M/S Dwivedi And Sons Vs Bharat Petroleum Corporation Limited

Court: Patna High Court

Date of Decision: Jan. 22, 2022

Acts Referred: Constitution Of India, 1950 â€" Article 227
Code Of Civil Procedure, 1908 â€" Section 11, Order 23 Rule 1, Order 23 Rule 1(3), Order 23 Rule 1(4)
Arbitration And Conciliation Act, 1996 â€" Section 19, 34, 34(1), 34(3), 34(5), 36
Limitation Act, 1963 â€" Section 5, 14
Industrial Disputes Act, 1947 â€" Section 25O(1)

Hon'ble Judges: Anil Kumar Sinha, J

Bench: Single Bench

Advocate: Amit Shrivastava, Kunal Tiwary, Girish Pandey, Siddhartha Prasad, Om Prakash Kumar

Final Decision: Dismissed

Judgement

1. The present application has been filed, under Article 227 of the Constitution of India, for setting aside the order, dated 25.04.2019, passed by the

District Judge, Patna, in Misc. (Arbitration) Case No. 12 of 2019, whereby the said misc. case has been admitted for hearing.

2. Misc. Case no. 12 of 2019 has been filed, under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as Ã¢â‚¬Ëœthe 1996

ActÃ¢â‚¬â„¢) by the respondent-Bharat Petroleum Corporation Limited (in short, Ã¢â‚¬ËœCorporationÃ¢â‚¬â„¢), challenging the arbitral award, dated 02.07.2018,

passed by the Arbitrator HonÃ¢â‚¬â„¢ble Justice Smt. Mridula Mishra (Retd.).

3. The petitioner is a firm, engaged in selling of petroleum products and was granted license for operating the petrol pump by the respondent-

Corporation on 17.01.2017, but the said license was cancelled, which was challenged by the petitioner in CWJC No. 1493 of 2017. This Court, vide

order, dated 21.03.2017, directed the petitioner to take steps for arbitration. Thereafter, the petitioner filed Request Case No. 91 of 2017, in which this

Court, vide order, dated 30.08.2017, directed for appointment of Arbitrator. The learned Arbitrator thereafter conducted the arbitration proceeding and

passed an award on 02.07.2018 (Annexure 2 to this application) in favour of the petitioner, holding that the termination of the license of the petitioner

by the respondent-Corporation is illegal and, accordingly, the order of termination was quashed, with further direction to the Corporation to restore the

license of the petitioner in terms of the agreement, dated 28.03.2014 and also to restore the supply of petroleum products to the retail outlet of the

petitioner.

4. The award, dated 02.07.2018, was challenged by the respondent-Corporation by filing Misc. Case No. 133 of 2018 before the District Judge, Patna,

under Section 34 of the 1996 Act. Since the said misc. case was filed without compliance of Section 34 (5) of the 1996 Act and no prior notice was

served upon the petitioner, as such, on the objection raised by the petitioner, the respondent-Corporation sought permission from the learned District

Judge, Patna, to withdraw misc. Case No. 133 of 2018 and, accordingly, Misc. Case No. 133 of 2018 was dismissed as withdrawn, vide order, dated

17.01.2019, passed by the learned District judge, Patna.

5. Learned Senior Counsel appearing on behalf of the petitioner submits that Misc. Case No. 133 of 2018 was withdrawn by the respondent-

Corporation without seeking liberty of the learned Court below to file a fresh case, challenging the award, dated 02.07.2018 and, admittedly, 90

daysÃ¢â‚¬â„¢ time, prescribed under Section 34 (3) of the 1996 Act for challenging the award expired on 02.10.2018 and thereafter 30 daysÃ¢â‚¬â„¢ period,

provided under the proviso of Section 34 (3) of the 1996 Act had also expired on 02.11.2018, as such, on the date on which the misc. Case No. 133 of

2018 was withdrawn, i.e. on 17.01.2019, the maximum time prescribed under Section 34 (3) of the 1996 Act of 120 daysÃ¢â‚¬â„¢ (90 + 30) had already

expired and, therefore, on the date of seeking withdrawal of the Misc. Case No. 133 of 2018, it was mandatory for the respondent-Corporation to

seek liberty of the learned Court below to file a fresh case and in absence of such liberty, after the expiry of the time period, provided under Section

34 (3) of the 1996 Act, no case can be filed challenging the award passed under the 1996 Act. Learned Senior Counsel relied upon the judgment of

the Supreme Court, in the case of Ramjee Power Construction Limited v. Jharkhand Urja Vikash Nigam Limited and Another, reported in 2019 (2)

PLJR SC 321, in which the Supreme Court has held that if an application under section 34 of the 1996 Act is filed after the mandatory period of 120

daysÃ¢â‚¬â„¢, then, in such cases, there was no scope for having the delay condoned as no power is provided under Section 34 of the 1996 Act to

condone the delay in filing the application under Section 34 of the 1996 Act beyond the period prescribed by the parliament. Learned Senior Counsel

also relies on a judgment of the Supreme Court, in the case of B.B.M. Enterprises v. the State of West Bengal and Another, reported in (2020) 9 SCC

448, in which the Supreme Court has held that the limitation period provided for challenging the arbitral award as provided under Section 34 (3) of the

1996 Act, of three months plus 30 days, is mandatory in nature and, therefore, any challenge to an award well beyond the limitation period under

Section 34 (3) of the 1996 Act is time barred and is not maintainable.

6. He further submits that after withdrawal of misc. Case No. 133 of 2018, the respondent-Corporation cannot file any other case, i.e. Misc. Case No.

12 of 2019, after a delay of 239 days from the date of passing of the award on 02.07.2018. The contention is that even this time also, no prior notice

regarding challenging the award was served/received by the petitioner inasmuch as the notice was issued by the respondent-Corporation by putting the

incorrect name of the petitioner, which would be evident from Annexure 9 to this application, which clearly demonstrates that the notice was issued in

the name of M/s Dwivedi of sons; whereas the correct name of the petitioner firm is M/s Dwivedi and Sons. However, the petitioner, on its own

knowledge, appeared before the learned Court below, where the second misc. case filed by the respondent-Corporation was taken up and a

preliminary objection (Annexure 7) was raised on behalf of the petitioner regarding maintainability of the Misc. Case No. 12 of 2019 after the expiry

of 120 daysÃ¢â‚¬â„¢ period provided under Section 34 (3) of the 1996 Act. The petitioner took specific objection that the Misc. Case No. 12 of 2019 has

been filed after the expiry of the mandatory period of three months plus 30 daysÃ¢â‚¬â„¢ time provided under Section 34 (3) of the 1996 Act and,

therefore, the same is not maintainable. However, the learned Court below admitted misc. Case No. 12 of 2019, without assigning any reason, vide its

order, dated 25.04.2019.

7. Learned Senior Counsel argued that it was incumbent upon the learned Court below to deal with the objection raised by the petitioner and the

learned Court below without assigning any proper reason much less without dealing with the objection of the petitioner admitted Misc. Case No. 12 of

2019 in complete disregard of the provisions laid down under Section 34 (3) of the 1996 Act. He relies upon the judgment of this Court, in the case of

Geeta Devi and Another v. the State of Bihar, reported in 2001 (1) PLJR 647, in which the learned Single Judge, relying upon the case of Gulab

Chand Jain v. State, reported in 1980 BLJR 156, has held that the court must assign the reason for its satisfaction while condoning the delay.

8. He next submits that since the respondent-Corporation had withdrawn the Misc. Case No. 133 of 2018 without seeking liberty to file a fresh

application, therefore, after expiry of 120 days, subsequent case, i.e. Misc. Case No. 12 of 2019 cannot be maintained and the subsequent petition is

barred in view of the principle underlying Rule (1) of Order XXIII of the Civil Procedure Code, 1908. He relies upon the judgment of the Supreme

Court, in the case of Ramesh Chandra Sankla and Others v. Vikram Cement and Others, reported in (2008) 14 SCC 58, in which it has been held by

the Supreme Court that Ã¢â‚¬Å“it is open to the petitioner to withdraw a petition filed by him. Normally, a Court of Law would not prevent him

from withdrawing his petition. But if such withdrawal is without the leave of the Court, it would mean that the petitioner is not interested in

prosecuting or continuing the proceedings and he abandons his claim. In such cases, obviously, public policy requires that he should not

start fresh round of litigation and the Court will not allow him to re-agitate the claim which he himself had given up earlierÃ¢â‚¬. He further

submits that the Supreme Court, in the case of Ramesh Chandra Sankla (supra), has quoted the ratio laid down in the case of Sarguja Transport

Service v. State Transport Appellate Tribunal, reported in (1987) 1 SCC 5, in which it has been clearly held that Ã¢â‚¬Å“the law confers upon a man no

rights or benefits which he does not desire. Whoever waives, abandons or disclaims a right will loose it. In order to prevent a litigant from

abusing the process of the Court by instituting suits again and again on the same cause of action without any good reason the Code insists

that he should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in Sub-rule (3) of

Rule 1 of Order XXIII. The principle underlying the above rule is founded on public policy, but it is not the same as the rule of res judicata

contained in Section 11 of the Code which provides that no court shall try any suit or issue in which the matter directly or substantially in

issue has been directly or substantially in issue in a former suit between the same parties, or between parties under whom they or any of

them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been

subsequently raised, and has been heard and finally decided by such Court. The rule of res judicata applies to a case where the suit or an

issue has already been heard and finally decided by a Court. In the case of abandonment or withdrawal of a suit without the permission of

the Court to file a fresh suit, there is no prior adjudication of a suit or an issue is involved, yet the Code provides, as stated earlier, that a

second suit will not lie in Sub-rule (4) of Rule 1 of Order XXIII of the Code when the first suit is withdrawn without the permission referred

to in Sub-rule (3) in order to prevent the abuse of the process of the CourtÃ¢â‚¬â€‹.

9. Mr. Siddharth Prasad, learned Counsel appearing on behalf of the respondent-Corporation, on the other hand, submits that the principle that second

application for the same relief and cause of action is barred as the first one was withdrawn without any liberty to file fresh application will only apply

in cases where the first application was withdrawn because of some mala fide reason or to do bench-hunting or just because the case was being

dismissed on merits and the advocate chose to withdraw in order to not take any adverse order etc. He submits that no doubt, Order XXIII Rule 1 (4)

of the Civil Procedure Code, 1908, states that where the plaintiff withdraws a suit without the permission of the Court to file a fresh suit, he is

precluded from instituting any fresh suit in respect of such subject-matter. However, this provision will apply only to suits and an application filed under

Section 34 of the 1996 Act is not a suit and as such, this provision will not apply to such application.

10. Learned Counsel for the respondent-Corporation further submits that from the order, dated 17.01.2019, passed in Misc. Case No. 133 of 2018, by

the learned District Judge, Patna, it is evident that the same has been withdrawn for a bona fide reason that the provision contained in Section 34 (5)

of the 1996 Act was not adhered to due to inadvertence and the respondent-Corporation, without wasting time, filed Misc. case No. 12 of 2019 on

01.02.2019 after serving a proper notice upon the petitioner and as such, no prejudice has been caused to the petitioner. He further submits that in

Misc. Case No. 12 of 2019, the petitioner had already appeared upon receipt of the notice and a preliminary objection was also raised on behalf of the

petitioner, but the issue regarding maintainability of the second Misc. Case was not raised. In support of his contention, learned Counsel for the

respondent-Corporation relies upon the judgment of the supreme Court, in the cases of Ramesh Chandra Sankla (supra), Sarva Shramik Sanghatana

(KV) v. the State of Maharashtra and Others, reported in (2008) 1 SCC 494 and the order passed by this Court in the case of Arun Kumar Singh and

Another v. The State of Bihar and Others (CWJC No. 14797 of 2019).

11. In reply to the arguments advanced on behalf of learned Senior Counsel for the petitioner that the second case has been filed after expiry of the

limitation period of 120 days, as provided under Section 34 (3) of the 1996 Act, it is admitted position that the first case, under Section 34 of the 1996

Act, was filed on 06.09.2018, i.e. after 66 days of the award and henc it was filed within the limitation period and the same was withdrawn on

17.01.2019 because of the bona fide reason and the second case, under Section 34 of the 1996 Act was filed on 01.02.2019, i.e. after 14 days of the

withdrawal of the first case, which is well within the limitation period of 120 days. He also submits that the principle of Section 14 of the Limitation

Act stipulates of exclusion of time of proceeding bona fide in court without jurisdiction. Further, 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, will apply in the present case. The respondent-Corporation has filed

a petition under Section 14 of the Limitation Act, along with Misc. Case No. 12 of 2019, after serving a copy of the same upon the petitioner and the

petitioner had already entered appearance and filed objection. It is well settled that the competent Court cannot hear any matter if the

case/suit/application is defective and such defect goes to the root of the matter like non-payment of the court fee etc. if the Court hears/adjudicates a

defective case/suit/application, then the same is considered to be without jurisdiction. In the instant case, the District judge, Patna, could not have

heard an application under Section 34 of the 1996 Act bearing Misc. Case No. 133 of 2018 when there was no pre-service of notice under Section 34

(5) of the 1996 Act, otherwise it would amount to exceeding its jurisdiction. The Supreme Court, in the case of Consolidated Engineering Enterprises

v. the Principal Secretary, Irrigation Department and others, reported in (2008) 7 SCC 169, has held, in paragraph 21, that certain conditions must be

satisfied before Section 14 can be pressed into service and one of them being the failure of the prior proceeding was due to defect of jurisdiction or

other cause of like nature. Here, the respondent-Corporation was pursuing the matter in a court of competent jurisdiction but due to statutory defect in

the application under Section 34 of the 1996 Act, any order passed by the District judge, Patna, would have amounted to exceeding its jurisdiction.

Further, the Supreme Court, in Consolidated Engineering Enterprises (supra), in paragraph 22, held that the policy of Section 14 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. It has also been held that policy of Section 14 is to advance the cause of justice rather than abort the proceedings. The Supreme Court, in

Consolidated Engineering Enterprises (supra), in paragraph 24, held that the language of beneficial provision contained in Section 14 of the Limitation

Act must be construed liberally so as to suppress the mischief and advance its object. He also submits that it is well settled principle of law that the

period of 120 daysÃ¢â‚¬â„¢ limitation for filing an application under Section 34 of the 1996 Act cannot be extended by giving the benefit of Section 5 of the

Limitation Act, but it is equally well settled by the Supreme Court, in Consolidated Engineering Enterprises (supra), that benefit of Section 14 of the

Limitation Act will accrue to an application submitted under Section 34 of the 1996 Act for setting aside an arbitral award.

12. Controverting the argument of learned Senior Counsel for the petitioner that pre-service of notice was not done as prescribed under Section 34 of

the 1996 Act at the time of filing of the Misc. Case No. 12 of 2019, it has been submitted by learned Counsel for the respondent-Corporation that prior

notice, under Section 34 (5) of the 1996 Act was sent by the respondent-Corporation before filing of the Misc. Case No. 12 of 2019 on 18.01.2019 by

post. In the application filed under Section 14 of the Limitation Act, along with the misc. petition, the respondent-Corporation has also stated about the

pre-service of notice on 18.01.2019, through speed post, which would be evident from the list of documents, annexed along with Annexure 9 to this

application. The fact that the notice was validly served upon the petitioner will be evident from the fact that the petitioner appeared in Misc. Case No.

12 of 2019 and filed its objection. Further, there is receiving of the Advocate appearing on behalf of the petitioner on the application filed by the

respondent-Corporation before the learned Court below, under Section 14 of the limitation Act. Therefore, the argument of the petitioner that the

notice was not validly served upon him is not acceptable. The contention of the petitioner that in the postal receipt, the name of the petitioner has

wrongly been typed as Ã¢â‚¬Ëœ Dwivedi of sonsÃ¢â‚¬â„¢ instead of Ã¢â‚¬Ëœ Dwivedi and SonsÃ¢â‚¬â„¢ has no legs to stand because notice has been validly served upon

the petitioner and the petitioner also entered appearance in Misc. Case No. 12 of 2019. The postal receipt was not generated by the respondent-

Corporation and sometimes spelling error takes place in typing the name from the envelope into the system and in the envelope, the respondent-

Corporation had mentioned the correct name and address of the petitioner. In the objection filed by the petitioner, in Misc. Case No. 12 of 2019, the

issue of non-compliance of Section 34 (5) of the 1996 Act regarding pre-service of notice was not raised. Lastly, learned Counsel for the respondent-

Corporation submits that the provision of Section 34(5) of the 1996 Act has been held by the Supreme Court to be directory and not mandatory, in

Civil Appeal No. 7314 of 2018.

13. In reply, learned Senior Counsel for the petitioner submits that Section 14 of the Limitation Act provides for exclusion of time spent in good faith in

a court which from defect of jurisdiction or other cause of like nature is unable to entertain it, but, in the instant case, the Court of District Judge,

Patna, was the competent Court to hear the Misc. Case challenging the award under Section 34 (1) of the 1996 Act and the said court did not suffer

any jurisdiction, but the respondent-Corporation chose to withdraw the application on the objection of the petitioner and at the time of withdrawal, the

respondent-Corporation did not take any permission to file a fresh application challenging the award and, therefore, the subsequent application is not

maintainable and Section 14 of the Limitation Act does not come to the rescue of the respondent-Corporation.

14. In reply to the argument advanced on behalf of the respondent-Corporation that the provision of the Civil Procedure Code, 1908 is not applicable

stricto senso, learned Senior Counsel submits that the argument is misleading and devoid of any merit as Section 36 of the 1996 Act itself provides that

on expiry of the period prescribed under Section 34 of the 1996 Act for challenging the award, the award becomes enforceable in accordance with the

provisions of the Civil Procedure Code, 1908 in the same manner as it was decree of the court. In other words, the submission is that the provision of

the Civil Procedure Code, 1908 is applicable in the arbitration proceeding.

15. I have heard learned Counsel for the parties concerned and have carefully gone through the materials and the documents available on record.

16. It is evident from record that Misc. Case No. 133 of 2018, challenging the award, dated 02.07.2018, was filed by the respondent-Corporation

within time, i.e. on the 66th day of passing the award and it was on the objection of the petitioner before the learned District Judge, Patna, that Misc.

Case No. 133 of 2018 is not maintainable because the same has been filed without service of notice to the petitioner therein in terms of Section 34 (5)

of the 1996 Act, the respondent-Corporation sought the permission of the learned Court below to withdraw the Misc. Case No. 133 of 2018 and in the

light of submission made by the parties, the District Judge, Patna, vide its order, dated 17.01.2019, dismissed the Misc. Case No. 133 of 2018, as

withdrawn.

17. The contention of the petitioner that since Misc. case No. 133 of 2018 was withdrawn without seeking any permission to file a fresh case is not

maintainable in view of the provision under Order XXIII Rule 1 (4) of the Civil Procedure Code, 1908, is not acceptable in law as well as in the facts

of the case, for the following reasons.

18. From the order, dated 17.01.2019, passed, by the learned District Judge, Patna, allowing the withdrawal of Misc. Case No. 133 of 2018 in the light

of the submission advanced by the parties, it is evident that it was on the specific objection raised by the petitioner herein regarding pre-service of

notice required under Section 34 (5) of the 1996 Act, for challenging the award and the same was not withdrawn as a tool of bench-hunting and to

avoid any adverse order likely to be passed on the merit of the challenge. The very fact that within fourteen days of the withdrawal of Misc. Case No.

133 of 2018, the second misc. case, bearing Misc. Case No. 12 of 2019 has been filed after prior service of notice upon the petitioner herein, leads to

the conclusion that the Misc. Case No. 133 of 2018 was withdrawn for a bona fide reason that the compliance of the statutory provision prescribed in

Section 34 (5) of the 1996 Act was not adhered to.

19. The Supreme Court, in Sarva Shramik Sanghatana (KV) (supra), took note of its fact that an application, under Section 25-O (1) of the industrial

Dispute Act filed by the employer for closure of an undertaking was withdrawn for making an attempt for settlement, however, the efforts were not

successful, hence, the management files fresh application. The Union of India took an objection that since the earlier application filed by the employer

for closure of undertaking was withdrawn, the second application is hit by Order XXIII of the Civil Procedure Code, 1908. In support, the Union of

India relied on Sarguja Transport Service (supra). The Supreme Court rejected the contention of the Union of India and held that the second

application is maintainable and distinguished the case of Sarguja Transport Service (supra), holding that the action of the management of withdrawal of

the first application was bona fide and the same was not a case of bench-hunting with a view to avoid adverse order likely to be passed against it. It

was also observed, in Sarva Shramik Sanghatana (KV) (supra),that the provision of the Civil Procedure Code, 1908 did not strictly apply to industrial

adjudication and the second application was held to be maintainable.

20. As per Section 19 of the 1996 Act, the arbitral tribunal shall not be bound by the Civil Procedure Code, 1908 or the Indian Evidence Act and the

parties are free to determine their own procedure to be followed in arbitration proceeding based upon the equal treatment. Though, certain provisions

of the Civil Procedure Code, 1908 for the purpose of execution of decree and in taking assistance of the Court for recording evidence are available,

but in my opinion, an application challenging the award by way of Misc. case before the District Judge is not a suit and, accordingly, the provisions of

Order XXIII Rule 1 (4) of the Civil Procedure Code, 1908, will not apply in an application under Section 34 of the 1996 Act.

21. Accordingly, the aforesaid contention of the petitioner is rejected.

22. Insofar as the second contention of the petitioner that on the date on which Misc. Case No. 133 of 2018 was withdrawn, the maximum period

prescribed under Section 34 (3) of the 1996 Act, i.e. 90 + 30 days, had already expired and the second case (Misc. Case No. 12 of 2019) having been

filed after 239 days from the date of passing of the award is time barred and is not maintainable, is also not tenable in the facts as well as on law, for

the following reasons.

23. It is an admitted position that the award, dated 02.07.2018, was challenged under Section 34 of the 1996 Act by filing Misc. Case No. 133 of 2018,

i.e. on the 66th day, which was well within time, and the second case, being Misc. Case No. 12 of 2019, after withdrawal of Misc. Case No. 133 of

2018 based upon the objection raised by the petitioner, was filed by the respondent-Corporation within fourteen days of withdrawal of Misc. Case. No.

133 of 2018 on 01.02.2019, along with an application under Section 14 of the Limitation Act after pre-service of notice upon the petitioner, as required

under Section 34 (5) of the 1996 Act and the petitioner also filed its objection before the learned Court below (Annexure-7 to the application),

contending that the second application (Misc. Case No. 12 of 2019) is barred by limitation and Section 5 of the Limitation Act will not apply to an

application under Section 34 of the 1996 Act.

24. The Supreme Court, in Consolidated Engineering Enterprises (supra), has held that merely because it is held that Section 5 of the Limitation is not

applicable to an application filed under Section 34 of the Act for setting aside an award, one need not conclude that the provision of Section 14 of the

Limitation Act will also not be applicable to an application filed under Section 34 of the 1996 Act.

25. The Supreme Court, in paragraph 21 of Consolidated Engineering Enterprises (supra), has held as follows:-

Ã¢â‚¬Å“21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court 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 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.Ã¢â‚¬â€‹ (Emphasis is mine)

26. From perusal of condition 3 aforesaid, it is clear that if the failure of prior proceeding was due to defect of jurisdiction or other cause of like nature,

Section 14 of the Limitation Act can be pressed into service and in the present case, the respondent-Corporation filed the first case (Misc. Case No.

133 of 2018)Ã, challenging the award, dated 02.07.2018 within time, but due to statutory defect, which is not mandatory in nature, as held by the

Ã, Supreme Court, the same was re-filed just after fourteen days ofÃ, withdrawal of the first case with prior service of notice to thepetitioner and

after serving a petition under Section 14 of the Limitation Act upon it. Since the first case was withdrawn on theÃ, objection raised by the petitioner

and for bona fide reason, theÃ, second application was filed immediately thereafter, in my opinion, the principle of Section 14 of the Limitation Act will

come into play in the facts of the case in favour of the petitioner and after applying the principle of Section 14 of the Limitation Act, the second case

(Misc. Case No. 12 of 2019) was filed within the limitation period of 120 days by the respondent-Corporation, i.e. on 80th day.

27. The Supreme Court, in paragraph 22 of Consolidated Engineering Enterprises (supra), has held as follows:-

Ã¢â‚¬Å“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.Ã¢â‚¬â€‹

28. Accordingly, the second contention of the petitioner regarding time barred is hereby rejected.

29. In view of the aforesaid discussion, on facts as well as on law, I come to the conclusion that the impugned order, dated 25.04.2019, passed in

Misc. Case No. 12 of 2019, is not required to be interfered with by this Court.

30. This application is, accordingly, dismissed.

31. However, there shall be no order as to costs.