

(2023) 08 DEL CK 0236

In the Delhi High Court

Case No : Original Miscellaneous Petition (COMM.) No. 79 Of 2022

National Seeds Corporation Ltd. And Anr.

APPELLANT

Vs

Ram Avtar Gupta

RESPONDENT

Date of Decision : 25-08-2023

Acts Referred:

Limitation Act, 1963 &mdsh; Section 14, 43(3)
Code of Civil Procedure, 1908 — Section 151
Arbitration and Conciliation Act, 1996 — Section 34, 34(3), 37(1)(b)
Commercial Courts Act, 2015 — Section 12(2)

Citation : (2023) 08 DEL CK 0236

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : Yashvardhan, Smita Kant, Kritika Nagpal, Priyanka Raj, Bharti Tyagi, Vikash Kumar

Judgement

Jyoti Singh, J

I.A. 1776/2022 (under Section 14 of Limitation Act, 1963 read with Section 151 CPC, by Petitioners)

1. This judgment will dispose of an application filed by the Petitioners under Section 14 of the Limitation Act, 1963 (hereinafter referred to as the '1963 Act') read with Section 151 CPC seeking exclusion of 1239 days spent in prosecuting the petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the '1996 Act'), being ARBTN. No.5043/2018 before the learned District Judge, Commercial Court, Patiala House Courts, New Delhi and Appeal against the said order in this Court being FAO(COMM.) No.200/2021.

2. Present petition has been filed by the Petitioners assailing an award dated 08.06.2018 passed by the learned sole Arbitrator in reference No.8N/CHD/(6)/17/LS 6508 in respect of contract order dated 05.06.2013 placed on the Respondent by the Petitioners pursuant to a tender for construction of a Seed Store of 35,000 quintals capacity including construction of boundary walls, roads, electrical works

etc.

3. By the impugned award, the learned sole Arbitrator has allowed wholly or in part, claim Nos.1, 3, 4, 7, 8, 9 and 10 of the Respondent and aggrieved by the award, Petitioners challenged the same by filing a petition being ARBTN. No.5043/2018 under Section 34 of the 1996 Act before the District Judge. This petition was admittedly filed within the statutory time limit of three months prescribed under Section 34(3) of the 1996 Act. However, almost three years later i.e. on 25.09.2021, petition was dismissed as non-maintainable for want of pecuniary jurisdiction since the Statement of Claim demonstrated that claims of the Respondent were more than Rs.2 Crores.

4. This decision was challenged by Petitioners by filing an appeal before this Court bearing FAO(COMM.) No.200/2021 under Section 37(1)(b) of the 1996 Act. Vide order dated 14.12.2021, this Court dismissed the appeal finding no infirmity in the impugned order. However, the Court held that the dismissal shall not in any manner preclude the Petitioners from instituting a petition under Section 34 of the 1996 Act, in accordance with law, before a Court of competent jurisdiction. In view of the liberty granted by this Court, Petitioners filed the present petition on 31.01.2022.

5. By an order dated 02.02.2022, this Court stayed the execution of the award, subject to the Petitioners depositing the awarded amount and notice was issued in the present application. The application was heard at some length on 03.03.2023 and during the course of arguments, learned counsel for Petitioners sought and was granted two weeks' time to file detailed affidavit in support of the application. Affidavit was filed on behalf of the Petitioners on 17.04.2023 alongwith orders passed by the District Judge as well as this Court in FAO (COMM.) No.200/2021. Respondent has filed a detailed reply to this application.

6. Contentions on behalf of the Petitioners are as under :-

(a) After the award was passed and received by the Petitioners on 08.06.2018, Petitioners filed a petition under Section 34 of the 1996 Act on 06.09.2018 before the learned District and Sessions Judge, Patiala House Courts, challenging the award within the statutory period of limitation of three months. Respondent also filed a petition being ARBTN. No.5676/2018 on 03.10.2018 before the learned District and Sessions Judge, Patiala House Courts partially challenging the same award. Petition was filed by the Petitioners under a bonafide belief that under provision of Section 12(2) of the Commercial Courts Act, 2015, the interest claimed by the Respondent was not to be included in the aggregate value of the claims. By this assessment, the total value of the claims came to Rs.1,92,49,235/-, excluding future and pendente lite interest and therefore, in the understanding of the Petitioners, the District Court had pecuniary jurisdiction to entertain the petition.

(b) Petition was filed on 06.09.2018, but it was only for the first time on 07.08.2021 that the Court flagged the issue that it lacked the pecuniary

jurisdiction and finally dismissed the petition on 25.09.2021, after three years. Petitioners still believed that the petition was rightly filed and assailed the said order before this Court by filing an appeal on 06.12.2021 under Section 37(1)(b) of the 1996 Act. No doubt, the appeal was dismissed but the Division Bench observed that the dismissal of the appeal shall not in any manner preclude the Petitioners from instituting a petition under Section 34 of the 1996 Act, in accordance with law, before the Court of competent jurisdiction. Therefore, Petitioners cannot be faulted for the delay as they were diligently and bonafidely pursuing a legal remedy before a Court albeit it was finally held that the Court lacked the pecuniary jurisdiction. Petitioners had been diligent in challenging the award within the statutory period of three months and in fact the petition was filed on the 88th day with a balance period of 02 days remaining.

(c) It is a matter of common knowledge that the entire world was affected by the Pandemic COVID-19 from March, 2020, which was one of the most unprecedented and unforeseen event having impacted the lives of people globally. In view of this, the Supreme Court passed an order in 'Re: Cognizance for Extension of Limitation, Suo Motu Writ Petition (Civil) No. 3/2020' on 23.03.2020 extending the limitation periods from 15.03.2020 till further orders. By an order dated 08.03.2021, period from 15.03.2020 till 14.03.2021 was excluded for computing the limitation period and on 27.04.2021, extension of limitation was restored and limitation periods were extended from 14.03.2021 till further orders. Finally, by an order dated 10.01.2022, the Supreme Court directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation, as may be prescribed under any general or special law in respect of all judicial or quasi judicial proceedings and consequently, balance period of limitation remaining as on 03.10.2021, if any, shall become available w.e.f. 01.03.2022. It was further directed that where limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have limitation period of 90 days from 01.03.2022. Therefore, Petitioners are entitled to exclusion of period from 06.09.2018 upto 31.01.2022 i.e. the period between filing of the original petition under Section 34 in the District Court to the filing of the petition in this Court by virtue of the benefit of Section 14 of the 1963 Act and the exclusion of limitation period under the order of the Supreme Court passed on 10.01.2022. To support his case, learned counsel for the Petitioners relies on the judgment of the Supreme Court in *Simplex Infrastructure Limited v. Union of India*, (2019) 2 SCC 455, where the Supreme Court has held that Section 14 of the 1963 Act would be applicable to an application under Section 34 of the 1996 Act for setting aside an arbitral award.

(d) The matter can be seen from another angle. When the Section 34 petition was initially filed before the District Court, a balance period of 2 days was remaining out of the three months' limitation period under Section 34(3). Granting the benefit of Section 14, Petitioners are entitled to exclusion of the period from 06.09.2018 to 14.12.2021 and once the balance period of 2 days

gets extended by virtue of order dated 10.01.2022 passed by the Supreme Court in Re: Cognizance for Extension of Limitation (*supra*) upto 28.02.2022, this petition filed on 31.01.2022 is within limitation. For this proposition, reliance was placed on the judgment of the Supreme Court in *M.P. Steel Corporation v. Commissioner of Central Excise*, (2015) 7 SCC 58.

7. Opposing the application, learned counsel for the Respondent contended as follows:

(a) This application under Section 14 of the 1963 Act is not maintainable since the present petition under Section 34 of the 1996 Act has been filed after a delay of 1334 days from the date of passing the award on 08.06.2018. It is not mentioned in the application as to for what period the Petitioners are seeking condonation of delay and/or exactly how much is the delay which is sought to be condoned. Application is conspicuously silent on any explanation with respect to the day-to-day delay.

(b) Section 14 of the 1963 Act provides that in computing the period of limitation for any suit, the time during which 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, 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. The chronology of dates and events in the present case does not even remotely support the case of the Petitioners that they were diligent in prosecuting their objections against the award. The initial petition was filed on 89th day when the three months period was about to end. The learned District Court pointed out to the Petitioners that the petition was not maintainable on ground of pecuniary jurisdiction on 07.08.2021, but thereafter Petitioners only sought adjournments and delayed the matter till 25.09.2021, when the petition was finally dismissed and therefore, 49 days were wasted without any reason. Thereafter, 73 days were taken in filing the appeal before this Court from the date of dismissal of the petition and no reason has been given for this delay. Even after this Court dismissed the appeal on 14.12.2021, Petitioners waited for 46 days to file the present petition on 31.01.2022. Therefore, there is a total delay of 1334 days from the date of receipt of the award till the filing of the present petition, which is unexplained. In this view of the matter, benefit of Section 14 of the 1963 Act ought not to be given to the Petitioners as they were completely negligent in prosecuting the case.

(c) In the alternative, even if the benefit of Section 14 is given to the Petitioners, petition is time-barred. Section 34(3) of the 1996 Act provides that an application for setting aside an award may not be made after three months have elapsed from the date on which the party making the application has received the arbitral award. Proviso to Section 34(3) carves out an exception and provides that if the Court is satisfied that applicant was prevented by sufficient cause from making the application within three months, it may entertain the application

within a period of thirty days, but not thereafter. The use of the words "but not thereafter" by the legislature makes it clear that the Court has no discretion to condone the delay beyond the period of thirty days for any reason whatsoever. In the present case, even if the benefit of thirty days period is given to the Petitioners under the proviso, there is still a delay of 28 days in filing the petition and is beyond the discretion and powers of this Court to condone.

(d) Petitioners are seeking the benefit of the order of the Supreme Court in *Re: Cognizance for Extension of Limitation* (supra), overlooking the fact that what was extended by the order of the Supreme Court was only the period of limitation and not the period upto which delay can be condoned in exercise of discretion conferred by the statute as clearly held by the Supreme Court in *Sagufa Ahmed and Others v. Upper Assam Polywood Products Private Limited and Others*, (2021) 2 SCC 317. To the same effect is a judgment of this Court in *Union of India v. Rama Contractor*, 2021 SCC OnLine Del 4350. Therefore, the delay exceeding thirty days beyond three months in the present case cannot be condoned by this Court and the petition deserves to be dismissed.

(e) Judgement in *Simplex Infrastructure Limited* (supra), covers the present case on all four corners on facts, wherein the Supreme Court was dealing with a factual situation where Respondent had received the arbitral award on 31.10.2014 and exactly 90 days after the receipt of the award had filed an application under Section 34 before the District Judge on 30.01.2015. Petition was dismissed on 12.02.2016 for want of jurisdiction and on 28.03.2016, Respondent filed the petition under Section 34 before the High Court i.e. almost after 44 days, excluding the date of dismissal of the initial petition and the date of filing the petition before the High Court. In these facts, the Supreme Court held that even if the Respondent is given the benefit of Section 14 of the 1963 Act in respect of period spent in pursuing the proceedings before the District Judge, petition was beyond the outer period of 90 days and the delay of 131 days could not be condoned as that would be a breach of statutory mandate.

8. I have heard learned counsels for the parties and examined their respective contentions.

9. The question that first arises for consideration before this Court is whether Petitioners can be granted the benefit of Section 14 of the 1963 Act. This very question came up for consideration before the Supreme Court in *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and Others*, (2008) 7 SCC 169.

After discussing and deliberating on various provisions of the Limitation Act and the Arbitration Act, the Supreme Court held that Section 14 will be applicable to an application filed under Section 34 of the 1996 Act, for setting an award made by the Arbitrator. Relevant paragraph is as follows:-

"23. At this stage it would be relevant to ascertain whether there is any express provision in the Act of 1996, which excludes the applicability of Section 14 of the

Limitation Act. On review of the provisions of the Act of 1996 this Court finds that there is no provision in the said Act which excludes the applicability of the provisions of Section 14 of the Limitation Act to an application submitted under Section 34 of the said Act. On the contrary, this Court finds that Section 43 makes the provisions of the Limitation Act, 1963 applicable to arbitration proceedings. The proceedings under Section 34 are for the purpose of challenging the award whereas the proceeding referred to under Section 43 are the original proceedings which can be equated with a suit in a court. Hence, Section 43 incorporating the Limitation Act will apply to the proceedings in the arbitration as it applies to the proceedings of a suit in the court. Sub-section (4) of Section 43, inter alia, provides that where the court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by the Limitation Act, 1963, for the commencement of the proceedings with respect to the dispute so submitted. If the period between the commencement of the arbitration proceedings till the award is set aside by the court, has to be excluded in computing the period of limitation provided for any proceedings with respect to the dispute, there is no good reason as to why it should not be held that the provisions of Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the Act of 1996, more particularly where no provision is to be found in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act, to an application made under Section 34 of the Act. It is to be noticed that the powers under Section 34 of the Act can be exercised by the court only if the aggrieved party makes an application. The jurisdiction under Section 34 of the Act, cannot be exercised suo motu. The total period of four months within which an application, for setting aside an arbitral award, has to be made is not unusually long. Section 34 of the Act of 1996 would be unduly oppressive, if it is held that the provisions of Section 14 of the Limitation Act are not applicable to it, because cases are no doubt conceivable where an aggrieved party, despite exercise of due diligence and good faith, is unable to make an application within a period of four months. From the scheme and language of Section 34 of the Act of 1996, the intention of the legislature to exclude the applicability of Section 14 of the Limitation Act is not manifest. It is well to remember that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period. Having regard to the legislative intent, it will have to be held that the provisions of Section 14 of the Limitation Act, 1963 would be applicable to an application submitted under Section 34 of the Act of 1996 for setting aside an arbitral award."

10. It would be relevant to refer to another judgment of the Supreme Court in this context in *Simplex Infrastructure Limited* (supra), wherein the Supreme Court observed that the position of law is well settled with respect to applicability of Section 14 to an application under Section 34 of the 1996 Act and relied on the judgment in *Consolidated Engineering Enterprises* (supra), albeit in the facts

of the case the Supreme Court found that even if the benefit of Section 14 was given to the Respondent therein and time spent in pursuing the proceedings before the District Court under Section 34 was excluded, it was beyond the limitation period.

11. In view of the conspectus of these judgments, this Court has no hesitation in holding that Petitioners would be entitled to the benefit of Section 14 provided they satisfy the Court that the proceedings before the District Court under Section 34 of the 1996 Act and the appeal under Section 37(1)(b) of the 1996 Act before this Court were prosecuted diligently and in good faith.

12. The principles and parameters that guide the adjudication of an application under Section 14 are well settled. In Consolidated Engineering Enterprises (supra), the Supreme Court has succinctly stated the purpose and object behind enacting a provision such as Section 14 and observed 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. Relevant paragraph is as follows:-

"22. 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 the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him such a trial, would not be applicable to an application filed under Section 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or (sic of) law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded."

13. In an earlier decision of a two-Judge Bench of the Supreme Court in P. Sarathy v. State Bank of India, (2000) 5 SCC 355, the Supreme Court held that abortive proceedings would attract the provisions of Section 14 once it is found that the party has been prosecuting with due diligence another proceeding. This

judgment is in line with a large number of judicial precedents where it was further held that Section 14 should be liberally construed to advance the cause of justice. [Ref.: Shakti Tubes Limited Through Director v. State of Bihar and Others, (2009) 1 SCC 786].

14. In M.P. Steel Corporation (supra), the Supreme Court once again affirmed that principle of Section 14 which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and pursued with due diligence but ultimately end without a decision on merits of the case. The Supreme Court observed that construed in the light of the object for which Section 14 has been made, there can be no cavil that if the conditions of the provision are otherwise met, the applicant should be put in the same position as he was when he started an abortive proceeding. What is however necessary is the absence of negligence or inaction and so long as the applicant is bona fide in pursuing a legal remedy which ultimately turns out to be abortive, the time beginning from the date of cause of action is to be excluded and not doing so would lead to anomalous results. Relevant paragraphs from the judgment are as under:-

"49. The language of Section 14, construed in the light of the object for which the provision has been made, lends itself to such an interpretation. The object of Section 14 is that if its conditions are otherwise met, the plaintiff/applicant should be put in the same position as he was when he started an abortive proceeding. What is necessary is the absence of negligence or inaction. So long as the plaintiff or applicant is bona fide pursuing a legal remedy which turns out to be abortive, the time beginning from the date of the cause of action of an appellate proceeding is to be excluded if such appellate proceeding is from an order in an original proceeding instituted without jurisdiction or which has not resulted in an order on the merits of the case. If this were not so, anomalous results would follow. Take the case of a plaintiff or applicant who has succeeded at the first stage of what turns out to be an abortive proceeding. Assume that, on a given state of facts, a defendant-appellant or other appellant takes six months more than the prescribed period for filing an appeal. The delay in filing the appeal is condoned. Under Explanation (b) of Section 14, the plaintiff or the applicant resisting such an appeal shall be deemed to be prosecuting a proceeding. If the six month period together with the original period for filing the appeal is not to be excluded under Section 14, the plaintiff/applicant would not get a hearing on merits for no fault of his, as he in the example given is not the appellant. Clearly therefore, in such a case, the entire period of nine months ought to be excluded. If this is so for an appellate proceeding, it ought to be so for an original proceeding as well with this difference that the time already taken to file the original proceeding i.e. the time prior to institution of the original proceeding cannot be excluded. Take a case where the limitation period for the original proceeding is six months. The plaintiff/applicant files such a proceeding on the ninetieth day i.e. after three months are over. The said proceeding turns out to be abortive after it has gone through a chequered career in the appeal

courts. The same plaintiff/applicant now files a fresh proceeding before a court of first instance having the necessary jurisdiction. So long as the said proceeding is filed within the remaining three month period, Section 14 will apply to exclude the entire time taken starting from the ninety-first day till the final appeal is ultimately dismissed. This example also goes to show that the expression "the time during which the plaintiff has been prosecuting with due diligence another civil proceeding" needs to be construed in a manner which advances the object sought to be achieved, thereby advancing the cause of justice.

50. Section 14 has been interpreted by this Court extremely liberally inasmuch as it is a provision which furthers the cause of justice. Thus, in *Union of India v. West Coast Paper Mills Ltd.* [(2004) 3 SCC 458] , this Court held: (SCC p. 464, para 14)

14. "... In the submission of the learned Senior Counsel, filing of civil writ petition claiming money relief cannot be said to be a proceeding instituted in good faith and secondly, dismissal of writ petition on the ground that it was not an appropriate remedy for seeking money relief cannot be said to be 'defect of jurisdiction or other cause of a like nature' within the meaning of Section 14 of the Limitation Act. It is true that the writ petition was not dismissed by the High Court on the ground of defect of jurisdiction. However, Section 14 of the Limitation Act is wide in its application, inasmuch as it is not confined in its applicability only to cases of defect of jurisdiction but it is applicable also to cases where the prior proceedings have failed on account of other causes of like nature. The expression 'other cause of like nature' came up for the consideration of this Court in *Roshanlal Kuthalia v. R.B. Mohan Singh Oberoi* [(1975) 4 SCC 628] and it was held that Section 14 of the Limitation Act is wide enough to cover such cases where the defects are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any circumstance, legal or factual, which inhibits entertainment or consideration by the court of the dispute on the merits comes within the scope of the section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has a right."

15. Facts of the present case would now require examination in the light of the principles enunciated by the Supreme Court in the aforementioned judgments. The chronology of facts and dates, which is undisputed shows that the impugned award dated 08.06.2018 was challenged by the Petitioners under Section 34 of the 1996 Act before the learned District Court by filing a petition on 06.09.2018, within the period of three months provided under Section 34(3) of the 1996 Act. After three years of filing the petition, the same was dismissed by the Court on 25.09.2021 for lack of pecuniary jurisdiction. An appeal was filed in this Court on 06.12.2021 being FAO (COMM.) No.200/2021 challenging the order dated 25.09.2021. The appeal was dismissed by the Division Bench of this Court on 14.12.2021 granting liberty to the Petitioners to institute a petition under Section 34 of the 1996 Act, in accordance with law, before a Court of competent

jurisdiction. Pursuant to the liberty granted, Petitioners filed the present petition on 31.01.2022.

16. Having given my thoughtful consideration to the reasons set forth by the Petitioners, I am of the view that Petitioners were diligent and prosecuted the proceedings at all stages in good faith. It is stated in the application that when the petition was filed before the District Court, the valuation was done under a bonafide impression that as per Section 12(2) of the Commercial Courts Act, 2015, interest claimed by the Respondent is not to be included in the aggregate value of the claim. Under this impression, petition was filed valuing the claims at Rs.1,92,49,235/- excluding future and pendente lite interest and therefore the petition was filed in the District Court within the pecuniary jurisdiction of the said Court. It is also to be noted that this petition was filed within the statutory limitation period of three months under Section 34(3) of the 1996 Act. Order sheets of the District Court placed on record indicate that notice in the petition was issued by the District Court on 10.09.2018 and on the returnable date i.e. 28.11.2018, Respondent had entered appearance and informed the Court that Respondent had also preferred a petition under Section 34 of the 1996 Act before the Court of Shri Gaurav Rao, learned Additional District Judge and requested for clubbing the matters. The petition remained pending thereafter for one reason or the other including during the Pandemic COVID-19 and was also fixed for final arguments on a few dates. It was only when the petition was listed on 07.08.2021 that a question arose with respect to the pecuniary jurisdiction of the District Court. Adjournment was sought by the Petitioners for taking instructions and appropriate steps in the matter. On 17.08.2021, as the order records, after making part submissions, the matter was adjourned for further arguments on joint request of the parties on the issue of pecuniary jurisdiction and finally after hearing arguments, the District Court dismissed the petition for lack of pecuniary jurisdiction. It is also important to emphasize that Petitioners took steps to assail the order and the appeal before this Court was also filed within the limitation period. Thus, this Court is unable to come to a conclusion that the Petitioners were not prosecuting the petition diligently.

17. In this view, Petitioners are entitled to the benefit of Section 14 of the 1963 Act as they qualify the twin conditions laid down by the Supreme Court in *Suryachakra Power Corporation Limited v. Electricity Department Represented by its Superintending Engineer, Port Blair and Others*, (2016) 16 SCC 152, having acted both diligently and in good faith. Therefore, as rightly urged by learned counsel for the Petitioners, the period of 1116 days commencing from 06.09.2018 to 14.12.2021 shall stand excluded for the purpose of computation of limitation period. Pithily put, benefit of Section 14 of the 1963 Act will be available to the Petitioners for excluding the entire period from the institution of original proceedings to the termination of Appellate proceedings, while computing the limitation period. I am supported in this view by judgments of two Co-ordinate Benches of this Court in *NHPC Limited v. BGS-SGS-Soma JV*, 2020 SCC OnLine Del 2368 and *Ircon International Limited v. Kamal Builders*, 2022

18. Respondent has opposed the grant of benefit under Section 14 of the 1963 Act essentially on the ground that Petitioners filed a misconceived petition before the District Court and ought to have known that the said Court lacked the pecuniary jurisdiction to entertain the petition. Even after the Court pointed out that it may not have the pecuniary jurisdiction, Petitioners took several adjournments in the matter and can only blame themselves for the delay. This Court is unable to accept this argument. Petitioners have explained that they filed the petition under a bonafide impression that the interest was not to be calculated while determining the specified value of the subject matter of the commercial suit. In fact, interestingly Respondent had also invoked the jurisdiction of the District Court and after notice was issued, had requested the Court to club the two suits. The order sheets do not indicate any deliberate act on the part of the Petitioners seeking unnecessary adjournments after the issue of maintainability was raised by the Court.

19. The next plank of the argument of the Respondent is that even assuming that the benefit of Section 14 of the 1963 Act is granted to the Petitioners, the petition filed in this Court is not only beyond the three months period of statutory limitation under Section 34(3) of the 1996 Act but is also beyond the thirty days condonable period under the proviso and this Court has no power to condone the delay of 28 days beyond the thirty days condonable period. There can be no dispute that proviso to Section 34(3) proscribes this Court from condoning the delay beyond thirty days as it is clearly provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months, it may entertain the application within a further period of thirty days, 'but not thereafter'.

20. The question that now arises is whether the present petition is beyond the condonable period of thirty days provided in the proviso to Section 34(3) of the 1996 Act. In this context, the second limb of the argument of the Petitioners becomes relevant. It was argued that benefit of the exclusion of the limitation period under the order passed by the Supreme Court in *Re: Cognizance for Extension of Limitation* (supra) on 10.01.2022 is available to the Petitioners by virtue of which the period from 15.03.2020 till 28.02.2022 stands excluded for the purposes of limitation. Learned counsel for the Respondent, per contra, had argued that by a subsequent judgment in *Sagufa Ahmed and Others* (supra), the Supreme Court had clarified that in *Re: Cognizance for Extension of Limitation* (supra), what was extended by the Supreme Court was only the period of limitation and not the period upto which delay can be condoned in exercise of discretion conferred by the Statute.

21. This Court need not detain itself with the contention of the Respondent that it was the limitation period and not the condonable period which was extended, for the reason that the present petition was filed within the limitation period taking into account the benefit of exclusion of the period under Section 14 of the 1963

Act and exclusion of the limitation period by virtue of the order of the Supreme Court passed on 10.01.2022. This very issue came up before the Co-ordinate Bench in Ircon International Limited (supra) and I may quote the relevant paragraph where giving benefit of both the exclusions, the Court held that the petition was filed within the period of limitation:-

"15. In the present case, it is not disputed that the objections were filed before the Hon'ble District Judge on 22nd July, 2019 which was well within the limitation period of three months from the date of receiving the modified impugned order, that is 22nd April, 2019. It has also been explained that period from 22nd July, 2019 till 12th April, 2021, the period during which the objections remained pending before the District Judge, Saket, is also liable to be excluded. It is further not in dispute that the period of limitation has been extended till 29th May, 2022 which implies that the period of limitation stood suspended at the time when the petition was withdrawn on 12th April, 2021 till 29th May 2022, while the present petition has been filed before this Court on 21st December, 2021 which is well within the period of limitation."

22. Since the Petitioners are entitled to benefit of exclusion of the period from 06.09.2018 to 14.12.2021 under Section 14 of the 1963 Act and further entitled to benefit of the order dated 10.01.2022, the petition is within limitation as it was filed on 31.01.2022 i.e. within the extended period which was upto 28.02.2022.

23. Seen from a different angle, Petitioners have rightly flagged that when the petition under Section 34 was filed before the District Court on 06.09.2018, it was short of three months limitation period under Section 34(3) albeit there is a dispute between the parties whether it was 02 days or 01 day. Taking the period to be 01 day, after the benefit of Section 14 of the 1963 Act is granted to the Petitioners, period upto 14.12.2021 stands excluded, Petitioners would be entitled to extension upto 28.02.2022, by virtue of the order of Supreme Court and thus the present petition filed on 31.01.2022, is within limitation. In this context, I may refer to the observations of the Supreme Court in M.P. Steel Corporation (supra), relevant paragraphs of which have been extracted above. In the said case, the Supreme Court explained the application of Section 14 of the 1963 Act with certain illustrations and one of them was where in a given case limitation period for the original proceeding is six months and the applicant files the proceeding on the 90th day i.e. after three months are over. The said proceeding turns out to be abortive after it has gone through a chequered career in the Appeal Courts. The same Plaintiff then files a fresh proceeding before a Court of first instance having jurisdiction. The Supreme Court observed that so long as the proceeding is filed within the remaining three months period, Section 14 of the 1963 Act will apply to exclude the entire time taken starting from 91st day till the final appeal is ultimately dismissed and further observed that the expression 'the time during which the Plaintiff has been prosecuting with due diligence another civil proceeding' needs to be construed in a manner which

advances the object sought to be achieved, i.e. cause of justice. Applying the judgment to the facts here, when Petitioners had filed the petition in the District Court, it was 01 day short of the three months limitation period. Therefore, applying the judgment and giving benefit of Section 14 and order dated 10.01.2022 in Re: Cognizance for Extension of Limitation (supra), Petitioners are entitled to succeed even on this score.

24. For all the aforesaid reasons, this Court holds that the present petition is filed within the limitation period. The application is allowed and disposed of.

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25. Issue notice.

26. Notice is accepted by Ms. Bharti Tyagi, learned counsel for the Respondent.

27. Let reply be filed within four weeks.

28. List on 11.12.2023.