from a bare perusal of the order dated 25/01/2008 passed by the learned Single Judge in W.P. No. 95/2008, the respondent's writ petition was dismissed not on the ground of jurisdiction or other ground of like nature, but on the ground that the remedy of a writ petition was not a proper remedy, and the respondent should avail the remedy of a civil suit only. It is submitted that instead of filing a civil suit as directed, the respondent chose to challenge the order of the learned Single Judge by filing a writ appeal. When the said appeal came up for final hearing on 29/01/2013, the respondent withdrew the same with the liberty to file a suit for claiming specific performance of the contract. It is submitted that in the circumstances, it cannot be said that the matter was being 'bonafide' or 'diligently pursued in good faith' before this Hon"ble Court. In fact, by availing the wrong remedy, the respondent cannot claim to be entitled to the benefit of Section 14 of the Limitation Act on the basis that he was diligently, bonafide and in good faith pursuing his legal remedies.

12. Respondent has not filed written submissions despite opportunity granted to them.

13. It is apparent and clear that the respondent who was in fact, a tenant in the suit premises and became successful bidder after steps taken by the petitioners to sell the suit property and offered to purchase the same for Rs. 8.40 lacs, the respondent did not file a suit for specific performance and it is only on 01st of February, 2013 filed a suit for specific performance even though the cause of action had appeared on 07th of August, 2001.

14. The respondent inspite of filing the suit within three years which is the period of limitation, filed a Writ Petition which was registered as W.P. No. 1501/2001. However, the said Writ Petition was dismissed and later on, the respondent filed a Writ Appeal which was also dismissed with liberty to the respondent to file Civil Suit.

15. Submissions on behalf of the respondent was that since he was continuously calling up the matter initially having written letters from time to time to the petitioners to execute the sale deed and return on filing Writ Petition, the entire period of delay was entitled to be condoned u/s 14 of the Limitation Act. Sections 5 and 14 of the Limitation Act reads as under:

5. Extension of prescribed period in certain cases--Any appeal or any application, other than, an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed

period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation--The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this 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.

(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 XXXIII 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 sections,--

(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;

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

16. In the present case, the suit filed on behalf of the respondent was for specific performance for which, specific limitation has been provided u/s 5 of the Limitation Act and does not provide for condonation of delay in filing of suit subsequent to the period of limitation.

17. Merely because, the respondent filed a Writ Petition, it will not mean that he will file a suit. Moreover, the writ petition was also not within the limitation. The question of availing the benefit of section 14 of the Limitation Act, therefore, does not arise. Considering all the facts and circumstances of the case, I am of

the considered opinion that in the present case, the order of learned Additional District Judge in having condoned the delay in filing the suit is not sustainable and therefore, the present Civil Revision deserves to be allowed. Accordingly, while allowing the Civil Revision filed on behalf of the petitioners, we set aside the order dated 26th of August, 2013 of the learned 21st A.D.J., Indore, whereby the delay in filing of the suit has been condoned but with no order as to costs.

C c as per rules.