
(2010) 04 DEL CK 0347
In the Delhi High Court
Case No : C.R.P. 169 of 2000

Paras Ram @ Parse

APPELLANT

Vs

Sheoji Ram and Others

RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:

Limitation Act, 1963 — Article 113, 18, 56, 57, 58

Citation : (2010) 4 ILR Delhi 443

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : S.S. Panwar, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

Hima Kohli, J.—The petitioner (defendant No. 1 in the court below) has laid challenge to an order dated 01.12.1999 passed by the Civil Judge, by which two preliminary issues framed with regard to maintainability of the suit filed by the respondent No. 1 (plaintiff in the court below) on the ground of limitation and on the ground of suit being improperly valued for the purposes of court fee and jurisdiction, were decided against him.

2. The facts relevant to decide the present petition are that the respondent No. 1/ plaintiff instituted a suit for declaration, mandatory and permanent injunction against the petitioner/defendant No. 1 and respondents No. 2 to 4 (defendants No. 2 to 4 in the court below), praying inter alia for a decree of declaration that he is entitled to reconstruct an intervening wall of House No. 254, Village Jharoda Kalan, Delhi, constructed pursuant to a judgment dated 26.03.1993 passed in an earlier suit instituted by the respondent No. 1/plaintiff, registered as Suit No. 160/82. Relief of mandatory and permanent injunction was also sought by the respondent No. 1/plaintiff against the petitioner and the respondent No. 2 to 4 for restoration of the intervening wall and for restraining them from interfering in the peaceful use and enjoyment of the suit premises by him.

3. The aforesaid suit was instituted by the respondent No. 1/plaintiff in the trial court on 12.08.1996. Summons were issued to the defendants in the suit. As none appeared on behalf of the respondents No. 2 and 3 (defendants No. 2 and 3 in the suit), they were proceeded against ex-parte on 09.01.1998. A written statement was filed by the petitioner/defendant No. 1. In his written statement, the petitioner/defendant No. 1 raised a number of preliminary objections as to the maintainability of the suit instituted by the respondent No. 1/plaintiff. Vide order dated 27.07.1999, two preliminary issues were framed by the trial court with regard to the maintainability of the suit in the following manner:

1. Whether the suit is barred by the period of limitation?

2. Whether the suit has been properly valued for the purposes of court fees and jurisdiction?

4. After hearing the counsels for the parties, the learned Civil Judge passed the impugned order, deciding both the preliminary issues against the petitioner/defendant No. 1 and the remaining defendants by holding that the suit was not barred by limitation and that the same was properly valued for the purposes of court fee and jurisdiction. Aggrieved by the aforesaid order, the petitioner has preferred the present petition.

5. While the petitioner had initially laid challenge to the findings returned by the Civil Judge on both the preliminary issues, however, in the course of arguments, learned Counsel for the petitioner confined his submissions to the findings returned with regard to preliminary issue No. 1, pertaining to the suit being barred by limitation.

6. Counsel for the petitioner submitted that the learned Civil Judge erred in concluding that the suit instituted by the respondent No. 1/plaintiff was not barred by limitation. He argued that the aforesaid findings suffer from material irregularity as the court below completely disregarded the fact that it was not Article 18, but Articles 58 and 113 in the Schedule to the Limitation Act which were squarely applicable to the case for the purpose of reckoning limitation for instituting the suit for the relief sought. As per Article 58, the period of limitation prescribed for instituting a suit relating to declaration is three years from the date when the right to sue first accrued and Article 113, which applies to any suit for which there is no prescribed period of limitation provided elsewhere in the Schedule to the Act, prescribes three years as the period of limitation from the date, when the right to sue accrues.

7. Counsel for the petitioner contended that a perusal of the plaint, particularly paras 10, 11 and 17 clearly demonstrates that as per the respondent No. 1/plaintiff, the cause of action for instituting the suit arose in his favour on 20.02.1992, when he claimed that the defendants illegally and forcibly demolished the wall of his house, which was constructed in the presence of the police and the court bailiff on 19.02.1992, pursuant to the judgment and decree dated 26.03.1983 passed in an earlier suit for possession and damages filed by

him and registered as Suit No. 160/82, entitled "Sheoji Ram v. Daya Chand and Ors.", wherein the petitioner and the respondents No. 2-4 were also parties. He therefore stated that the suit instituted by the respondent No. 1/plaintiff on 12.8.1996 is hopelessly barred by limitation and ought to have been dismissed.

8. Lastly, it was urged by the Counsel for the petitioner that respondent No. 1 having failed to file an application so as to invoke the provisions of Section 14 of the Limitation Act for seeking exclusion of time, for the period when he was prosecuting another civil proceeding, on its own, the trial court could not have given the benefit of the said provision to him for the purposes of computing the period of limitation and holding that the suit was filed within the period of limitation.

9. I have heard the learned Counsel for the petitioner. It is relevant to note that none has appeared on behalf of the respondents despite the fact that the present case has remained on the regular board since 07.12.2009.

10. For deciding the issue of limitation, certain relevant dates need to be focused on. As per the averments contained in para 17 of the plaint, pertaining to the cause of action, it was stated that the cause of action arose in favour of respondent No. 1/plaintiff on 20.02.1992, when the defendants in the suit allegedly forcibly demolished the wall of his house. The cause of action was stated to be continuing thereafter. In para 10 of the plaint, it was elaborated by the respondent No. 1 as to how the defendants forcibly and illegally demolished the wall in question on 20.02.1992 pursuant to which, a FIR was registered with police station Najafgarh and the defendants were challaned. In para 11, it was averred that the respondent No. 1/plaintiff tried to raise the wall again but was obstructed and threatened by the defendants.

11. In para 12 of the plaint, it was stated by the respondent No. 1/plaintiff that he filed a criminal writ petition in the High Court, on 5.8.1993, registered as W.P. (Crl.) 533/93, entitled "Sheoji Ram v. State and Ors." praying inter alia for issuance of a writ in the nature of mandamus, directing the respondents No. 6 to 11 therein (defendants in the suit proceedings) not to interfere with the peaceful enjoyment and occupation of the plaintiff in the suit property and directing the respondents No. 1 to 5, the police authorities to get the wall, which was allegedly demolished on 20.02.1992, re-constructed under their supervision. In the same para, the plaintiff averred that the aforesaid criminal writ petition was disposed of by the Division Bench vide order dated 14.02.1994 by observing inter alia that the court was not concerned with the fact as to whether the respondent No. 1/plaintiff had a right to reconstruct the wall or not and that the said matter would have to be decided in civil court.

12. In para 14 of the plaint, the respondent No. 1/plaintiff averred that on 29.03.1995, he filed an application in the execution proceedings, registered as Execution Case No. 39/85, praying inter alia for a clarification to the effect that there was no bar on him in raising the wall in question as that existed at the time

of taking possession of the house on 19.02.1992. On 12.8.1996, the respondent No. 1/plaintiff instituted the present suit in question. At the time of institution of the suit, the aforesaid application was stated to be pending. However, later on, the same was sought to be withdrawn by the respondent No. 1/plaintiff by filing an application before the concerned court on 17.10.1997, stating inter alia that he did not want to press the said application as he had filed the aforesaid suit. After recording the statement of the respondent No. 1/plaintiff, the Execution Court dismissed the application as satisfied, vide order dated 17.10.1997.

13. Dealing with the first contention raised on behalf of the petitioner that the suit filed by respondent No. 1/plaintiff was barred by limitation, it may be observed that suits relating to the relief of declaration are governed by Articles 56 to 58 in the Schedule to the Limitation Act. The present suit is undoubtedly governed by Article 58 in so far as the relief of declaration is concerned and hence, the period of limitation for instituting a suit for the said relief is to be reckoned as three years from the date when the right to sue accrued in favour of respondent No. 1/plaintiff. As per the respondent No. 1/plaintiff himself, the cause of action arose on 20.2.1992, when the defendants allegedly demolished the intervening wall of his house. As there is no manner of doubt that the cause of action to institute the suit accrued on 20.2.1992, the period of three years has to be reckoned from 20.02.1992. Insofar as the relief of permanent and mandatory injunction is concerned, Article 113 is the residuary Article and mandates that where no period of limitation is provided elsewhere in the Schedule, the period of limitation is three years from the date when the right to sue accrued.

14. While passing the impugned order, the learned Civil Judge held that the case of the respondent No. 1/plaintiff was not covered under Article 58 and 113 of the Schedule to the Limitation Act, but under Article 18 thereof. Article 18 of the Schedule to the Limitation Act has no application to the facts and circumstances of the present case as the said Article falls under part-II of the Schedule which pertains to "Suits relating to Contracts". Article 18 in particular, governs suits in respect of price of work done by the plaintiff for the defendant at his request, where no time limit has been fixed for payment. Clearly, the said Article has no application to the facts of the present case, and the learned Civil Judge committed an error by applying the said Article to the present suit for the purpose of computing the period of limitation. It therefore has to be held that for the reliefs sought by the respondent No. 1/plaintiff in his suit, the period of limitation is governed by Articles 58 & 113 and the same is to be computed as three years from 20.2.1992. The period of three years when reckoned from 20.2.1992, expired on 20.2.1995, whereas the suit was instituted by the respondent No. 1/plaintiff only on 12.8.1996. Hence the same cannot be said to have been filed within the prescribed period of limitation.

15. Coming to the next question as to whether the respondent No. 1/plaintiff was entitled to claim condonation of delay in instituting the suit, though not stated in

so many words, perusal of the impugned judgment shows that the learned Civil Judge has given the benefit of Section 14 of the Limitation Act to the respondent No. 1/plaintiff. The argument of the Counsel for the petitioner that in the absence of any specific application filed by the respondent No. 1/plaintiff, invoking Section 14 of the Limitation Act, for the purpose of condonation of delay in instituting the suit, benefit thereof could not have been granted to him, is fallacious. Section 14 of the Limitation Act falls under part-III of the Act, which deals with computation of period of limitation. The said provision is not worded in such a manner as to stipulate that only upon filing of an appropriate application by a party seeking the benefit of the said provision, can the court extend such a benefit to him. Rather, the provision is worded in such a manner as to indicate that while computing the period of limitation in any suit, the court shall exclude the time spent by the plaintiff in prosecuting with due diligence another civil proceeding against the defendant, where such 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. In other words, the Court is empowered by a substantive provision in the Limitation Act to condone the delay in instituting a suit, if sufficient cause is shown to it, in terms of Section 14.

16. If the plaintiff is able to explain the delay in instituting a suit by stating that he had been diligently prosecuting civil proceedings on the same issue before another forum, the same can be an explanation which ought to be taken into consideration by the concerned court for the purpose of exercising its discretion in condoning the delay in instituting a subsequent suit, as long as the remaining conditions imposed by the provision are satisfied. For the said purpose, the pleadings contained in the plaint can be scrutinized by the Court, without insisting that the plaint be accompanied by a separate application seeking condonation of delay. Hence, the submission of the Counsel for the petitioner that in the absence of a specific prayer made to the said effect, seeking condonation of delay in instituting the suit, the benefit of Section 14 of the Limitation Act could not have been extended to the respondent No. 1/plaintiff by the Civil Judge, is found to be bereft of merits and has to be turned down.

17. However, the matter does not rest here. The next question which deserves consideration is as to whether in the given facts and circumstances of the present case, the respondent No. 1/plaintiff was able to satisfactorily demonstrate due diligence, good faith on his part for the court to have extended the benefit of the said provision to him.

18. As noted above, Section 14 requires that the time that may be permitted to be excluded for the purpose of computing the limitation ought to pertain to civil proceeding relating to the same matter in issue and prosecuted with due diligence and in good faith in a court, which is unable to entertain it on account of any defect of jurisdiction or other cause of a like nature. "Good faith" as defined in Section 2(h) of the Limitation Act, 1963 for entitlement to benefit of

Section 14 of the Act was considered by the Supreme Court in the case of Rabindra Nath Samuel Dawson Vs. Sivakasi and Others, and it was held that the benefit of Section 14 of the Limitation Act, 1963 can be given to a party who has been prosecuting with due diligence another civil proceeding.

19. Section 14 of the Limitation Act comes to the rescue of a litigant only if it is shown that the remedy being prosecuted in some other Court was in good faith, i.e., with due care and caution and it was bonafide believed by the Counsel as well as party that the remedy being pursued was a proper remedy. The aforesaid provision was analysed by the Supreme Court in Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. and Others, in the following words:

12. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said Section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
- (5) Both the proceedings are in a court.

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 u/s 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 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.

20. The facts of the present case reveal that while the cause of action arose in favour of the respondent No. 1/plaintiff on 20.02.1992 and the prescribed period of limitation expired on 20.2.1995, the suit came to be instituted by him only on 12.08.1996, i.e., after one and a half year. In the interregnum, two sets of proceedings were initiated by him. The first set of legal proceeding pertains to the criminal writ petition No. 533/1993, which was instituted in the High Court by the respondent No. 1/plaintiff in the year 1993. The said writ petition was disposed of by a Division Bench of this Court vide order dated 14.02.1994 specifically observing inter alia that the matter at hand would have to be decided in civil court.

21. Thereafter, the respondent No. 1/plaintiff did not take any legal recourse for reconstruction of the demolished wall till as late as in the month of March 1995, i.e., after a period of one year, when he filed an application on 29.3.1995, before the executing court, registered as Execution Case No. 39/85, arising out of Suit No. 160/82, which was decreed vide order/judgment dated 26.03.1993. In the said application, he sought a clarification from the court that he was not barred from raising the wall in question that existed on 19.02.1992. While the said application was still pending adjudication, the respondent No. 1/plaintiff instituted the present suit on 12.08.1996. Pertinently, by then the prescribed period of limitation had long since expired. Thereafter, on 17.10.1997, he filed another application before the executing court, seeking withdrawal of the pending application dated 29.03.1995, which was dismissed on recoding the statement of the respondent No. 1/plaintiff that the decree stood satisfied as he had filed the present suit.

22. In the opinion of this Court, the benefit of Section 14 of the Limitation Act could not have been granted to the respondent No. 1/plaintiff for the reason that he failed to establish that he had been prosecuting with due diligence and in good faith, another civil proceeding against the defendants (petitioner and respondents No. 2 to 4 herein) in respect of the same matter in issue. The writ petition filed by the respondent No. 1 on the criminal side could not have been treated as a "civil proceeding" by the learned Civil Judge, for applying Section 14 of the Limitation Act. Further, while the cause of action accrued in favour of the respondent No. 1 on 20.02.1992, even the criminal writ petition came to be filed by him in the High Court after one year of the said event, in the year 1993. No explanation has been offered for the yawning gap of one year between 20.02.1992 when the cause of action arose and the year 1993, when the respondent No. 1/plaintiff filed the criminal writ petition. As noticed above, the said writ petition was disposed of vide order dated 14.2.1994, without granting

any relief to the petitioner. Furthermore, in the said order, the Division Bench had specifically observed that the right of the respondent No. 1/plaintiff as to whether he could reconstruct the wall or not, was a matter to be adjudicated in civil court.

23. Despite the aforesaid order having been passed by the High Court in the month of February, 1994, the respondent No. 1/plaintiff again failed to take any steps for one whole year thereafter and chose to file an application in the execution proceedings only on 29.03.1995. Yet again, there is no explanation on the record for the complete inaction on the part of respondent No. 1/plaintiff, between 14.02.1994 and 29.03.1995. After lapse of one year, and about five months thereafter, he instituted the suit in question on 12.8.1996 and the aforesaid pending application was finally withdrawn by him by filing an application on 17.10.1997. In the subsequent application, the respondent No. 1/plaintiff stated that there was a technical defect in the earlier application filed by him on 29.03.1995, without elaborating the exact defect. It was further stated that he had instituted a fresh suit in the civil court and hence, did not want to press the application. It was not the case of the respondent No. 1 that the application suffered from any defect of jurisdiction and could not be entertained by the concerned Court, or for any other cause of like nature. These are also considerations which ought to have weighed the learned Civil Judge while proposing to exercise the powers vested in it u/s 14 of the Act.

24. Had the respondent No. 1/plaintiff been vigilant and diligent in seeking his legal remedies by approaching the civil court in an appropriate proceeding within a reasonable time, the benefit of Section 14 of the Limitation Act could have been extended to him. Such is not the case here. The cause of action accrued in favour of the respondent No. 1/plaintiff on 20.02.1992. The period of limitation for institution of the suit expired on 20.02.1995. The present suit was filed by the respondent No. 1/plaintiff on 12.8.1996, after almost a period of one and half years. No steps were taken by him till the year 1993, when he filed the criminal writ petition. The benefit of filing of the criminal writ petition cannot be granted to him as Section 14 of the Act specifies that the time sought to be excluded for the purposes of computing the period of limitation pertains to "another civil proceeding". Even if the filing of said criminal writ petition is taken into consideration, valuable time was lost by the respondent No. 1/plaintiff in taking further legal recourse, despite order dated 14.2.1994 passed in the aforesaid writ petition by the Division Bench of this Court. The only other civil proceeding initiated by the respondent No. 1/plaintiff in the present case was the application filed by him after over one year, on 29.03.1995 in the Execution Case No. 39/85. The said application was filed by him one month after expiry of the prescribed period of limitation, and after a period of one year from the date of passing of the order dated 14.02.1994, dismissing his writ petition. No explanation has been offered by the respondent No. 1/plaintiff, much less plausible explanation for his inaction for periods stretching to over one year. The respondent No. 1 failed to prosecute the earlier proceedings with good faith and diligence.

25. In such circumstances, the learned Counsel for the petitioner/defendant No. 1 is justified in submitting that the suit of the respondent No. 1/plaintiff was filed beyond the period of limitation prescribed under Articles 58 and 113 of the Schedule to the Limitation Act and further, that the benefit of Section 14 of the Limitation Act could not have been granted to the respondent No. 1/plaintiff as it could not be held that he had been prosecuting another civil proceeding against the defendants in good faith and due diligence, for condoning the delay in instituting the suit. There is no bonafide litigious activity demonstrated by the respondent No. 1/plaintiff which could have entitled him for exclusion of the time spent in pursuing another remedy u/s 14 of the Act.

26. Accordingly, the present revision petition is partly allowed. The impugned order dated 01.12.1999 is quashed and set aside in respect of the findings relating to preliminary issue No. 1. It is held that the suit of the respondent No. 1/plaintiff is barred by limitation and that he cannot be extended the benefit of Section 14 of the Limitation Act. The suit is therefore dismissed. There shall, however, be no orders as to costs.