

(2018) 08 CHH CK 0284

Chhattisgarh High Court

Case No: First Appeal No. 1 Of 2002

M.R.K. And Association

APPELLANT

Vs

Nagar Palika Parishad

RESPONDENT

Date of Decision: Aug. 27, 2018

Acts Referred:

- Chhattisgarh Municipalities Act, 1961 - Section 319
- Limitation Act, 1963 - Section 14, 14(2)

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Ram Kumar Tiwari, Pankaj Agrawal

Final Decision: Allowed

Judgement

Sanjay K. Agrawal, J

1. The appellant was plaintiff before the trial Court. According to the plaintiff, cause of action for recovery of the part of amount arose on 8-7-1992

when the bill of the plaintiff was not paid by the defendant and partly on 8-12-1992 when the security deposit was not released. The appellant, in

March, 1995, filed a writ petition under Article 226/227 of the Constitution of India before the High Court of Madhya Pradesh bearing W.P.

(Mandamus) No.1163/1995 (M/s R.K. and Associates v. Municipal Committee Raigarh) which was disposed of on 15-7-1996 with a direction to the

appellant / plaintiff to take recourse to suit. According to the plaintiff, he issued statutory notice under Section 319 of the Chhattisgarh F.A.No.1/2002

Municipalities Act, 1961 (for short, 'the Act of 1961') and after service of notice received by the defendant on 22-10-1996, the suit was filed on 8-1-

1997 with an application under Section 14(2) of the Limitation Act, 1963. The trial Court by its impugned order rejected the application under Section 14(2) of the Limitation Act, 1963, thereby dismissed the suit holding that the suit is barred by 24 days. Questioning that order, the instant first appeal has been filed.

2. Mr. Ram Kumar Tiwari, learned counsel appearing for the appellant / plaintiff, would submit that the finding recorded by the trial Court is perverse and contrary to record, as the trial Court is absolutely unjustified in rejecting the application under Section 14(2) of the Limitation Act, 1963, as notice under Section 319 of the Act of 1961 was necessary before filing the suit which ought to have been included while computing the period of limitation for filing the civil suit.

3. Mr. Pankaj Agrawal, learned counsel appearing for the respondent / defendant, would support the impugned order.

4. I have heard learned counsel for the parties and went through the record with utmost circumspection.

5. The question for consideration would be, whether the trial Court is justified in rejecting the application under Section 14(2) of the Limitation Act, 1963?

6. Section 14(2) of the Limitation Act, 1963 provides as under: -

14. Exclusion of time of proceeding bona fide in court without jurisdiction.--(1) xxx xxx xxx (2) In computing the period of limitation for any

F.A.No.1/2002 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.

7. The object of Section 14 of the Limitation Act, 1963 is to give relief to a person who institutes proceedings which by reason of some technical defect are thrown out. From a bare reading of Section 14 of the Limitation Act, 1963, it is apparent that there are at least three pre-conditions for its application:

(i) parties in the civil suit and in the subsequent proceeding (in which condonation is prayed for) must be the same;

(ii) the suit and the later proceeding must seek the same relief; and

(iii) the Court where the earlier suit was filed was unable to entertain it from defect of jurisdiction or other cause of a like nature.

8. The first question would be, whether the earlier writ petition filed by the plaintiff before the M.P. High Court and disposed off with liberty to file

civil suit would fall within the expressions ""another civil proceeding and in a court of first instance"" within the meaning of Section 14(1) of the

Limitation Act, 1963?

9. It may be noticed that Section 14 of the Limitation Act, 1963 does not speak of a ""civil court"" but speaks only of a ""court"". It is not necessary that

the court spoken of in Section 14 should be a ""civil court"". Any authority or tribunal having the trappings of a court would be a ""court"" within the

meaning of this section. It need not be a civil court and as such the writ court being a constitutional court is undoubtedly covered within the meaning of

court"" under Section 14 of the Limitation Act, 1963 and the proceedings pending before it were civil proceedings. (See P. Sarathy v. State Bank of

India (2000) 5 SCC 355.)

10. In the matter of Rameshwarlal v. Municipal Council, Tonk and others (1996) 6 SCC 100, the Supreme Court has held that where in a writ petition

filed by a municipal employee for arrears of salary the High Court refused to exercise its discretionary power under Article 226 of the Constitution of

India, relegating the writ-petitioner to a civil suit and the limitation for suit, though had not expired at the time of filing of the writ petition, expired

during the pendency of the same. It was further held that the entire time from the date of institution of the writ petition till its disposal should be

excluded under Section 14 of the Limitation Act, 1963. Their Lordships observed in paragraph 3 of their report as under: -

3. Normally for application of Section 14, the court dealing with the matter in the first instance, which is the subject of the issue in the later case, must

be found to have lack of jurisdiction or other cause of like nature to entertain the matter. However, since the High Court expressly declined to grant

relief relegating the petitioner to a suit in the civil court, the petitioner cannot be left remediless. Accordingly, the time taken in prosecuting the proceedings before the High Court and this Court, obviously pursued diligently and bona fide, needs to be excluded. The petitioner is permitted to issue notice to the Municipality within four weeks from today. After expiry thereof, he could file suit within two months thereafter. The trial court would consider and dispose of the matter in accordance with law on merits.

11. Admittedly, cause of action as per the plaint allegation, arose on 8-7-1992 and partly on 8-12-1992 and thus, the period of limitation 1 according to

Article 18 of the Limitation Act, 1963, was available up to 7-7-1995 / 7-12-1995 and in the meanwhile, in March, 1995, when the writ petition was filed

for the amount in dispute which the M.P. High Court has disposed of on 15-7-1996 relegating the petitioner therein / appellant herein to file civil suit,

immediately after the letter received from his counsel on 6-8-1996, the plaintiff served a notice under Section 319 of the Act of 1961 to the defendant

which was received by the defendant on 22-10-1996 and the suit was filed on 8-1-1997. Thus, in fact, the writ petition remained pending from March,

1995 to 15th July, 1996, as such, for a period of 1 year 4½ months, the writ petition remained pending in the High Court and according to Section 14

of the Limitation Act, 1963, the appellant / plaintiff is entitled for the said benefit of exclusion of time in computing the period of limitation for filing suit

for recovery. If the period of 1 year 4½ months is included in the period of 3 years provided for institution of suit, undisputedly, the suit is well within

the period of limitation.

12. Following the principle of law laid down by the Supreme Court in the aforesaid cases (supra) excluding the period from the date of institution of

writ petition till the date of its disposal that is 15-7-1996 is counted in favour of the plaintiff, admittedly, the suit of the plaintiff is well within the period

of limitation and as such, the trial Court has committed illegality in rejecting the application filed under Section 14(2) of the Limitation Act, 1963.

13. As a fallout and consequence of the aforesaid discussion, the order dated 13-8-2001 passed by the 1st Additional District Judge, Raigarh in Civil

Suit No.1B/97 is set-aside and extending the benefit of Section 14 of the Limitation Act, 1963, the suit is held to be within limitation. By setting aside

the order impugned, the matter is remitted to the trial Court for deciding the suit on merits, in accordance with law.

14. The first appeal is allowed to the extent indicated herein-above. No order as to cost(s).

15. Decree be drawn-up accordingly.