

**Param Preet Singh vs.devender Kumar Relan & Ors**

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**SooperKanoon Citation :** [sooperkanoon.com/1221784](http://sooperkanoon.com/1221784)

**Court :** Delhi

**Decided On :** Feb-28-2019

**Appellant :** Param Preet Singh

**Respondent :** Devender Kumar Relan & Ors

**Advocate for Pet/Ap. :** Mr. J.C. Mahindro

**Judgement :**

\$~5 \* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on :

08. h February, 2019 Judgment pronounced on :

28. h February, 2019 RFA(OS) 78/2018, CM APPL471072018 PARAM PREET SINGH ..... Appellant Through Mr. J.C. Mahindro with Mr. versus Shubham Aggarwal, Advocates. CORAM: DEVENDER KUMAR RELAN & ORS Through Mr. Mukul Gupta & Mr. Atul Y. Chitale, Sr. Advocates with Ms. Tanvi Kakar & Mr. Himanshu Bajaj, Advocates for R-1 to R-10. .... Respondent HON'BLE MR. JUSTICE G.S. SISTANI HON'BLE MS. JUSTICE JYOTI SINGH G.S. SISTANI, J.

1. The present appeal is directed against the judgment dated 05.09.2018 by which an application filed by the appellant under Section 14 of the Limitation Act has been dismissed and consequently, the suit filed by the appellant has been dismissed being barred by limitation.

2. The facts which have given rise to filing of the present appeal are that the appellant (hereinafter referred to as the plaintiff) had filed a suit for specific performance of an agreement dated 04.10.2010 with respect to purchase two properties bearing no.D-54, Kalkaji, New Delhi and plot no.75, Sainik Farms, Delhi, for a total sale consideration of Rs.6.34 crores against the defendants/respondents herein (hereinafter referred to as the defendants). Alongwith the RFA(OS) 78/2018 Page 1 of 10 plaint, an application was filed under Section 14 of the Limitation Act for exclusion of the time spent in pursuing the application filed under Order I Rule 10 of the Code of Civil Procedure (in short C.P.C.) in suit being CS(OS) 343/2018. The plaintiff agreed to purchase two properties bearing no.D-54, Kalkaji, New Delhi and plot no.75, Sainik Farms, Delhi for a total sale consideration of Rs.6.34 crores. The plaintiff admittedly paid a sum of Rs.31 lacs in cash and agreed to pay the balance sale consideration after the properties were mutated in favour of the defendants, within 8 months from 04.10.2010.

3. On account of disputes between the parties, an FIR was registered against the defendants on 19.01.2013 under Sections 420, 406, 120- B/34 of IPC, on the basis of complaint filed by the plaintiff dated 12.08.2011.

4. In the year 2013, a suit being CS (OS) 252/2013 was instituted for specific performance by one Yogesh Kumar in respect of plot no.75, Sainik Farms, Delhi being one of the properties subject matter of the agreement entered into between the parties herein dated 04.10.2010. On 13.05.2013, the appellant herein filed an application under Order I Rule 10 CPC in the suit filed by Yogesh Kumar for being impleaded as a defendant. The application filed by plaintiff was dismissed by the Joint Registrar by an order dated 01.02.2016. The order of the Joint Registrar was assailed by filing O.A. no.97/2016, which was dismissed by order dated 05.09.2017 passed by the learned Single Judge of this Court. Thereafter, the plaintiff filed a suit being CS (OS) 343/2018 for specific performance alongwith an application under Section 14 of the Limitation Act. By the impugned order dated RFA(OS) 78/2018 Page 2 of 10 05.09.2018, the application was rejected which has led to the filing of the present appeal.

5. Mr. J.C. Mahindro, counsel for the appellant submits that the impugned order is contrary to law and facts. He further submits that the learned Single Judge has failed to appreciate that the appellant was prosecuting his application under Order I Rule 10 CPC diligently and when the said application was dismissed by the Joint Registrar, he filed an appeal before the learned Single Judge. Mr. Mahindro further contends that although the learned Single Judge dismissed the appeal but liberty was granted to seek an appropriate remedy in accordance with law with an application under Section 14 of the Limitation Act, which was to be considered on its own merit. It has also been contended that in case, the application under Order I Rule 10 CPC was allowed, the appellant would have filed a counter claim and thus, it was not necessary for him to seek independent remedy. It is contended that the learned Single Judge has not appreciated the fact that there was no lapse, negligence or willful default of the appellant, who had acted under the legal advice and approached the Court in 2013 by filing an application under Order I Rule 10 CPC when his claim was well within the period of Limitation.

6. Per contra, Mr. Gupta and Mr. Chitale, learned Senior Counsels appearing for the respondents submit that there is no infirmity in the order passed by the learned Single Judge. The appellant failed to fulfill the five conditions before applying Section 14 of the Limitation Act as laid down in the case of M/s. Consolidated Engineering Enterprises Vs. The Principal Secretary (Irrigation Department) & Ors., 2008 RFA(OS) 78/2018 Page 3 of 10 (7) SCC169 as the earlier proceedings were not rejected due to defect of jurisdiction or any similar cause nor the earlier proceedings and the subsequent proceedings related to the same matter and issue. There was also no due diligence in prosecuting the application under Order I Rule 10 CPC by the appellant herein. In the absence of appellant having failed to safeguard his own rights, the application was rightly rejected by the learned Single Judge.

7. We have heard learned counsels for the parties and given our thoughtful consideration to the matter. Desirous of purchasing two properties at Kalkaji and Sainik Farms, a receipt/agreement was entered into between the parties on 04.10.2010, which reads as under : RECEIPT/AGREEMENT0410/2010 We, Pushpa hurriya, Saroj Bala, Chander Kanta, Savita Girdhar, D/o Late Sh.

Bhagwan das Kalra, R/o D-54, Kalkaji, Delhi all four sisters legal heirs of Late Sh. Bhagwan das Kalra have received a sum of Rs.3100000/- (thirty one lacs) in cash from (sic) Sh. P.P. Singh R/o A-6 Shivalik, N. Delhi through our husbands as advance against the Sale of our both Properties, entire house D54, Kalkaji and entire Property 4 Bighas 8 Biswas in Khasra no.288, Khanpur settled Sale (Sainik Farms), N. Delhi out of Consideration is Rs.63400000/- (Six Crores thirty four Lacs) balance Payment we will receive at the time of transfer both Properties in the name of P.P.Singh (buyer) after mutation formalities are completed which is Pending, within 8 months from today 04/

Photostat Papers self attested has been given to the buyer. for both above said Properties 8. The plaintiff filed a police complaint on 12.08.2011 which resulted in registration of an FIR on 19.01.2013, the defendants were even denied anticipatory bail. Learning that one Yogesh Kumar has instituted a suit RFA(OS) 78/2018 Page 4 of 10 9. for specific performance with respect to one of the properties, subject matter of the agreement dated 04.10.2010, the appellant herein made an application under Order I Rule 10 CPC. The application for impleadment was objected to by Yogesh Kumar, which is evident upon reading of para-2 of the reply dated 12.02.2014, which we reproduce below : 2. That the present application filed by and on behalf of the Applicant is not maintainable in as much as the grievance of the Applicant cannot be adjudicated by way of the present proceedings. As per the allegations of the Applicant, he had also entered into an Agreement to Sell with the defendants herein and had paid some amount to them, ad advance payment. It is submitted that by getting himself impleaded in the present proceedings, it seems that the Applicant wants adjudication of his alleged rights over the property in dispute. It is submitted that the Applicants alleged rights qua the property in dispute can not be adjudicated in the present proceedings in as much as the only remedy for the same would be filing of a suit for specific performance the defendants herein. In view of the same, the present application is liable to be dismissed with heavy costs. independently against (Emphasis supplied) The appellant at that stage also did not consider it appropriate to seek appropriate remedy. The application under Order I Rule 10 was dismissed by the Joint Registrar and appeal filed before the learned Single Judge was also dismissed. Counsel for the appellant has contended that although the appeal was

dismissed but the learned Single Judge has granted liberty to seek appropriate remedy alongwith an application under Section 14 of the Limitation Act. The operative part of the order dated 05.09.2017 passed by learned Single Judge reads as under : RFA(OS) 78/2018 Page 5 of 10 However, the appellant is given liberty to file appropriate proceedings in accordance with the law. If the appellant desires, he may file an application under Section 14 of the Limitation Act along with the substantive proceeding that he wishes to file. Needless to say, the said application would be considered on its own merit by the concerned Court. The rights and contentions of all the parties are left open. 10. Reading of the aforesaid observation makes it clear that there was no consent on behalf of the defendants, who had appeared in the matter nor a blanket liberty was granted but it was observed that in case the appellant desired to file an application under Section 14 of the Limitation Act alongwith the substantive proceedings, he may do so. With the rider that the said application would be considered on its own merit by the concerned Court, the rights and contentions of all the parties were left open. In our view, the application under Section 14 of Limitation Act was to be decided on merits and not on account of any liberty granted by the learned Single Judge.

11. For the sake of convenience, we reproduce Section 14 of the Limitation Act :  
Section 14: Exclusion of time of proceeding bona fide in Court without jurisdiction.  
- (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. RFA(OS) 78/2018 Page 6 of 10 12. (2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. (3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by

the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature. Explanation.- For the purposes of this section,- (a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted; (b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding; (c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction. It may be noted that the application filed by the appellant under Order I Rule 10 in the suit filed by Yogesh Kumar was not dismissed on account of defect of jurisdiction or any other similar reason. The suit filed by Yogesh Kumar and the present suit filed do not relate to the same matter and issue for the reason that the suit filed by Yogesh Kumar pertains to the Sainik Farms property while the agreement of which specific performance is sought in the subsequent suit filed by RFA(OS) 78/2018 Page 7 of 10 the appellant pertains to two properties in Kalkaji and Sainik Farms. Assuming for the sake of arguments even if the appellant was impleaded in the suit filed by Kumar, no relief could have been granted to him in the said suit, moreso, when the property at Kalkaji was not the subject matter in the suit filed by Yogesh Kumar. Accordingly, at least two of the conditions laid down by the Supreme Court in the case of Consolidated Engineering Enterprises (supra) would not stand satisfied.

13. Reading of the reply filed by Kumar to the application under Order I Rule 10 would show that as far back as on 12.02.2014, the appellant was cautioned that he was knocking at the wrong door, but he did not take recourse to such remedy as were available to him. At best, it can be said that till the time reply to the application under Order I Rule 10 was filed, the appellant was under a bonafide belief that he was pursuing the right remedy but after 12.02.2014, this ground of prosecuting his application with due diligence and good faith would not be available. The parties entered into an agreement on 04.10.2010. First cause of action accrued in favour of the plaintiff upon the expiry of eight months and finally on 12.08.2011 when specific performance was refused by the defendants. Article 54 of the Limitation Act reads as under : 54. For specific performance of a contract Three years The date fixed for the performance, or if no such is fixed, when date

the plaintiff has notice that performance is refused. RFA(OS) 78/2018 Page 8 of 10 14. Since the performance was refused by the defendants on 12.08.2011, the period of limitation would be three years from the said date and would expire on 11.08.2014. The date of 11.08.2014 gains relevance as the reply to the application under Order I Rule 10 was filed on 12.02.2014. In case, the appellant had acted in a bonafide manner and with a due diligence, he would have sought his remedy at that stage. The application under Order I Rule 10 was dismissed on 01.02.2014 on the ground that the plaintiff had a remedy of specific performance. The dismissal was not on account of any defect of jurisdiction or any cause of similar nature as prescribed in Section 14 of the Limitation Act. The appeal against the aforesaid order was also dismissed on 05.09.2017.

15. There is yet another aspect in the matter and that is the unexplained delay of 8 months in filing the present suit after the appeal in chamber was dismissed on 05.09.2017. The explanation rendered was that the time was spent for obtaining the original documents which had been filed in suit being CS (OS) 252/2013 (suit filed by Yogesh Kumar) is not a satisfactorily explanation as the appellant could have filed the plaint and sought time in filing the original documents by giving reference to the fact that the same were filed in the suit filed by Yogesh Kumar but the appellant seemed to be in no hurry in filing the present suit.

16. In the case of Consolidate Engineering Enterprises (supra), the Supreme Court held that the following five conditions have to be fulfilled before applying Section 14: 21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court RFA(OS) 78/2018 Page 9 of 10 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 proceedings 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. (Emphasis supplied) 17. For all the reasons stated above, we find no infirmity in the order passed by learned Single Judge. The sequence of events

clearly shows that the appellant was not prosecuting his application diligently neither the same was bonafide, it seems that the appellant was satisfied with the criminal proceedings initiated by him. His application was not rejected on account of any defect in jurisdiction or any other cause of similar nature. The subject matter of both the suits was not the same as property of Kalkaji was not the subject matter of the suit filed by Yogesh Kumar.

18. Resultantly, the appeal is dismissed leaving parties to bear their own cost.  
G.S.SISTANI, J.

**JYOTI SINGH, J.**

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