

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.88/2018

1. Sri Sribash Chandra Saha, S/O. Late Raichand Saha, Resident of Shibnagar, P.O.-MBB Club, P.S.-East Agartala, District-West Tripura.

2. Sri Jiban Kumar Mandal alias Jiban Kumar Modak, S/O. Late Haridhan Mandal alias Haridhan Modak, Resident of-Anandanagar, P.S.-Srinagar, Bishalgarh, Sepahijala District.
Represented by its constituted attorney Sribash Chandra Saha.

3. Sri Sishir Ranjan Saha, S/O. Late Parimal Saha, Resident of Anandanagar, P.S.-Srinagar, Bishalgarh, Sepahijala District, represented by its constituted attorney Sribash Chandra Saha.

4. Sri Satish Chandra Das, S/O. Sri Khir Mohan Das, Resident of Anandanagar, P.S.-Srinagar, Bishalgarh, Sepahijala District. Represented by its constituted attorney Sribash Chandra Saha.

----- Petitioner(s).

Versus

1. The Rubber Board, Represented by its Chairman, Rubber Board, P.B. No.1122, Sub-Jail Road, Kottayam-686002.

2. The Deputy Rubber Production Commissioner, Rubber Board Regional Office, NRETC, P.O. Kunjaban, P.S.-New Capital Complex, District-West Tripura.

3. The Divisional Manager, National Insurance Company Ltd., Division Office, CSI Square, Baker Hill, Kottayam-686001, Kerala.

4. Sri Bishnu Debbarma, S/O. Late Sonacharan Debbarma, Resident of Vill. & P.O. Krishnagar, P.S. West Agartala, District-West Tripura.

----- Respondent(s).

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. SANJAY KAROL**

For the petitioners : Mr. Debasish Saha, Advocate.

For the respondents : Mr. S.D. Choudhury, Advocate,
Mr. S. Kar Bhowmik, Advocate,
Mr. A. Bhattacharjee, Advocate.

Date of hearing : 05.04.2019.

Date of judgment : **31.05.2019.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER

The following issues arise for consideration in the present petition:

(a) Whether delay, in instituting a suit for recovery of money, before a Civil Court can be condoned by virtue of Section 5 of the Limitation Act, 1963 (*referred to as the Act*) or not?

(b) Whether time spent by the plaintiffs in pursuing the matter before the consumer forum, in relation to the same matter in issue, can be excluded by virtue of Section 14 of the Act. As a corollary thereof, whether trial Court was right in rejecting the plaintiffs' request, seeking exclusion of time for the proceedings bona fide instituted before a forum not having jurisdiction, particularly when such liberty stood granted?

2. Certain facts are not in dispute. Plaintiff-petitioners own and possess rubber plantation within the State of Tripura. Allegedly on 28th August, 2008, defendant-State Rubber Board deducted certain premiums towards the insurance policy, but did not remit the amount to the insurer. Unfortunately, on 22nd February, 2009, the said rubber plantation got gutted in fire. Vide notice dated 22nd March, 2010 and 4th May, 2010 plaintiffs set up their claim for compensation from the insurer. Vide response dated 21st May, 2010, their claim stood turned down. On 1st July, 2010, plaintiffs instituted a petition before the consumer forum claiming compensation, which holding the plaintiffs not to be consumer, vide order dated 6th September, 2013 stood rejected

with liberty to institute a suit and take benefit of Section 14 of the Act. Resultantly, on 18th September, 2014, plaintiffs instituted a suit before a civil court having competent jurisdiction. Along with the plaint, an application both under Section 5 and Section 14 of the limitation Act seeking condonation of delay of 1095 days was filed. The said application stands rejected by the trial court. Hence, the present revision petition.

3. Ordinarily, this Court would have not examined the first question but for the insistence of the learned counsel for the plaintiffs that independent of plaintiffs' right seeking condonation of delay under Section 14 [in view of liberty granted by the Consumer Forum], even under Section 5 of the Act plaintiffs have got a right to seek condonation of delay. Hence, at the threshold, the Court proceeds to examine the first question.

Object & purpose of prescribing limitation:

4. In ***B. Madhuri Goud vs. B. Damodar Reddy, (2012) 12 SCC 693***, the Apex Court held as under:

"The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation."

5. In fact, in ***Damodaran Pillai & others vs. South Indian Bank Ltd., (2005) 7 SCC 300***, the Court observed that the principles underlying the provisions prescribing limitation are based on public policy aiming at justice, to repose, peace and prompt decision. Further hardship or injustice cannot be a ground for extending the period of limitation.

Statutory provisions:

6. The language of sub-sections (1) and (2) of Section 3 of the Act is unambiguously clear. For the purposes of ready reference, the same is reproduced as under:

"3. Bar of limitation.—(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2) For the purposes of this Act,—

(a) a suit is instituted,—

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted—

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court."

(Emphasis supplied).

7. From the bare reading of the Section it is abundantly clear that every suit instituted after the prescribed period, necessarily, has to be dismissed and this, despite such plea not set up as a defence.

8. "The prescribed period" is with reference to the period of limitation which is so defined under sub-section (f) of Section 2 to mean the one which is prescribed by the Schedule. The suit is deemed to be instituted when the plaint is presented to the proper officer. Noticeably, Section 3 is subject to the provisions contained under Sections 4 to 24.

9. Law of limitation is not meant to an unconscionable conduct, although, if the claim is clearly barred, the Court must unhesitatingly dismiss the plaint. It is a law of repose, peace and justice which bars the remedy after a lapse of a particular period by way of public policy and expediency without extinguishing the right in certain cases. Parties must approach the Court without unreasonable delay. Every suit should be filed within the prescribed period of time, failing which is liable to be dismissed. Careful perusal of provisions of Sections 4 to 24 reveals that there are two Sections empowering and enabling the Court to condone the delay and entertain proceedings so instituted beyond the prescribed period of limitation. The first being Section 5 and the

second Section 14. For better appreciation and ready reference, both are reproduced as under:

"5. Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

.....
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.

(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.”

10. Section 5 deals only with appeals or any application other than an application under any of the provisions of Order XXI CPC.

The answer as to whether an appeal or an application referred to in the said Section would include a suit or not lies in the provisions of the Act itself, for sub-section (I) of Section 2 defines the “suit” not to include an appeal or an application.

11. When contrasted, one notices that Section 3 specifically deals with the suit and Section 5 deals with an appeal or any application. On the other hand, Section 14 provides for exclusion of period of limitation with respect to any suit.

12. Thus, the purpose, ambit and scope of Sections 5 & 14 is totally distinct and different. For the Apex Court in ***Suryachakra Power Corporation Limited vs. Electricity Department, represented by its Superintending Engineer, Port Blair & others, (2016) 16 SCC 152*** observed that “the principles under Section 14 of the Limitation Act, 1963 can be applied even when Section 5 of the Act is not applicable, is no more *res integra*, in view of *M.P. Steel Corpn. V. CCE, (2015) 7 SCC 58*.”

13. In any event, on the first question, law is well settled for no Court has power to condone the delay with respect to a suit instituted beyond a period of limitation, this of course, with the exception under the conditions and limitations prescribed under Section 14. In fact, in ***Kamlesh Babu & others vs. Lajpat Rai***

Sharma & others, (2008) 12 SCC 577, the Apex Court observed that:

“It is well settled that Section 3(1) of the Limitation Act casts a duty upon the court to dismiss a suit or an appeal or an application, if made after the prescribed period, although, limitation is not set up as a defence.”

The said principle stands reiterated in **State of Orissa & another vs. Mamata Mohanty, (2011) 3 SCC 436**.

14. In **Rabindra Nath Samuel Dawson vs. Sivakasi & others, (1973) 3 SCC 381**, the Court observed that where plaintiff had been pursuing the suit and the resultant appeal, despite objection of maintainability taken by the defendant, he would not be entitled to the benefit of Section 14 of the Act in a subsequent suit initiated on the same cause of action, which principle stands reiterated in **Deena (dead) through L.R.s vs. Bharat Singh (dead) through L.R.s & others, (2002) 6 SCC 336**.

15. Though not relevant, in a passing reference, it be only observed that the Apex Court in **B. Madhuri Goud** (supra) explained the meaning of the word “sufficient cause” as contained under Section 5 of the Act. The Court is required to take a liberal view and adopt a pragmatic approach so as to subserve the ends of justice.

16. Thus, it is evidently clear that no suit instituted by the plaintiff beyond the period of limitation would be maintainable and

necessarily has to be dismissed without consideration of Section 5 of the Act. First question is answered accordingly.

17. The Apex Court in ***Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department & others, (2008) 7 SCC 169*** (3 Judge Bench), laid down the following principles necessary for invoking the provisions of Section 14:

"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."

18. What is the meaning of the expression "court" occurring in Section 14 of the Act stands considered by the Apex Court in its various judicial pronouncements. It is not a court as understood in common parlance, established to adjudicate a *lis* under the common law remedy and more specifically the Code of Civil Procedure.

19. In ***Saushish Diamonds Ltd. vs. National Insurance Co. Ltd., (1998) 8 SCC 357***, the Court upheld the decision

passed by an authority namely, National Consumer Disputes Redressal Commission established under the Consumer Protection Act, 1986 relegating the parties to a civil action, entitling them to the benefit of Section 14 of the Act.

20. In ***P. Sarathy vs. State Bank of India, (2000) 5 SCC 355***, similarly with respect to a special statute i.e. the Tamil Nadu Shops and Establishments Act, 1947, the Court held the Deputy Commissioner of Labour (Appeals) to be a "court" for the purposes of Section 14 of the Act, for the reason that even though the said authority may not be, truly speaking, a "civil court" but has trappings of a Court.

21. In ***M.P. Steel Corporation vs. Commissioner of Central Excise, (2015) 7 SCC 58***, the Court clarified that use of word "court" in Section 14 would take its colour from the preceding words "civil proceedings" which may be of several kinds and need not be confined to suits, appeals or applications which are "made only in courts *stricto sensu*" and thus held the said Section to be applicable to proceedings initiated before a quasi judicial Tribunal under a particular statute.

22. The Apex Court in ***Consolidated Engineering Enterprises*** (supra) clarified the expression "good faith" as used in Section 14 to mean, exercise of due care and attention and the findings as to whether "good faith" or its absence is there or not is actually one of fact, dependent upon each case. It further held that:

"31. Section 14 requires that the prior proceeding should have been prosecuted in good faith and with due diligence. The definition of good faith as found in Section 2(h) of the Limitation Act would indicate that nothing shall be deemed to be in good faith which is not done with due care and attention. It is true that Section 14 will not help a party who is guilty of negligence, lapse or inaction. However, there can be no hard-and-fast rule as to what amounts to good faith. It is a matter to be decided on the facts of each case. It will, in almost every case be more or less a question of degree. The mere filing of an application in wrong court would not prima facie show want of good faith. There must be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party. In the light of these principles, the question will have to be considered whether the appellant had prosecuted the matter in other courts with due diligence and in good faith."

23. In fact, in **Deena (dead)** (supra) succinctly clarified the same to read as:

"14. The main factor which would influence the Court in extending the benefit of section 14 to a litigant is whether the prior proceeding had been prosecuted with due diligence and good faith. The party prosecuting the suit in good faith in the court having no jurisdiction is entitled to exclusion of that period. The expression "good faith" as used in section 14 means "exercise of due care and attention". In the context of section 14 expression "good faith" qualifies prosecuting the proceeding in the Court which ultimately is found to have no jurisdiction. The finding as to good faith or the absence of it is a finding of fact. This Court in the case of *Vijay Kumar Rampal vs. Diwan Devi* [AIR 1985 SC 1669] observed:

"The expression good faith qualifies prosecuting the proceeding in the Court which ultimately is found to

have no jurisdiction. Failure to pay the requisite court fee found deficient on a contention being raised or the error of judgment in valuing a suit filed before a Court which was ultimately found to have no jurisdiction has absolutely nothing to do with the question of good faith in prosecuting the suit as provided in section 14 of the Limitation Act."

15. The other expressions relevant to be construed in this regard are "defect of jurisdiction" and "or other cause of a like nature". The expression "defect of jurisdiction" on a plain reading means the Court must lack jurisdiction to entertain the suit or proceeding. The circumstances in which or the grounds on which, lack of jurisdiction of the Court may be found are not enumerated in the Section. It is to be kept in mind that there is a distinction between granting permission to the plaintiff to withdraw the suit with leave to file a fresh suit for the same relief under Order 23 Rule 1 and exclusion of the period of pendency of that suit for the purpose of computation of limitation in the subsequent suit under section 14 of the Limitation Act. The words "or other cause of a like nature" are to be construed *ejusdem generis* with the words "defect of jurisdiction", that is to say, the defect must be of such a character as to make it impossible for the court to entertain the suit or application and to decide it on merits. Obviously section 14 will have no application in a case where the suit is dismissed after adjudication on its merits and not because the Court was unable to entertain it."

24. Noticeably, impugned order running into 9(nine) pages is nothing but reproduction of submissions of the parties and quotes of the decisions rendered by different courts of the land.

25. This Court finds such decisions referred to in the order, not to deal with the issue in hand. None of the decisions referred

to by the trial Judge held the Consumer Forum not to be a court for the purposes of applicability of Section 14 of the Act.

26. Specific to the issue as to whether Consumer Forum is a Court or not, the Apex Court in ***Saushish Diamonds Ltd.*** (supra) under identical circumstances, where the plaintiffs had been pursuing the matter before the Consumer Forum, granted benefit of provisions of Section 14 of the Limitation Act.

27. In crux, it is seen that the trial Court dismissed the application for the reason that (a) Consumer Forum was not a "court"; (b) lack of due diligence and good faith exercised by the plaintiffs; and (c) the *lis*, on merits, stood adjudicated by the Consumer Forum. Defect of jurisdiction is not a ground for rejection of the application.

28. Perusal of the order dated 06.09.2013 passed by the District Consumer Disputes Redressal Forum, West Tripura, Agartala in case No.C.C. 46 of 2010, titled as *Sri Sribash Chandra Saha & others vs. The Chairman-cum-Managing Director, Rubber Board & others*, only reveals that the *lis inter se* the parties was not adjudicated on merits. Petition stood rejected for the reason that plaintiffs on account of non-payment of premium for insurance could not be held to be "consumer" falling within the definition of the Consumer Protection Act, 1986, and as such, holding the application not to be maintainable, dismissed the same, reserving liberty to institute appropriate proceedings before a civil court by taking aid of Section 14 seeking exclusion of the

period spent in pursuing such proceedings. The Consumer Forum did not hold the applicants not to have pursued the matter by exercising due diligence or good faith. The complaint stood rejected only on account of lack of jurisdiction which would take within its sweep the expression "defect of jurisdiction". There is no dispute about the subject matter of the plaint being same, as the one pursued by the plaintiffs before the Consumer Forum.

29. Hence, for all the aforesaid reasons, this court finds the court below to have seriously erred in appreciating and correctly applying the provisions of law, in rejecting the plaintiffs' application filed under Section 14 of the Act. Time spent for pursuing the matter before the Consumer Forum had to be excluded. Second question is answered accordingly.

30. Considering the attending facts and circumstances, the court ought to have allowed the prayer, more so in view of the liberty granted in rejecting the application by the Consumer Forum. The plaintiffs, being poor and helpless litigants had been pursuing the matter in good faith by exercising due diligence.

31. The instant suit is for recovery of compensation towards the loss suffered in the fire for which, allegedly premium towards insurance cover stood deducted by the Board. The proceedings relate to the very same matter in issue. As such, the present petition is allowed.

32. The application filed by the plaintiffs seeking condonation of delay stands allowed with the impugned order

dated 25.04.2018 passed by learned Civil Judge (Sr. Division), Court No.3, West Tripura, Agartala in case No.Misc. (Condo.) 08 of 2014, titled as *Sri Sribash Chandra Saha & others vs. The Chairman-cum-Managing Director, Rubber Board & others*, is quashed and set aside. Delay is not intentional and is justifiable in the attending facts and circumstances.

33. The parties are directed to appear before the trial court on **18.06.2019**. The plaint be registered and hearing of the suit expedited. Since the claim pertains to the year 2009, trial court shall endeavour to conclude the proceedings, positively within a period of one year. Parties shall not take any unnecessary adjournment and save and except for official witnesses, endeavour to produce their evidence at the earliest, in accordance with law.

34. The revision petition stands disposed of in view of above terms.

(SANJAY KAROL), CJ