A J. KUMARADASAN NAIR & ANR.

v.

IRIC SOHAN & ORS.

(Civil Appeal Nos. 943-944 of 2009)

B FEBRUARY 12, 2009

[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]

LIMITATION ACT, 1963:

C *Section 14 – Interpretation/application of – In the facts of the case especially since the party was prosecuting the first appeal and second appeal before the wrong forum, and mentioning a wrong provision, S.14(2) per se may not be applicable but the principles thereof would be applicable for* D *the purpose of condonation of delay in terms of S.5 – Matter remitted to High Court with a request to dispose of the matter as expeditiously as possible preferably within three months.*

Interpretation and/or application of Section 14 of the Limitation Act, 1963 is in question in this appeal as the E **appellant was prosecuting the first and second appeals before a wrong forum, mentioning a wrong provision.**

On behalf of the appellant, it was contended that the High Court committed a serious error insofar as it failed F **to take into consideration that the appellant was *bona fide* prosecuting the first appeal and second appeal before a wrong forum and, thus, Sub-section (2) of Section 14 of the Limitation Act would be attracted.**

On behalf of the respondents, it was contended that G **the provision of Sub-section (2) of Section 14 of the Limitation Act is not applicable as the same applied in a suit; and that the appellants in fact filed an application under Section 5 of the Limitation Act but withdrew the same.**

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Allowing the appeal, this Court A

HELD: 1. The provisions of Sections 5 and 14 of the Limitation Act alike should, thus, be applied in a broad-based manner. When Sub-section (2) of Section 14 of the Limitation Act *per se* is not applicable, the same would not B mean that the principles akin thereto would not be applied. Otherwise, the provisions of Section 5 of the Limitation Act would apply. There cannot be any doubt whatsoever that the same would be applicable to a case of this nature. [Para 12] [245-G; 246-A]

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2. There cannot furthermore be any doubt whatsoever that having regard to the definition of `suit' as contained in Section 2(l) of the Limitation Act, a revision application will not answer the said description. But, although the provisions of Section 14 of the D Limitation Act *per se* are not applicable, the principles thereof would be applicable for the purpose of condonation of delay in filing an appeal or a revision application in terms of Section 5 thereof. [Para 13] [246-B]

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3.1. It is also now a well-settled principle of law that mentioning of a wrong provision or non-mentioning of any provision of law would, by itself, be not sufficient to take away the jurisdiction of a court if it is otherwise F vested in it in law. While exercising its power, the court will merely consider whether it has the source to exercise such power or not. The court will not apply the beneficient provisions like Sections 5 and 14 of the Limitation Act in a pedantic manner. When the provisions are meant to apply and in fact found to be applicable to the facts and G circumstances of a case, there is no reason as to why the court will refuse to apply the same only because a wrong provision has been mentioned. In a case of this nature, Sub-section (2) of Section 14 of the Limitation Act *per se* may not be applicable, but, as indicated hereinbefore, the H

A **principles thereof would be applicable for the purpose of condonation of delay in terms of Section 5 thereof. [Para 14] [246-D]**

3.2. The impugned judgment cannot be sustained B **which is set aside accordingly, the matter is remitted to the High Court for consideration thereof on merits. High Court is requested to dispose of the revision application filed by the appellants herein as expeditiously as possible and preferably within a period of three months from the** C **date of communication of this order. This unusual request is made keeping in view the fact that the respondents have obtained a decree as far back as in 1969. [Para 15] [250-E]**

Ramlal and others v. Rewa Coalfields Ltd. **AIR 1962 SC** D **361;** *Ghasi Ram and Others v. Chait Ram Saini and Others* **(1998) 6 SCC 200;** *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and Others* **(2008) 7 SCC 167 and** *M/s. Shakti Tubes Ltd. Through. Director v. State of Bihar & Ors.* **(2009) 1 SCC 786, relied on.**

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Case Law Reference:

AIR 1962 SC 361	**relied on**	**Para 14**
(1998) 6 SCC 200	**relied on**	**Para 14**
F **(2008) 7 SCC 167**	**relied on**	**Para 14**
(2009) 1 SCC 786	**relied on**	**Para 14**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 943-944 of 2009.

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From the final Judgment and Order dated 13.11.08 of the High Court of Kerala at Ernakulam in I.A. No. 1895/2008 in C.R.P. No. 593 of 2008.

P. Krishna Moorthy, B.V. Deepak and K.B. Pradeep M/s. H

T.T.K. Deepak and Co. for the Appellants. A

C.N. Sree Kumar, P.R. Nayak and Dushyant Parashar for the Respondent.

The Judgment of the Court was delivered by B

S.B. SINHA, J.1. Leave granted.

2. Interpretation and/or application of Section 14 of the Limitation Act, 1963 (for short, 'the Act') is in question in this appeal. It arises out of a judgment and order dated 13.11.2008 C passed by a learned Single Judge of the High Court of Judicature at Kerala at Ernakulam in IA No.1895 in CRP No.593 of 2008(B) dismissing the said application as barred by limitation.

3. The basic fact of the matter is not in dispute. First D Respondent obtained a decree in a suit filed in the court of Munsif, Trivandrum being Original Suit No.150 of 1965, wherein it was directed :

> "It is hereby decreed that the plaintiff is entitled for a E declaration of title and possession over the plaint schedule property; and it is directed that the wooden hut placed by the Defendant No.1 be removed by him at his expense, failing which the Court shall remove the same and deliver possession of the property to the Plaintiff. The plaintiff is F entitled to mesne profits at the rate of Rs.50/- from the date of suit till delivery of possession."

The description of the property in the said decree was as under

> "8 cents of property with trees, building, well and a bunk G (mobile hut) and all appurtenants thereto in Survey 365 described in Pandara Otti Partition Deed (marked Vol-II Plan)", situated in Chengazhassery Village, Trivandrum."

The said decree was put in execution by Fanuval Stephen, H

A the Decree holder in Original Suit No.150 of 1965 being Execution Petition No.705 of 1977. Fanuval Stephen died on or about 28.3.1985. Respondent Nos.1 to 5 herein, being his heirs and legal representatives, were impleaded as additional decree holder Nos.2 to 6 therein. The said execution petition B was dismissed by an order dated 8.7.1996.

4. The judgment debtor appears to have suffered another decree passed in Original Suit No.274 of 1982. Execution Petition No.271 of 1986 was filed for execution of the said decree. A sale certificate was issued in respect of the suit C property. It is said to have been charged towards the satisfaction of the debt sought to be recovered in O.S. No.274 of 1982 by the State Bank of Travancore. Appellant purchased the said property in auction.

D 5. Respondent Nos.1 to 5, however, filed a Second Execution Petition on or about 11.9.2001. Appellants were impleaded as Respondent Nos.16 and 17 therein. They filed an objection in regard to the maintainability of the said execution petition, *inter alia*, contending that the same was E barred by limitation.

6. By an order dated 6.9.2005, the said objection petition was rejected. An appeal was preferred thereagainst on or about 3.10.2005 which was marked as AS No.301 of 2005. The said appeal was held to be not maintainable by the learned First F Appellate Court by an order dated 5.10.2005. However, the merit of the matter was also considered therein.

7. Aggrieved by and dissatisfied with the said order dated 6.9.2005, the appellants preferred an Execution Second G Appeal before the High Court which was marked as Execu ion Second Appeal No.17 of 2005. By reason of a judgment and order dated 13.6.2008, the High Court disposed of the said second appeal opining that the First Appellate Court was not correct in entering into the merit of the matter despite holding H that the appeal was not maintainable. The said appeal was

disposed of, directing : A

> "I am convinced that the request made by the learned counsel for the appellants is necessitated by reason of the first appellate court wrongly entering into merits of the case and considering the right of the appellants after holding that B the appeal is not maintainable and that therefore, setting aside the judgment of the first appellate court, the Execution Second Appeal deserves to be disposed of without prejudice to the rights of the appellants to move for appropriate reliefs by way of revision or otherwise, if so C advised.
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> In the result, I dispose of this appeal setting aside the judgment appealed against to the extent it has gone to the merits of the contentions of the appellants after holding that the appeal itself was not maintainable. With a view to D enable the appellants to seek for appropriate relief, it is ordered that the decree holders shall not take delivery of the decree schedule property for a period of one month from today. Inasmuch as the appellants are being referred to seek for their reliefs in appropriate proceedings, E substantial question of law formulated as Sl. No.4 in the appeal memorandum on which also the appeal was admitted is left open. Registry shall return the certified copies of documents produced by the appellants in this Execution Second Appeal to the counsel for the F appellants."

8. Pursuant to or in furtherance of the said observations, a Revision Application was filed by the appellant on 30.6.2008 which was marked as C.R.P. No.593 of 2008(B). Along with the said application, an application for condonation of delay in G terms of Section 5 of the Act was also filed. However, later on the said application was withdrawn and an application under Section 14 thereof was filed. An affidavit was affirmed in support thereof, *inter alia,* stating :

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A "The impugned order is dated 6.9.2005. The first appeal was filed on 3.10.2005. The second appeal was disposed of by this Hon'ble Court on 28.6.2008. This Revision Petition is filed on 7.7.2008. Hence in any view of the matter this Revision Petition is well within time. It is also B submitted that the time taken for obtaining certified copies also is liable to be excluded."

9. By reason of the impugned judgment, the High Court, however, opined that Section 14 of the Limitation Act is not attracted in the facts and circumstances of this case, stating : C

"The meaning of the expression "other cause of like nature" came up for consideration in *Zafar Khans's* case. It was held that the expression `cause of like nature' has to be read as *ejusdem generis* with the expression `defect D of jurisdiction' and that so construed, the expression `other cause of like nature' must be so interpreted as to convey something analogous to the preceding words "from defect of jurisdiction" and that *prima facie* it appeared that there must be some preliminary objection which if it succeeds E the court would be incompetent to entertain the proceeding on merits, such defect could be said to be of the like nature as defect of jurisdiction. The same view was taken by a Full Bench of the Lahore High Court in *Bhai Jai Kishen v. Peoples Bank* (AIR (31) 1944 Lah. 36 (FB) where it was F held that it is not possible to give an exhaustive list of defect that the said expression may be taken to cover, but if they are such as have got to be decided before the merits of the case can be gone into and if they do not necessitate an examination of the merits of the case, they may fall within the purview of those words. Illustrations of G such defects which are covered by the words "or other cause of a like nature" in Section 14 may be found where a suit had failed because it was brought without proper leave, want of powers of attorney in favour of the person who sued on behalf of the plaintiff, or because no notice H

under Section 80 of the Code was given, etc. It was pointed out in the said decision that it would indicate that although the court had jurisdiction to decide the issue, it was unable to entertain it on account of the technical defect and it was not possible for the court to proceed and consider the case on merit."

10. Mr. Krishnamurthy, learned senior counsel, in support of the appeal, *inter alia,* would contend that the High Court committed a serious error insofar as it failed to take into consideration that the appellant herein was *bona fide* prosecuting the first appeal and second appeal before a wrong forum and, thus, Sub-section (2) of Section 14 of the Limitation Act would be attracted.

11. Mr. C.N. Sree Kumar, learned counsel appearing on behalf of the respondents, would, on the other hand, contend that the provision of Sub- section (2) of Section 14 of the Limitation Act is not applicable as the same applied in a suit. It was pointed out that the appellants in fact filed an application under Section 5 of the Limitation Act but withdrew the same.

12. The question which arises for consideration is as to whether only because a mistake has been committed by or on behalf of the appellants in approaching the appropriate forum for ventilating their grievances, the same would mean that the provision of Sub-section (2) of Section 14 of the Limitation Act, which is otherwise available, should not be taken into consideration at all. The answer to the said question must be rendered in the negative. The provisions contained in Sections 5 and 14 of the Limitation Act are meant for grant of relief where a person has committed some mistake.

The provisions of Sections 5 and 14 of the Limitation Act alike should, thus, be applied in a broad-based manner. When Sub-section (2) of Section 14 of the Limitation Act per se is not applicable, the same would not mean that the principles akin thereto would not be applied. Otherwise, the provisions of

A Section 5 of the Limitation Act would apply. There cannot be any doubt whatsoever that the same would be applicable to a case of this nature.

13. There cannot furthermore be any doubt whatsoever that having regard to the definition of `suit' as contained in Section B 2(l) of the Limitation Act, a revision application will not answer the said description. But, although the provisions of Section 14 of the Limitation Act *per se* are not applicable, in our opinion, the principles thereof would be applicable for the purpose of condonation of delay in filing an appeal or a revision application C in terms of Section 5 thereof.

14. It is also now a well-settled principle of law that mentioning of a wrong provision or non-mentioning of any provision of law would, by itself, be not sufficient to take away D the jurisdiction of a court if it is otherwise vested in it in law. Wile exercising its power, the court will merely consider whether it has the source to exercise such power or not. The court will not apply the beneficient provisions like Sections 5 and 14 of the Limitation Act in a pedantic manner. When the provisions E are meant to apply and in fact found to be applicable to the facts and circumstances of a case, in our opinion, there is no reason as to why the court will refuse to apply the same only because a wrong provision has been mentioned. In a case of this nature, Sub-section (2) of Section 14 of the Limitation Act *per se* may F not be applicable, but, as indicated hereinbefore, the principles thereof would be applicable for the purpose of condonation of delay in terms of Section 5 thereof.

In *Ramlal and others v. Rewa Coalfields Ltd.* [AIR 1962 SC 361], this Court held as under:

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"12. It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent H for the exercise of the discretionary jurisdiction vested in

the court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its *bona fides* may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. In this connection we may point out that considerations of *bona fides* or due diligence are always material and relevant when the court is dealing with applications made under Section of the Limitation Act. In dealing with such applications the court is called upon to consider the effect of the combined provisions of Sections 5 and 14. Therefore, in our opinion, considerations which have been expressly made material and relevant by the provisions of Section 14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only under Section 5 without reference to Section 14."

In *Ghasi Ram and Others v. Chait Ram Saini and Others* [(1998) 6 SCC 200], this Court opined:

"10. Learned counsel appearing for the respondents urged that, assuming the High Court suffered from disability to decide the rights of party on facts, the plaintiff-appellant did not prosecute the revision petition before the High Court in good faith; therefore, the appellant cannot derive any benefit of Section 14 of the Act. Before the High Court, it was not disputed that the plaintiff-appellant has prosecuted the other civil proceeding with due diligence. What is

A disputed is that the plaintiff did not prosecute the civil proceeding in good faith. "Good faith" is defined in the Act as under:

"2. (h) `good faith' -- nothing shall be deemed to be done in good faith which is not done with due care and attention;"

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The aforesaid definition shows that an act done with due care and attention satisfies the test of "good faith". "Due care" means that sufficient care was taken so far as C circumstances demanded and there was absence of negligence. In other words, the plaintiff has taken sufficient care which a reasonable man is expected to take in order to avoid any injury. It is not shown here that the plaintiff-appellant has not taken sufficient care in prosecuting the D remedy. Where a plaintiff is illiterate and is not acquainted with the procedural law, the only thing that he can do is to consult some lawyer for advice. It is not disputed that the plaintiff-appellant filed the revision before the High Court on the advice of his counsel, although it may be that he E was ill-advised. Learned counsel for the respondents contended that any act done in violation of law cannot be described as act done with due care. No doubt, when a party proceeds contrary to a clearly expressed provision of law, it cannot be regarded as prosecuting the other civil F proceeding in good faith. It is based on sound principle of law. But the said rule cannot be enforced in rigidity in every case. Each case has to be judged on its own merits. In the present case, the plaintiff-appellant is not a legally-trained person and thus he sought advice of his counsel for future course of action. The counsel advised him to file G revision in the High Court instead of bringing a fresh suit under Order 21 Rule 103 CPC. It is also true that at that time, there was no unanimity about remedy of revision amongst the various High Courts. The plaintiff-appellant's revision was entertained for hearing by the High Court and

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that gave expectation to the plaintiff- appellant that the order of the executing court may be set aside and further, there was no inordinate delay in filing the suit under Rule 103. If, on examining the facts, it is found that there was no lack of due care, there is no reason why the plaintiff-appellant should not be accorded the benefits of Section 14 of the Act. Does the interest of justice demand that the plaintiff should be refused the benefit of Section 14 of the Act on account of the negligence on the part of his counsel, ill-advising him to file a revision instead of filing a fresh suit? An illiterate litigant cannot be made to suffer when he is ill-advised by his counsel. On the facts and circumstances of this case, we are satisfied that the plaintiff-appellant prosecuted the earlier civil proceeding in good faith."

In *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and Others* [(2008) 7 SCC 167], this Court held:

"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."

See *M/s. Shakti Tubes Ltd. Through. Director v. State of Bihar and Ors.* [(2009) 1 SCC 786].

15. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeals are allowed and the matter is remitted to the High Court for consideration thereof on merits. However, we would request the High Court to dispose of the revision application filed by the appellants herein as expeditiously as possible and preferably within a period of three months from the date of communication of this order. We are making this unusual request keeping in view the fact that the respondents have obtained a decree as far back as in 1969. However, in the facts and circumstances of the case, there shall be no order as to costs.

G.N. Appeal dismissed.