

Purni Devi & Anr.

v.

Babu Ram & Anr.

(Civil Appeal No. 4633 of 2024)

02 April 2024

[Sanjay Karol* and Aravind Kumar, JJ.]

Issue for Consideration

A suit was decreed in favour of plaintiff. Application for execution was filed before the Tehsildar (settlement), Hiranagar on 18.12.2000. The application was rejected on 29.01.2005. The Tehsildar observed that plaintiff had not applied before the Court with appropriate jurisdiction. Whether the period (18.12.2000 to 29.01.2005) diligently pursuing execution petition before the Tehsildar, would be excluded for the purposes of computing the period of limitation or not.

Headnotes

Limitation Act, 1963 – s. 14 – J&K Limitation Act – Art.182 – The High Court dismissed the execution application preferred by the plaintiff being barred by limitation – Sustainability:

Held: In the present case, it is not in dispute that:- (i) Both the proceedings are civil in nature and have been prosecuted by the Plaintiff or the predecessor in interest; (ii) The failure of the execution proceedings was due to a defect of jurisdiction; (iii) Both the proceedings pertain to execution of the decree dated 10.12.1986, which attains finality on 09.11.2000; (iv) Both the proceedings are in a court – No substantial averment has come on record to substantiate the claim that the predecessor in interest of the Plaintiff approached the Tehsildar with any *mala fide* intention, in the absence of good faith or with the knowledge that it was not the Court having competent jurisdiction to execute the decree – On a perusal of the record, it is apparent that the Plaintiff has pursued the matter *bonafidely* and diligently and in good faith before what it believed to be the appropriate forum and, therefore, such time period is bound to be excluded when computing limitation before the Court having competent jurisdiction – All conditions stipulated for invocation of s.14 of the Limitation Act are fulfilled – Therefore, the period from 18.12.2000, when

Digital Supreme Court Reports

the execution application was filed to 29.01.2005, when the prior proceeding was dismissed, has to be excluded while computing period of limitation – The impugned order of the High Court dated 09.04.2018 and Munsiff Court, Hiranagar dated 28.11.2007 (dismissing application of plaintiff as being barred by limitation) are set aside – The execution application of the Plaintiff is restored to the file of the Munsiff Court, Hiranagar for fresh consideration. [Paras 32, 37, 38, 39, 40]

Case Law Cited

Consolidated Engg. Enterprises v. Principle Secy, Irrigation Department [\[2008\] 5 SCR 1108](#) : (2008) 7 SCC 169; *M.P. Steel Corporation v. CCE* [\[2015\] 7 SCR 291](#) : (2015) 7 SCC 58 – relied on.

Prem Lata Agarwal v. Lakshman Prasad Gupta and others [\[1971\] 1 SCR 364](#) : (1970) 3 SCC 440; *Sesh Nath Singh v. Baidyabati Sheoraphuli Coop. Bank Ltd.* [\[2021\] 3 SCR 806](#) : (2021) 7 SCC 313; *Laxmi Srinivasa R and P Boiled Rice Mill v. State of Andhra Pradesh and Anr.* 2022 SCC Online SC 1790 – referred to.

J&K Bank Limited etc. v. Amar Poultry Farm AIR 2007 J&K 56 – referred to.

List of Acts

Limitation Act, 1963; J&K Limitation Act; Code of Civil Procedure, 1908.

List of Keywords

Application for execution; Appropriate jurisdiction; Limitation; Computing the period of limitation; Pursued the matter bonafidely and diligently; Exclusion of time of proceeding bona fide in court without jurisdiction.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4633 of 2024
From the Judgment and Order dated 09.04.2018 of the High Court of Jammu & Kashmir and Ladakh at Jammu in CREV No. 33 of 2008

Purni Devi & Anr. v. Babu Ram & Anr.**Appearances for Parties**

Nitin Sangra, Riju Ghosh, Mrs. Pragya Baghel, Advs. for the Appellants.

Sunil Fernandes, Sr. Adv., Ms. Nupur Kumar, Ms. Diksha Dadu, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment**

Sanjay Karol, J.

Leave Granted.

2. The present appeal arises from the final judgment and order in Civil Revision No.33/2008 dated 09.04.2018 of the High Court of Jammu and Kashmir at Jammu, whereby the judgment and order of Munsiff, Hiranagar, in File No. 70/Execution dated 28.11.2007 came to be affirmed, wherein the execution application preferred by the Plaintiff herein was dismissed, being barred by limitation.

Factual History

3. The genesis of the case at hand dates back to 01.06.1984, wherein the predecessors in interest of the Appellant (*hereinafter "Plaintiff"*) filed a suit for possession against the Respondents (*hereinafter "Defendants"*) herein. On 10.12.1986, this suit was decreed by learned Munsiff, First Class Hiranagar, in favour of the Plaintiff, and the Defendants were directed to deliver vacant and peaceful possession of the property to the Plaintiff. This decree was challenged by the Respondents before the learned District Judge, Kathua, in First Appeal, which came to be dismissed on 09.02.1990. Thereafter, the Respondents preferred a Second Appeal before the High Court of Jammu and Kashmir which came to be dismissed *vide* Order dated 09.11.2000. No further appeal was preferred. Therefore, the decree of the learned Munsiff Court attained finality on 09.11.2000.
4. The present *lis* arises from the application for execution filed by the predecessor in interest of the Plaintiff, before the learned Tehsildar (Settlement), Hiranagar on 18.12.2000. This application came to be rejected on 29.01.2005, whereby the learned Tehsildar observed that the Plaintiff had not applied before the Court with appropriate jurisdiction.

Digital Supreme Court Reports

5. The Plaintiff thereafter, on 03.10.2005 preferred a fresh application for execution before the Court of Munsiff, Hiranagar. This application resulted in the order dated 28.11.2007, whereby, the learned Munsiff Court dismissed the application as being barred by limitation, which has come to be confirmed vide the impugned order.

Reasoning of the Courts below

Munsiff Court, Order dated 28.11.2007

6. The question framed for determination was whether the execution petition was filed within time and whether the period of limitation for filing the execution petition is 3 years or 12 years.
7. The Court after a careful perusal of Article 182 of the J&K Limitation Act (*which provides for 3 years*) and Section 48 of the Civil Procedure Code (*which provides for 12 years, hereinafter "CPC"*), observed that, Article 182 deals with period of Limitation for filing an execution application for the first-time seeking enforcement of a decree. Meanwhile, Section 48 of the CPC deals with subsequent applications and fixes an outer limit when execution remains unsatisfied.
8. The application was held to be required to be filed within 3 years, as required by Article 182 of the J&K Limitation Act, which would run from when the second appeal came to be dismissed. Accordingly, the Munsiff Court, Hiranagar, held the application to be time-barred and therefore, dismissed.
9. There was no argument or discussion about the exclusion of time period under Section 14 of the Limitation Act at this stage.
10. The Plaintiff preferred Civil Revision No.33/2008 against the aforesaid order which came to be dismissed vide the Impugned Order, dated 09.04.2018.

Impugned Order

11. The Impugned Order also framed the question as to whether for execution of a decree, the application has to be filed within 12 years as prescribed by Section 48 of the CPC or within 3 years as prescribed by Article 182 of J&K Limitation Act.

Purni Devi & Anr. v. Babu Ram & Anr.

12. Reliance was placed on a judgment rendered by the High Court in **J&K Bank Limited etc. v. Amar Poultry Farm**¹ wherein it was observed that limitation for the first execution application shall be governed by Article 182 of the J&K Limitation Act. Further reliance was placed on the judgment of this Court in **Prem Lata Agarwal v. Lakshman Prasad Gupta and others**² (2-Judge Bench) wherein Section 48 of the CPC came to be considered. This Court observed that Section 48 provides for a maximum time limit provided for execution, but it does not prescribe the period within which each application for execution was to be made.
13. The argument of the Plaintiff that time spent in pursuing the proceedings before the Tehsildar is required to be excluded, has been recorded and rejected by the High Court.
14. It was finally held *vide* the Impugned Order that the dismissal of the execution petition is well reasoned and, therefore, cannot be interfered with. However, while disposing off the revision, the Court observed that the State Code of Civil Procedure is required to be brought to 12 years.

Submissions on behalf of the Appellant/Plaintiff

15. Learned counsel for the Plaintiff has submitted that the reasoning of the learned High Court that the Plaintiff had chosen a wrong forum and is not entitled to exclusion of time runs, contrary to the law laid down by this Court that the provisions of Section 14 of the Limitation Act, 1963 are meant for grant of relief, where a person has committed some mistake and such provisions should be applied in a broad manner. Furthermore, the provision of Section 14 of the Limitation Act is *para materia* to the provisions of Section 14 of the Limitation Act, as applicable to the then State of Jammu and Kashmir.
16. The Plaintiff has sought to place reliance on the judgment of this Court in **Consolidated Engg. Enterprises v. Principle Secy, Irrigation Department**³ (3-Judge Bench) and **M.P. Steel Corporation v. CCE**⁴

1 AIR 2007 J&K 56

2 [\[1971\] 1 SCR 364](#) : (1970) 3 SCC 440

3 [\[2008\] 5 SCR 1108](#) : (2008) 7 SCC 169

4 [\[2015\] 7 SCR 291](#) : (2015) 7 SCC 58

Digital Supreme Court Reports

(2-Judge Bench) wherein it was expounded that the provisions of Section 14 of the Limitation Act are to advance the cause of justice and must be interpreted to do so rather than abort proceedings.

17. It has been further submitted that in light of the facts of the present case, the Plaintiff is entitled to exclusion of time consumed in pursuing their remedy before the learned Tehsildar, in view of Section 14(2) of the Limitation Act. The filing of the application by the predecessor of the Plaintiff before the Tehsildar for implementation of the judgment and decree dated 09.10.1986 was under a genuine *bona fide* belief and in good faith that the Tehsildar possess the jurisdiction to execute decrees passed by a Civil Court.
18. In lieu of this conspectus, it has been submitted that previous recourse to a mistaken remedy or selection of a wrong forum by the Plaintiff cannot be said to be bereft of *bona fides*, due diligence or lacking in good faith.
19. Further, it is not disputed that in view of Section 105 and 112 of the Land Revenue Act, the Court of learned Tehsildar, Settlement, has all the trappings of a Court and thus would fall within the scope and ambit of the expression "*Court*" for the purpose of Section 14 of the Limitation Act.
20. Lastly, in view of the facts submitted above, it would be a travesty of justice, if, on mere technicalities, the Plaintiff is deprived from reaping the fruits of the decree.

Submissions on behalf of the Respondent

21. Learned counsel for the Respondents has vehemently opposed the stand taken by the Plaintiff. It has been submitted that the Plaintiff is taking this plea for the first time before this Court and did not raise the plea of Section 14 of the Limitation Act before the Courts below.
22. It was a deliberate act of wilful disobedience at the Plaintiff's end and the plea of Section 14 of the Limitation Act ought to have been raised at the very first instance.
23. It is further submitted that the Plaintiff herein has not approached the Court with clean hands. They have concealed the fact that they did not enter appearance in the Second Appeal and thereafter, had filed an application for setting aside the ex-parte order, which was allowed, and only thereafter, the second appeal was dismissed vide

Purni Devi & Anr. v. Babu Ram & Anr.

the impugned order. This Court in *M.P. Steel* (Supra) has reiterated that 'due diligence' and 'good faith' means that the party who invokes Section 14 is not guilty of negligence, lapse or inaction.

Issue before this Court

24. In view of the submissions raised, the issue which arises for consideration of this Court is as to whether the period (18.12.2000 to 29.01.2005) diligently pursuing execution petition before the Tehsildar, would be excluded for the purposes of computing the period of limitation or not.

Analysis & Consideration

25. The relevant portion of Section 14 of the Limitation Act is extracted as under, for ready reference:

“Section 14. Exclusion of time of proceeding bona fide in court without jurisdiction. ...

...

(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.”

....

26. The Plaintiffs have submitted that the provision of Section 14 of the Limitation Act, finds place in the Limitation Act applicable to the then State of J&K, which has not been contested by the Respondents.
27. On a perusal of Section 14(2) of the Limitation Act, which is also applicable to the State of Jammu and Kashmir, it is evident that it carves out an exception excluding the period of limitation when the proceedings are being pursued with due diligence and good faith in a Court “*which from defect of jurisdiction or other cause of a like nature, is unable to entertain it*”.

Digital Supreme Court Reports

28. The first objection raised by Defendants is that the plea of exclusion of limitation has not been raised before the Courts below and cannot be raised at the first instance before this Court.
29. We do not find merit in this submission, the learned High Court in paragraph 9 has categorically recorded the submission of the Plaintiff pertaining to the exclusion of time spent in pursuing the proceedings before the learned Tehsildar. Therefore, it cannot be said that the plea of *exclusion* has been raised for the first time, before this Court.
30. The principles pertaining to applicability of Section 14, were extensively discussed and summarised by this Court in [Consolidated Engg. Enterprises](#) (Supra), wherein while holding the exclusion of time period under Section 14 of the Limitation Act to a petition under Section 34 of the Arbitration Act it was observed:-
- “21. 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.”
31. This Court in [Consolidated Engg. Enterprises](#) (Supra) further expounded that the provisions of this Section, must be interpreted and applied in a manner that furthers the cause of justice, rather than aborts the proceedings at hand and the time taken diligently pursuing a remedy, in a wrong Court, should be excluded.
32. In the present case, it is not in dispute that:-
- (i) Both the proceedings are civil in nature and have been prosecuted by the Plaintiff or the predecessor in interest.

Purni Devi & Anr. v. Babu Ram & Anr.

- (ii) The failure of the execution proceedings was due to a defect of jurisdiction.
 - (iii) Both the proceedings pertain to execution of the decree dated 10.12.1986, which attains finality on 09.11.2000.
 - (iv) Both the proceedings are in a *court*.
- 33.** The only objection pointed out by the Respondent to the ingredients for invocation of Section 14, is that the Plaintiff have not approached this Court with clean hands and did not approach the Court of the Tehsildar *diligently* and in *good faith*.
- 34.** The judgment of this Court in *M.P. Steel* (Supra) discussed the phrases, “*due diligence*” and “*in good faith*” for the purposes of invocation of Section 14 of the Limitation Act. While considering the application of Section 14 to the Customs Act, it was observed:

“**10.** We might also point out that Conditions 1 to 4 mentioned in the Consolidated Engg. case [(2008) 7 SCC 169] have, in fact, been met by the Plaintiff. It is clear that both the prior and subsequent proceedings are civil proceedings prosecuted by the same party. The prior proceeding had been prosecuted with due diligence and in good faith, as has been explained in Consolidated Engg. [(2008) 7 SCC 169] itself. **These phrases only mean that the party who invokes Section 14 should not be guilty of negligence, lapse or inaction. Further, there should be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party.**”

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xxx

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49. 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.”

(emphasis supplied)

- 35.** The judgments in *Consolidated Engg. Enterprises* (Supra) and *M.P. Steel* (Supra) have been followed consistently by this Court. For instance in *Sesh Nath Singh v. Baidyabati Sheoraphuli Coop.*

Digital Supreme Court Reports

Bank Ltd.⁵ (2-Judge Bench), while holding Section 14 to be applicable to applications under Section 7 of the Insolvency and Bankruptcy Code, 2016 and the SARFAESI Act, it was observed:-

“75. Section 14 of the Limitation Act is to be read as a whole. A conjoint and careful reading of sub-sections (1), (2) and (3) of Section 14 makes it clear that an applicant who has prosecuted another civil proceeding with due diligence, before a forum which is unable to entertain the same on account of defect of jurisdiction or any other cause of like nature, is entitled to exclusion of the time during which the applicant had been prosecuting such proceeding, in computing the period of limitation. The substantive provisions of sub-sections (1), (2) and (3) of Section 14 do not say that Section 14 can only be invoked on termination of the earlier proceedings, prosecuted in good faith.”

36. More recently, in ***Laxmi Srinivasa R and P Boiled Rice Mill v. State of Andhra Pradesh and Anr.***⁶ (2-Judge Bench), this Court followed the dictum in ***Consolidated Engg. Enterprises*** (Supra) and ***M.P. Steel (Supra)*** to exclude the time period undertaken by the Plaintiff therein in pursuing remedy under Writ Jurisdiction, in the absence of challenge to the bona fides of the Plaintiff, in view of Section 14.
37. No substantial averment has come on record to substantiate the claim that the predecessor in interest of the Plaintiff approached the Tehsildar with any *mala fide* intention, in the absence of good faith or with the knowledge that it was not the Court having competent jurisdiction to execute the decree. The object to advance the cause of justice, as well must be kept in mind.
38. We do not find the reasoning given by the learned High Court in paragraph 9 while rejecting the plea for exclusion of time to be sustainable. On a perusal of the record, it is apparent that the Plaintiff has pursued the matter *bonafidely* and *diligently* and *in good faith* before what it believed to be the appropriate forum and, therefore, such time period is bound to be excluded when computing limitation before

5 [\[2021\] 3 SCR 806](#) : (2021) 7 SCC 313

6 2022 SCC Online SC 1790

Purni Devi & Anr. v. Babu Ram & Anr.

the Court having competent jurisdiction. All conditions stipulated for invocation of Section 14 of the Limitation Act are fulfilled.

39. Therefore, in view of the above discussion the period from 18.12.2000, when the execution application was filed to 29.01.2005, when the prior proceeding was dismissed, has to be excluded while computing period of limitation, which results in the execution application filed by the Plaintiff, being within the limitation period prescribed under Article 182 of the Limitation Act as well, which is 3 years.
40. Consequently, the appeal is allowed. The impugned order of the High Court dated 09.04.2018 and Munsiff Court, Hiranagar dated 28.11.2007 are set aside. The execution application of the Plaintiff is restored to the file of the Munsiff Court, Hiranagar for fresh consideration, in consonance with the view on limitation which has been decided above.
41. Pending applications, if any, are disposed of. No order as to costs.

Headnotes prepared by: Ankit Gyan

Result of the case:
Appeal allowed.