

Surajbhan Vs. Sadul Textiles

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Court : Rajasthan

Decided On : Dec-15-1987

Reported in : AIR1988Raj164; 1988(1)WLN247; 1988(1)WLN663

Judge : M.C. Jain, J.

Acts : [Limitation Act, 1963](#) - Sections 14

Appeal No. : Civil First Appeal No. 119 of 1973

Appellant : Surajbhan

Respondent : Sadul Textiles

Advocate for Def. : B.R. Arora, Adv.

Advocate for Pet/Ap. : P.C. Tatia, Adv.

Disposition : Appeal allowed

Judgement :

M.C. Jain, J.

1. This is a plaintiffs appeal against the judgment and decree dated 13th Dec. 1972 whereby the plaintiffs suit was dismissed with costs holding that the suit is barred by time as the period taken in litigation at Delhi cannot be excluded under Section 14 of the Limitation Act.

2. I may state a few relevant facts necessary for the disposal of the present appeal.
3. The plaintiff Surajbhan instituted the suit against the defendants on 13th March, 1958 in the court of Senior Sub-Judge at Delhi which was registered as No. 95 of 1958. The suit was for the recovery of damages amounting to Rs. 11,880.10 Annas. Before the filing of that suit a suit for permanent injunction was filed in the court of Sub-Judge Delhi but the same was allowed to be withdrawn by the order dated 27th Dec. 1957 with the permission to bring a fresh suit on the same cause of action. According to the plaintiff the cause of action arose at Delhi in July 1956 when the agreement took place subsequently on 1st June, 1957 and later on when the loss took place.
4. It appears that the suit at Delhi was resisted on the ground of want of jurisdiction. The objection of the defendant was upheld by the Senior Sub-Judge Delhi on 31st March, 1959 and the plaint was ordered to be returned to the plaintiff for presentation to the proper court. Appeal against that order was dismissed by the High Court, Delhi on 26th Sept. 1969 and the Letters Patent appeal was dismissed on 9th Dec. 1969 in limine. The plaintiff received back the plaint from the court on 20-1-70 and presented the same in the Ganganagar court on 21st Jan. 1970 along with an application under Section 14 read with Section 5 of the Limitation Act and Section 151 C.P.C. Written statement on behalf of the defendants 1 and 3 was filed in which it was admitted that the suit for the recovery of damages filed earlier at Delhi was allowed to be withdrawn with the permission to bring a fresh suit on the same cause of action. An objection as to limitation was taken and it was alleged that there was an agreement between the seller and the plaintiffs firm that the dispute relating to the contract will be entertained by Sri-Ganganagar court and Delhi Court's jurisdiction was denied and it was stated that looking to the facts alleged in the plaint, the suit is clearly time barred. A preliminary issue was raised whether the suit is within time. It may be stated that the application under Section 14 read with Section 5 of the Limitation Act was accompanied with an affidavit of the plaintiff Surajbhan. The learned Additional District Judge, Ganganagar recorded the statement of the plaintiff Surajbhan. No evidence was led in rebuttal. The learned Additional District Judge after hearing the

parties decided the issue against the plaintiff and consequently held that the suit is barred by time. As a result of this finding on the issue, the suit was dismissed. The plaintiff has preferred this appeal.

5. I have heard Shri P. C. Tatia learned counsel for the plaintiff appellant and Shri B. R. Arora, learned counsel for the defendant respondents.

6. The only question that calls for determination in the present case is as to whether the plaintiff is entitled to the exclusion of time taken by him in prosecuting the suit and the appeals at Delhi from 13th March, 1958 to 20th January, 1970, the time during which he continued to pursue his remedy at Delhi in the trial court as well as before the appellate court up to the date of disposal of Letters Patent Appeal. The plaintiff in his affidavit has stated that he was prosecuting his suit at Delhi bona fide and with due diligence since part of the cause of action had arisen at Delhi and Delhi courts had jurisdiction to entertain the suit. In his statement before the court he stated that he filed the suit on the advice of his counsel and the appeal was also filed on the basis of the advice of his counsel. He also stated that from 6th Jan. 1970 to 20th Jan. 1970, he was asking the court to return his plaint and documents and that there was no negligence on his part. The question is whether the plaintiff is entitled to the exclusion of the time taken by him in prosecuting the appeals and suit at Delhi. He instituted the suit at Delhi on the basis of the legal advice and also continued to prosecute appeals on the basis of legal advice.

7. Section 14 of the Limitation Act lays down that in computing the limitation for any suit, the time during which the plaintiff has been prosecuting with 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.

8. The expression 'good faith' has been defined in Section 2(h) of the Limitation Act as nothing shall be deemed to be done in good faith which is not done with due care and attention.

9. It has to be seen whether the plaintiff has been able to establish that he was prosecuting the proceedings at Delhi with due diligence acting in good faith.

10. Mr. P. C. Tatia, learned counsel for the plaintiff appellant submitted that the cause of action had accrued to the plaintiff at Delhi and on the basis of advice given, suit for permanent injunction was filed and thereafter suit for damages was filed on the basis of the legal advice. What could be done by the plaintiff is only to seek advice and as per the legal advice, he instituted the suit at Delhi and he pursued remedies of appeal as well, in pursuance of the legal advice. In this manner he acted with due care and attention and prosecuted the proceedings with due diligence and so the plaintiff is entitled to the exclusion of the time under Section 14 of the Limitation Act. It is not in dispute that if that time is excluded under Section 14 the suit is within limitation Mr. Tatia places reliance on the observation of their Lordship of the Supreme Court in *Concord of India Insurance v. Smt. Nirmala Devi* AIR 1979 SC 1666. In that case there was mistake made by the counsel in calculation of the period of limitation, as a result thereof the petitioner was misled in instituting the appeal late. The High Court took the view that the lawyer's ignorance about the law was no ground for condonation of delay. Their Lordships examined the reasoning of the High Court and stated their disagreement with the reasoning. It was observed as under : --

'A company relies on its Legal Adviser and the Manager's expertise is in company management and not in law. There is no particular reason why when a company or other person retains a lawyer to advise it or him on legal affairs reliance should not be placed on such counsel. Of course, if there is gross delay too patent even for layman or if there is incomprehensible indifference the shield of legal opinion may still be vulnerable.'

11. Their Lordships further extracted some excerpts from a decision in *State of Kerala v. Krishna Kurup Madhava Kurup* AIR 1971 Ker 211 which are reproduced hereunder : --

'The law is settled that mistake of Counsel may in certain circumstances be taken into account in condoning delay although there is no general proposition that mistake of counsel by itself is always a sufficient ground. It is always a question

whether the mistake was bona fide or as merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in an underhand way. The High Court unfortunately never considered the matter from this angle. If it had, it would have seen quite clearly that there was no attempt to avoid the Limitation Act but rather to follow it albeit on a wrong reading of the situation'.

12. From the above observations it would appear that if any taint of mala fides or element of recklessness or ruse is not present then legal advice honestly sought and actually given must be treated as sufficient cause.

13. Shri P. C. Tatia, submitted that there was a decision of the Madhya Bharat High Court reported in AIR 1956 Madh Bha 120 which took the view that 'although an agreement confining the parties to have recourse to only one of the several competent Courts may not be within the mischief of S. 28 of the Contract Act, yet it is of such a nature that if permitted, it defeats the provisions of law under Section 20 of the Civil P. C. It is, therefore, hit by Section 23(2), Contract Act and being unenforceable thereunder, cannot be pleaded in bar of action in one of such Courts'.

14. Reference may also be made to a decision of the Supreme Court in Mata Din v. A. Narayanan AIR 1970 SC 1953. Their Lordships of the Supreme Court observed as under : --

'The law is settled that mistake of counsel may in certain circumstances be taken into account in condoning delay although there is no general proposition that mistake of counsel by itself is always a sufficient ground. It is always a question whether the mistake was bona fide or was merely a device (devised. Ed.) to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in an underhand way. The High Court unfortunately never considered the matter from this angle. If it had, it would have seen quite clearly that there was no attempt to avoid the Limitation Act but rather to follow it albeit on a wrong reading of the situation'.

15. In *Rafiq v. Munshilal* AIR 1981 SC 1400 the appeal was dismissed for default of appearance of the appellant's counsel. Application for recall of order was rejected by the High Court on the ground that there was no satisfactory explanation for the slackness on the part of the learned advocate. Their Lordships in connection with the position of the parties and the advocates observed as under : --

'The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job.'

16. It was observed that in case appeal is rejected, the only one who would suffer, would not be the lawyer who did not appear, but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for inaction, deliberate omission or misdemeanour of his agent. The answer obviously is in the negative. Their Lordships further observed as under: --

'May Be that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order.'

17. In a very recent decision the question of limitation has been examined with reference to the provisions contained in Section 5 of the Limitation Act by their Lordships of the Supreme Court in Collector, Land Acquisition, Anantnag v. Mst. Katiji AIR 1987 SC 1353. Their lordships observed that the Supreme Court has been making a justifiable liberal approach in matters instituted in the Supreme Court but the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that : --

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense and pragmatic manner.
4. When substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

18. The above observations make it clear as to how the question of limitation should be approached. It should be approached in a manner which may advance the cause of justice and does not perpetrate injustice. It may be stated that there is

no reason to disbelieve the statement of the plaintiff. In the present case the plaintiff instituted the suit at Delhi and further prosecuted appeals on the basis of the legal advice honestly sought by him and actually given by his lawyer. The plaintiffs lawyer at Delhi gave advice considering that the court at Delhi had jurisdiction and the plaintiff acted on that advice honestly and bona fide and instituted the suit at Delhi. There was no negligence on the part of the plaintiff in accepting the advice and in acting upon it so the plaintiff is entitled to the exclusion of the entire time taken by him in prosecuting the remedy at Delhi.

19. An ignorant, illiterate, uneducated, rustic villager and for that matter even a literate and educated litigant is only expected to engage the services of a lawyer and act upon his counsel. It cannot be said that such a party is lacking in good faith in prosecuting the remedy.

20. Mr. B. R. Arora, learned counsel for the defendant respondent submitted that the plaintiffs counsel at Delhi in the trial Court and in the appellate Court have not been examined nor any affidavit of their have been filed. Even the plaintiff in his affidavit has not categorically stated who gave him what advice and so it should not be found that the plaintiff was given any advice which was bona fide believed to be correct and if a wrong advice has been given by the lawyers of Delhi, then the plaintiff should suffer. The plaintiff is not entitled to the exclusion of the time taken by him in prosecuting the remedy at Delhi. In support of his contention Mr. Arora places reliance on *Secretary to Govt. v. R. Mohapatra*, AIR 1963 Orissa 19, *Firm Bansi Dhar Baldeo Pershad v. Firm Alopi Pershad and Sons*, AIR 1963 Punj 556, *Brij Bhushan v. Madan Mohan Lal*, AIR 1973 Punj & Har 269, *Firm of Sivdutt Rai Gulab Rai v. Union of India*, AIR 1960 Andh Pra 406 and *Babu Ram v. Devinder Mohan Maura*, AIR 1981 Delhi 14.

21. In *Secretary to Government's case* (supra) the appellant's suit was barred under Section 32 of the Arbitration Act and it was observed that the parties are not entitled to the protection under provision of Section 14 of the Limitation Act even when he has entrusted all his work to a lawyer who advised him wrongly for a proceeding contrary to a clearly expressed provision of law and they cannot be regarded as prosecuting another civil proceeding in 'good faith' in the sense in

which the words 'good faith' are defined in Section 2(h) of the Limitation Act. It was observed that it cannot be a rule of law that any mistaken advice given by a lawyer is a sufficient ground under Section 5 or Section 14 of the Limitation Act. This case is distinguishable on facts. In that case, the earlier suit was barred under Section 32 of the Arbitration Act.

22. In *Firm Bansi Dhar Baldeo Prashad's case* (AIR 1963 Punj 556) (supra) there was an agreement between the parties that suit in respect of the dispute regarding agreement would be filed at Delhi but the suit was filed at Kheri. It was held that the suit was not filed in good faith. This authority no doubt relies to the facts in the sense that there was a similar agreement between the parties but the whole question would depend as to whether the advice was honestly given by the lawyer. Inder Dev Dua J. (as he then was) speaking for the court further observed that it is of course not possible to lay down any hard and fast rule for excluding the time under Section 14. However a fair working rule by and large accepted by the courts is that exclusion of time under this section can be allowed only when the mistake leading to the institution of a suit in a wrong court might be committed by a reasonable prudent man exercising due caution and diligence. Section 14 can hardly help a party guilty of negligence and undue indifference and inaction. It may be stated that the validity of the agreement in the light of the provisions contained in Section 23 of the Contract Act was there and it appears that in view of the *Madhya Bharat* decision advice was given, so it cannot be said that the advice was given without due care, caution and diligence.

23. In *Brij Bhushan's case* (AIR 1973 Punj & Har 269) (supra) good faith of the advocate was not established. There was a wrong advice of an advocate regarding the forum of appeal and as good faith was not established, delay was not condoned.

24. In *Firm of Sivdutt Rai Gulab Rai's case* (AIR 1960 Andh Pra 406) (supra) has no application to the facts of the present case. Where the law does not enjoin the exhausting of remedy before the particular authority before filing a suit in a court of law if a party carelessly continues to proceed with his remedy allowing the period of limitation to expire cannot be held to be prosecuting in good faith. Such is not

the case here.

25. In Babu Ram's case (AIR 1981 Delhi 14) (supra) an affidavit was filed by the counsel but it was laconic. It did not state what led him to give such an advice merely because the mistake is committed by a senior counsel does not necessarily mean that the mistaken advice was given bona fide or that it should constitute sufficient cause. There is no formula that person is merely to plead mistaken legal advice. The basis of mistaken advice should also be disclosed to enable the court to see whether the advice tendered was bona fide or reckless.

26. Mr. Arora submitted that in the present case even the affidavits have not been filed by the lawyers of Delhi. It is true that no affidavits of lawyers have been filed but there is no reason to disbelieve the statement of the plaintiff and the basis can be found in the judgment which has been referred to by Shri Tatia. On the basis of the Madhya Pradesh decision advice appears to have been given else the matter would not have been pursued up (to) the latter Patent Appeal stage. The plaintiff in any case cannot be considered to be negligent and lacking good faith in the conduct of the suit and appeals at Delhi, He was prosecuting with due diligence and bona fide, believing in the advice given to him and acting upon on that advice. Thus, in my opinion in the present case Section 14 of the Limitation Act is clearly attracted and the appellant is entitled to the exclusion of the time taken by him in prosecuting the civil proceedings at Delhi.

27. In this view of the matter the finding of the trial Court on issue No. 1 cannot be sustained. Excluding the time under Section 14 of the Limitation Act, the suit is within limitation. The issue is decided accordingly and it is held that this suit is within time. In view of the above finding the judgment of the trial court deserves to be set aside.

28. Accordingly, this appeal is allowed. The judgment and decree of the trial Court are set aside and the case is sent back to the trial Court for framing of other issues and for disposal of the suit in accordance with law.

29. The parties are directed to appear before the trial Court on 22-2-1988 and the trial court is further directed to decide the suit as far as possible within six months.

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