
(2023) 06 NCLAT CK 0008

National Company Law Appellate Tribunal New Delhi

Case No: I.A. No. 2315 Of 2023 In Company Appeal (AT) Insolvency No. 694 Of 2023

Vikram Bhawanishankar Sharma

APPELLANT

Vs

SREI Infrastructure Finance
Limited

RESPONDENT

Date of Decision: June 7, 2023

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Insolvency and Bankruptcy Code, 2016 - Section 7, 61
- Limitation Act, 1963 - Section 5, 14, 14(2)

Hon'ble Judges: Ashok Bhushan, Chairperson; Naresh Salecha, Member (T)

Bench: Division Bench

Advocate: Abhijeet Sinha, Abhirup Dasgupta, Jayashree Shukla Dasgupta, Ishaan Duggal, Mukta Halbe, Pranjit Bhattacharya, Krishnendu Datta, Anirban Bhattacharya, Ativ Patel, Priyanka Vora, Siddhant Buxy, Daushit Dave, Krishna Sumanth, Varsha HimatiSingka, Anish Jaipuria, Aishwarya Singh, Chandan Kumar

Final Decision: Disposed Of

Judgement

Ashok Bhushan, J

1. This is an Application filed by the Appellant praying for condonation of delay in filing the Appeal. The Appellant in the Application prays for exclusion of the period from 26.12.2022 to 01.05.2023 during which the Appellant was prosecuting the Writ Petition No. CWP-30348-2022 before Punjab and Haryana High Court.

2. Notices were issued in the Delay Condonation Application to which Reply has also been filed by Respondent No.1 to which Rejoinder on behalf of Appellant has also been filed.

3. Brief background facts necessary to be noted for deciding this Application are:-

a. The Appellant is member of the Suspended Board of Directors of Supreme Vasai Bhiwandi Tollways Pvt. Ltd.-Corporate Debtor. An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "The Code") being CP (IB) No. 442/CHD/HRY/2019 was filed by the Respondent No. 1 against the Corporate Debtor before National Company Law Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as "The Adjudicating Authority").

b. The Section 7 Application was admitted by the Adjudicating Authority vide its order dated 22nd December, 2022. Against which Order dated 22nd December, 2022, the Appellant filed a Writ Petition No. CWP-30348-2022 before the High Court of Punjab and Haryana. In the Writ Petition, the Appellant pleaded that Order dated 22nd December, 2022 passed by the Adjudicating Authority has been uploaded on website of the NCLT on 23rd December, 2022 which was the last working day of National Company Law Appellate Tribunal, Principal Bench, New Delhi (hereinafter referred to as "The Appellate Tribunal") and the Appellate Tribunal was to reopen on 2nd January, 2023 and there being no notice regarding the functioning of vacation bench, the Appellant is assailing the Order dated 22nd December, 2022 before the Hon'ble High Court under Article 226 of the Constitution of India.

c. The Hon'ble High Court vide its order dated 26th December, 2022 entertained the Writ Petition and passed an interim order on same day. In the Writ Petition, the Respondent No. 1 appeared and filed an application for vacating the Interim Order and for dismissing the Writ Petition on the ground that writ petition is not maintainable in view of the availability of an alternative remedy before the Appellate Tribunal. The Appellant was allowed time to file Reply to the Application, vide Order dated 07th February, 2023 thereafter the Writ Petition was taken before the Hon'ble High Court and Hon'ble High Court vide Order dated 01st May, 2023, noticing the facts held that parties being agreed that the matter can be relegated to the Appellate Tribunal, disposed of the writ petition with liberty to the Petitioner (Appellant before us) to avail the statutory remedy of appeal before the Appellate Tribunal within a period of two weeks from that day.

d. After the Order of the Hon'ble High Court dated 01st May, 2023, the Appellant filed this Appeal on 19th May, 2023 before this Appellate Tribunal. Appellant also filed an Application before the Hon'ble High Court praying for extension of time for filing the Appeal, which was disposed of by the Hon'ble High Court on 22nd May, 2023 granting further indulgence to the Appellant by extending the time for filing the Appeal and continuing with the stay till 26th May, 2023. It was made clear by the Hon'ble High Court that in case publication has already been done, the order shall not come into force.

4. The Application (I.A. No. 2315 of 2023) was taken by this Appellate Tribunal on 25th May, 2023 on which date this Appellate Tribunal issued notice on the Delay Condonation Application and further directed protection by order granted by the High Court to continue till

the next date. In pursuance of the Notice, Reply was filed by Respondent No. 1 to which time for Rejoinder was taken by the Appellant on 31st May, 2023.

5. We have heard Mr. Abhijeet Sinha, Learned Counsel for the Appellant, Mr. Krishnendu Dutta, Learned Sr. Counsel for the Respondent No. 1 and Mr. Chandan Kumar, Learned Counsel for the IRP.

6. The Only question which has arisen for consideration in this Appeal is as to whether the Applicant is entitled for the benefit of Section 14 of the Limitation Act for purposes of the limitation for filing this Appeal under Section 61 of the Code?

7. The Law is well settled that even though Section 14 of the Limitation Act is not strictly applicable in the Appeal filed under Section 61 of the Code but the principles underlying Section 14 are clearly attracted.

8. The Hon'ble Supreme Court in (2021) 10 SCC 401, Kalpraj Dharamshi & Anr. vs Kotak Investment Advisors Ltd. & Anr. which was a case where the question of applicability of Section 14 of the Limitation Act in an Appeal filed under Section 61 of the Code came for consideration held in the said Judgment that principles underlying Section 14 of the Limitation Act are clearly applicable while considering the limitation for filing an Appeal under Section 61 of the Code. We shall notice the Judgment of the Kalpraj Dharamshi in detail hereinafter.

9. There is no dispute about the sequence of the events which took place after the Order dated 22nd December, 2022 passed by the Adjudicating Authority admitting Section 7 Application. The Writ Petition was filed before the Hon'ble High Court by the Appellant on 26th December, 2022 which remained pending till 01st May, 2023. The Hon'ble High Court vide its Judgment dated 01st May, 2023 disposed of the Writ Petition. It is relevant to notice the paragraph 4 and 5 of the Judgment which is to the following effect:

"4. Keeping in view the above, even counsel for the parties are now agreed that the matter can be relegated to the statutory Tribunal.

5. Resultantly, we dispose of the writ petition with liberty to the petitioner to avail his statutory remedy of appeal before the above said Tribunal within a period of two weeks from today. However, since the stay has been operating since the said date i.e. 26.12.2022, we continue the said stay till the filing of the appeal within the abovesaid period. The petitioner is at liberty to file an appropriate application for the continuation of the said relief and file an appropriate application under Section 14 of the Limitation Act, 1963 keeping in view the fact that the matter was pending before this Court. All pending applications also stand disposed of."

10. In the Application filed for condonation of delay by the Appellant, the period which is to be excluded is from 26th May, 2022 to 01st May, 2023.

11. Learned Sr. Counsel for the Respondent in Reply to the Delay Condonation Application raise various objections; first objection raised by the Respondent is that Appeal as well as Application for condonation of delay has been filed through Power of Attorney holder Mr. Satish Kumar Tiwari whereas there is no power of attorney on behalf of Appellant in favour of Mr. Satish Kumar Tiwari with regard to Supreme Vasai Bhiwandi Tollways Pvt. Ltd. It is submitted that power of attorney annexed along with the Appeal at Page 645 Volume-IV of the Appeal is a power of attorney on behalf of Appellant in Supreme Ahmednagar Karmala Tembhurni Tollways Private Limited hence Appeal and Application is fully incompetent. Mr. Krishnendu Dutta, Learned Sr. Counsel opposing Section 5 Application of the Limitation Act further contends that benefit of Section 14 is not available to the Appellant since the earlier proceeding that is writ proceeding has not been prosecuted in good faith and due diligence. The benefit under Section 14 of the Limitation Act can be claimed only when the earlier proceeding was being prosecuted in good faith in a court suffering from defect of jurisdiction or other cause of like nature and is unable to entertain. It is submitted that writ proceedings in the Hon'ble High Court under Article 226 and 227 of the Constitution of India can not be held to be proceeding suffering from any defect of jurisdiction. It is submitted that writ proceeding which was filed on the basis that there is no vacation bench available in the NCLAT, it was incumbent on the Appellant to withdraw the writ petition since the NCLAT reopened from 2nd January, 2023. The Appellant even after 2nd January, 2023 did not withdraw the Appeal and contested the Application filed by the Respondent No. 1 by prosecuting the writ petition which indicate that writ proceedings were not prosecuted in bona fide and good faith.

12. The scope and ambit of Section 14 of the Limitation Act have been considered and explained by Hon'ble Supreme Court in several judgements. In Kalpraj Dharamshi case itself the Hon'ble Supreme Court has noted the conditions that are required to be fulfilled for invoking the provisions. In paragraph 59 of the Judgment, the Hon'ble Supreme Court has referred to earlier judgement of the Hon'ble Supreme Court in Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169. Paragraph 59 is as follows:

"59. The conditions that are required to be fulfilled for invoking the provisions of Section 14 of the Limitation Act have been succinctly spelt out in various judgments of this Court including the one in Consolidated Engg. Enterprises v. Irrigation Deptt., which read thus:

"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”

13. Now we may notice the facts and backgrounds of Kalpraj Dharamshi in which the question for extending the benefit of Section 14 of the Limitation Act arose. In the aforesaid case also an Order was passed by the Adjudicating Authority on 28.11.2019. Writ Petition No. 3621 of 2019 was filed by Kotak Investment Advisors Limited (KIAL in short) in the Hon'ble Bombay High Court which writ petition came to be dismissed on 28.01.2020 on the ground that KIAL has alternative remedy for filing an Appeal. KIAL thereafter filed an Appeal before NCLAT on 18.02.2020 when the Appeal was taken, objection was raised that it is barred by time which objection was overruled and NCLAT by subsequent order allowed the Appeal and set aside the Order of NCLT on 05th August, 2020. Four Appeals were filed in the Supreme Court. One of the question which came for consideration, has been noted in paragraph 49.1 is that whether the Appeals filed by KIAL before NCLAT were within limitation. In the above reference, Hon'ble Supreme Court had considered the several earlier judgments on Section 14 of the Limitation Act. Hon'ble Supreme Court in paragraph 64 observed that the provisions contained in Section 5 and 14 are meant for grant of relief, where a person has committed some mistake. In paragraph 64 also it was held that even though section 14 is not per se applicable, the same would not mean that principles akin thereto would not be applicable. In paragraph 64 and 65 of the Judgment, following has been observed:

“64. Thus, this Court relying on the earlier judgments in the cases of Bhudan Singh and another vs. Nabi Bux and another, J. Kumaradasan Nair and another vs. Iric Sohan and others, and Consolidated Engineering Enterprises observed, that the object of enacting the legislation is to advance public welfare. The entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legislation. It has been held by this Court, that in the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, there is little reason to believe, that it represents the legislative intent. It is further observed, that the provisions contained in Sections 5 and 14 of the Limitation Act are meant for grant of relief, where a person has committed some mistake. In J. Kumaradasan Nair, it has been observed, that when sub-section (2) of Section 14 of the Limitation Act per se is not applicable, the same would not mean, that the principles akin thereto would not be applicable.

65. In Consolidated Engineering Enterprises (supra), it has been observed, that 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 has been observed, that an element of mistake is inherent in the invocation of Section 14. The section, in fact, is intended to provide a relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. It has been observed, that the legislature has enacted Section 14 to exempt a certain period covered by a bona fide litigious activity. It has been held, 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. It could thus be seen, that this Court has in unequivocal terms held, that when a litigant bona fide under a mistake litigates before a wrong forum, he would be entitled for exclusion of the period, during which he was bona fide prosecuting such a wrong remedy. Though strictly, the provisions of Section 14 of the Limitation Act would not be applicable to the proceedings before a quasi-judicial Tribunal, however, the principles underlying the same would be applicable i.e. the proper approach will have to be of advancing the cause of justice, rather than to abort the proceedings.”

14. In paragraph 65, Hon'ble Supreme Court has also held that when a litigant bona fide under a mistake litigates before a wrong forum, he would be entitled for exclusion of the period, during which he was bona fide prosecuting such a wrong remedy. The Hon'ble Supreme Court in Kalpraj Dharamshi advertent to the said facts and present case laid down following in Paragraph 68:

“68. Coming to the facts of the present case, immediately after NCLT pronounced its judgment on 28.11.2019 and even before the certified copy was made available on 18.12.2019, KIAL had filed writ petition before the Division Bench of the Bombay High Court on 11.12.2019 on the principal ground, that the procedure followed by NCLT was in breach of principles of natural justice. Such a ground could be legitimately pursued before a writ court. In that sense, it was not a proceeding before a wrong court, as such. Perusal of the judgment and order dated 28.1.2020, passed by the Division Bench of the Bombay High Court, which dismissed the writ petition on the ground of availability of alternate and equally efficacious remedy would reveal, that the said writ petition was hotly contested between the parties and by an order running into 32 pages, the Division Bench of the Bombay High Court dismissed the petition relegating the petitioner therein (i.e. KIAL) to avail of an alternate remedy available in law.”

15. Hon'ble Supreme Court in Kalpraj Dharamshi after noticing the pleadings and writ petition filed by KIAL has taken view that although it had alternative remedy for filing the Appeal but since the issues pertained to functioning of the Tribunal writ jurisdiction was invoked. In paragraph 72, following has been observed:

“72. It could thus clearly be seen, that the petitioner therein i.e. KIAL has specifically stated, that though it had an alternate remedy of filing an appeal before NCLAT, since the petition was not just about the merits of the impugned order, but also in respect of functioning of the

Tribunal the petitioner was invoking the writ jurisdiction of the Court.”

16. In Kalpraj Dharamshi ultimately after referring to several judgements, laid down following in Paragraph 94, 97 and 100:

“94. In the present case, as already discussed herein above, the petitioner was bona fide prosecuting his remedy before the High Court and that too with due diligence. As such, the said judgment also would be of no avail to the case of the appellants.

.....

97. In the present case, the facts are totally contrary. KIAL had approached the High Court of Bombay making a specific grievance, that NCLT had adopted a procedure which was in breach of the principles of natural justice. It is specifically mentioned in the writ petition, that though an alternate remedy was available to it, it was approaching the High Court since the issue with regard to functioning of NCLT also fell for consideration. The proceedings before the High Court were hotly contested and by an elaborate judgment, the High Court dismissed the writ petition relegating the petitioner therein i.e. KIAL to an alternate remedy available in law. It is thus apparently clear, that KIAL was bona fide prosecuting a remedy before the High Court in good faith and with due diligence. In a given case, the High Court could have exercised jurisdiction under Article 226 of the Constitution inasmuch as, the grievance was regarding procedure followed by NCLT to be in breach of principles of natural justice. That would come within the limited area earmarked by this Court for exercise of extraordinary jurisdiction under Article 226 despite availability of an alternate remedy.

.....

100. We therefore have no hesitation to hold, that KIAL was entitled to extension of the period during which it was bona fide prosecuting a remedy before the High Court with due diligence.”

17. In Kalpraj Dharamshi case the Hon’ble Supreme Court extended the benefit of Section 14 of the Limitation Act in the Appeal filed under Section 61 of the Code before this Appellate Tribunal.

18. Mr. Krishnendu Dutta, Learned Sr. Counsel for the Respondent has emphasised that writ petition filed by the Appellant can not be treated to be bona fide proceeding since the Appellant could have withdrawn the Writ Petition after 2nd January, 2023 and approach this Tribunal.

19. A copy of the writ petition which was filed before the Hon’ble High Court of Punjab and Haryana has been brought on record by which Appellant in Volume 4 of the Appeal in the writ petition has pleaded following in paragraph 12 to 14:

12. That since the National Company Law Appellate Tribunal, New Delhi Bench is not functional and is not hearing any matters till 01.01.2023, it is impossible for Petitioner's appeal and stay application to be heard by the Appellate Tribunal when filed. The Petitioner is thus deprived of its statutory remedy of appeal from the Impugned Order before National Company Law Appellate Tribunal, New Delhi Bench. Petitioner is thus effectively left remediless in a situation where now that the steps in furtherance of the Impugned Order can be taken any time by the Interim Resolution Professional.

13. This Hon'ble Court and various other Courts of Law have in identical situations, granted stay on the operation and effect of orders passed due to the non-functioning of the Appellate Tribunal's. Petitioner respectfully submits that the Hon'ble High Court of Bombay Gangakhed Solar Power Put. Ltd. v. State of Maharashtra & Anr. [Civil Writ Petition (Lodging) No.1050 of 2022] and Guru Commodity Services Put. Ltd. v. Adjudicating Authority & Ors. [Writ Petition No.1976 of 2022], have granted reliefs identical to those prayed for in this Petition in identical situations due to the non-functioning of the Appellate Tribunal under PMLA in the above referred cases.

14. It is respectfully submitted that in a similar situation where the Hon'ble Debt Recovery Appellate Tribunal at Mumbai Was not functioning due to lack of quorum and non-filling of vacancies, the Hon'ble High Court of Bombay in Bank of Bahrain and Kuwait B.S.C. v. Union of India & Ors. [Writ Petition (Lodging) No.24293 of 2021], stayed the operation and effect of orders passed by the Hon'ble Debt Recovery Tribunals in the manner stated therein and categorically held as follows "allowing the recovery process to continue in the absence of an effective remedy of appeal particularly when the SARFAESI Act empowers secured creditors to take possession of secured assets without orders of the Court, would result in a desecration of the legal system".

20. The Appellant thus filed writ petition at the time when there was no notice of any sitting of Vacation Bench in the winter vacation of Appellate Tribunal. Impugned Order has been passed on 22nd December, 2022 and uploaded on 23rd December, 2022, it can not be denied that there was urgency on the part of the Appellant for obtaining immediate relief hence it can not be said that filing of writ petition by the Appellant before the Hon'ble High Court was not bona fide.

21. In so far as the Submission of Respondent that Appellant ought to have withdrawn the Writ Petition and filed the Appeal, suffice it to say that when Application was filed by Respondent No. 1 for dismissing the Writ Petition, the Hon'ble High Court allowed time to the Appellant to file a reply and ultimately on 1st May, 2023 writ petition was disposed of giving liberty to the Appellant to file an Appeal. The Hon'ble High Court in paragraph 5 of the Judgement dated 01st may, 2023 has granted liberty to the Appellant to avail statutory remedy before the Appellate Tribunal. The Hon'ble High Court thus having granted liberty to file the Appeal, we are not persuaded to accept the submission of Learned Sr. Counsel for

the Respondent that Proceedings in the Writ Petition were not prosecuted in good faith.

22. Now next submission which has been passed by Learned Sr. Counsel for the Respondent is that the Writ Petition can not be said to be suffering from defect of jurisdiction or other cause of like nature. Cause of like nature has been considered by the Hon'ble Supreme Court in several cases. Learned Counsel for the Respondent has referred to 1977 1 SCC 791 Gurdit Singh & Ors. Vs. Munsha Singh & Ors. where Hon'ble Supreme Court adverted to the expression "or other cause of a like nature". In paragraph 18 of the Judgement, following has been held:

"18. Now the words "or other cause of a like nature" which follows the words "defect of jurisdiction" in the abovequoted provisions are very important. Their scope has to be determined according to the rule of ejusdem generis. According to that rule, they make their colour from the preceding words "defect of jurisdiction" which means that the defect must have been of an analogous character barring the court from entertaining the previous suit. A Full Bench of the Lahore High Court consisting of Harries, C.J., Abdur Rehman, J. AND Mahajan, J. (as he then was) expressed a similar view in Bhai Jai Kishan Singh V. People Bank of Northern India (Supra)."

23. Learned Counsel for the Respondent has also referred to "Third Report (Limitation Act, 1908) of Law Commission of India". He has referred to paragraph 43 of Report of the Law Commission of India on Limitation Act. In paragraph 43, Law Commission of India has opined as follows:

"43. A suggestion was made that a further explanation to section 14 should be added extending the scope of the expression "other cause of a like nature" so as to bring within its ambit cases where the High Court exercising its jurisdiction under article 226 of the Constitution rejects a petition in the exercise of its discretion on the ground that the applicant has an alternative remedy by way of suit. The object of section 14: is to give relief to a person who institutes proceedings which by reason of some technical defect are thrown out. If a party knowing that he has a remedy by way of suit which has to be instituted within the period of limitation waits till the last moment and considers it better or more convenient "to have resort to a cheaper remedy by invoking the jurisdiction of the High Court under article 226 of the Constitution and the Court dismisses the application on the ground that the party has another remedy, such rejection should not be treated as a technical defect by reason of which the applicant could not obtain the relief he wanted. He elects between two remedies and the Court rejects the application on the ground that the appropriate remedy was by way of suit. There may be cases of suits or other proceedings in which similar situations might arise. Thus the supposed hardship is confined to an application under article 226 of the Constitution. To accept this suggestion would be to extend the policy underlying the section to cases not contemplated by it. The ground suggested cannot be regarded as a "cause of a like nature".

24. It is true that Law Commission opined in its report as extracted above that further explanation to section 14 should not be added extending the scope of the expression "other cause of a like nature" so as to bring within its ambit cases where the Hon'ble High Court exercising its jurisdiction under article 226 of the Constitution rejects a petition in the exercise of its discretion on the ground that the applicant has an alternative remedy by way of suit.

25. The said recommendation of the Law Commission were given in the year 1956, despite the above recommendation of Law Commission given in 1956, Hon'ble Supreme Court had occasion to consider several cases where benefit of Section 14 of the Limitation Act was claimed on the ground of prosecuting a proceeding before the Hon'ble High Court under Article 226. Some of the cases have been noticed in the Judgement of Kalpraj Dharamshi with regard to proceeding under Article 226. Kalpraj Dharamshi itself was a case where benefit of Section 14 of the Limitation Act was claimed on the ground that proceedings under Article 226 were being prosecuted in the Hon'ble Bombay High Court which benefit was extended by the Hon'ble Supreme Court and which benefit as per Judgment of Hon'ble Supreme was clearly admissible to any Appeal under Section 61 of the Code. The Judgment of the Hon'ble Supreme Court in Kalpraj Dharmashi being judgment directly applicable in the facts of the present that i.e. exclusion of period during which the Writ Petition was being prosecuted by the Appellant in an Appeal filed under Section 61 of the Code, we are of the view and feel ourselves bound to follow the Judgment of Supreme Court.

26. Now coming to the Submission of the Learned Counsel for the Appellant that dismissal of writ proceeding does not suffer from any defect of jurisdiction. The expression used in Section 14 are "defect of jurisdiction or other cause of a like nature". The expression "other cause of a like nature" has been explained and examined in large number of cases by Hon'ble Supreme Court. We may refer to the Judgment of the Hon'ble Supreme Court in "1971 (1) SCC 24, India Electric Works Ltd. vs. James Mantosh & Anr.", wherein the Hon'ble Supreme Court had occasion to consider the ambit and scope of Section 14 of the Limitation Act and both the expressions, "from defect of jurisdiction" or "other cause of like nature" came for consideration. The Hon'ble Supreme Court held that if the above words are read alongwith expression "is unable to entertain it", they would denote that the defect must be of such a character as to make it impossible for the Court to entertain the suit or application either in its inception or at all events as to prevent it from deciding it on the merits. Para 5 of judgment of the Hon'ble Supreme Court is as follows:

"5. Section 14 in so far as it is material for our purpose runs as follows:-

"S. 14(1) – In computing the period of limitation prescribed 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 in a Court of Appeal, against the defendant shall be excluded, where the proceeding is founded upon the same cause of action 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)

Explanation I.....

Explanation II

Explanation III. – For the purpose of this section misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

*The High Court having found that the present claim of the plaintiffs was also included in the previous suit the condition that the previous proceeding should be founded upon the same cause of action must be held to have been satisfied. The High Court has further held that the previous suit had been prosecuted in good faith and with due diligence. In order to attract the applicability of Section 14(1), therefore, all that has to be determined is whether the court in which the previous suit was filed was unable to entertain the claim relating to future mesne profits "from defect of jurisdiction" or "other cause of a like nature". It is common ground and indeed cannot be argued nor has any attempt been made to urge such a contention before us that the court trying the previous suit was unable to entertain it from defect of jurisdiction. The only question for determination is whether the court was unable to entertain the previous suit from "other cause of a like nature". In *Jai Kishan Singh v. The Peoples Bank of Northern India* it was pointed out that Section 14 of the Act will have no application where failure on the part of the petitioner or the plaintiff to get the reliefs which he asked for was not attributable to anything connected either with the jurisdiction of the court or with some other defect which was like that of jurisdiction. It was observed that the words "or other cause of a like nature", however, liberally construed must be read so as to convey something ejusdem generis or analogous to the preceding words relating to the defect of jurisdiction. If these words were read along with the expression "is unable to entertain", they would denote that the defect must be of such a character as to make it impossible for the court to entertain the suit or application in its inception or at all events as to prevent it from deciding it on the merits. In other words, if the defects were of such a nature that they had to be decided before the case could be disposed of on merits or if they did not necessitate an examination of the merits of the case they would be defects of a "like nature". The cases which were decided on the principle that if 'a plaintiff or a petitioner failed to establish a cause of action in himself no deduction of time could be allowed under Section 14 were noticed and it was accepted that they proceeded on a correct view. Illustration of the facts which would be covered by the words "or other cause of a like nature" as given in the decided cases were :*

(i) if a suit had failed because it was brought without proper leave; (ii) if it had failed because no notice under Section 80, Civil Procedure Code, had been given; (iii) where it would fail for non-production of the Collector's certificate required by Section 7 of the Pensions Act. In each one of these cases the court did not lack jurisdiction in its inception but the suit could

not be proceeded with and disposed of until the statutory conditions laid down had been satisfied or fulfilled.”

27. The Hon'ble Supreme Court in the same judgment further held that the words "or other cause of a like nature" must be construed liberally. In Para 7 following has been held:

“7. It is well settled that although all questions of limitation must be decided by the provisions of the Act and the courts cannot travel beyond them the words "or other cause, of a like nature" must be construed liberally. Some clue is furnished with regard to the intention of the legislature by the Explanation III in Section 14(2). Before the enactment of the Act in 1908 there was a conflict amongst the High Courts on the question whether misjoinder and non-joinder were defects which were covered by the words "or other cause of a like nature". It was to set at rest this conflict that Explanation III was added. An extended meaning was thus given to these words. Strictly speaking misjoinder or non-joinder of parties could hardly be regarded as a defect of jurisdiction or something similar or analogous to it.”

28. Same principles were again reiterated by Hon'ble Supreme Court in “(2004) 3 SCC 458, Union of India & Ors. vs. West Coast Paper Mills Ltd. & Anr. (III)”, where in Para 14 following has been laid down:

“14. In the submission of Mr. Malhotra, placing reliance on The Commissioner of Sales Tax, U.P., Lucknow v. M/s Parson Tools and Plants, Kanpur, [(1975) 4 SCC 22], to attract the applicability of Section 14 of the Limitation Act the following requirements must be specified.

"6. (1) both the prior and subsequent proceedings are civil proceedings prosecuted by the same party:

(2) the prior proceedings had been prosecuted with due diligence and in good faith:

(3) the failure of the prior proceedings was due to a defect of jurisdiction or other case of a like nature;

(4) both the proceedings are proceeding in a Court." In the submission of the learned senior counsel, filing of civil writ petition claiming money relief cannot be said to be a proceeding instituted in good faith and secondly, dismissal of writ petition on the ground that it was not an appropriate remedy for seeking money relief cannot be said to be "defect of jurisdiction or other cause of a like nature' within the meaning of Section 14 of the Limitation Act. It is true that the writ petition was not dismissed by the High Court on the ground of defect of jurisdiction. However, Section 14 of the Limitation Act is wide in its application, inasmuch it is not confined in its applicability only to cases of defect of jurisdiction but it is applicable also to cases where the prior proceedings have failed on account of other causes of like nature. The expression "Other cause of like nature" came up for the consideration of this Court in Roshanlal Kuthalia and Ors. v. R.B. Mohan Singh Oberoi [(1975) 4 SCC 628] and it was held that Section 14 of the Limitation Act is wide enough to cover such cases where the defects

are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any circumstances, legal or factual, which inhibits entertainment or consideration by the Court of the dispute on the merits comes within the scope of the Section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has right.”

29. When Hon'ble Supreme Court in Kalpraj Dharamshi has held that Appellant who has filed an Appeal under Section 61 is entitled for benefit of proceeding which was being prosecuted in the High Court under Article 226 which writ proceedings were also dismissed on the ground of availability of the alternative remedy. We, following the Judgment of the Hon'ble Supreme Court, are of the view that dismissal of writ petition is on the ground something similar or analogous and the benefit of Section 14 cannot be held to be denied to the Appellant.

30. Now coming to the objection which was raised by the Respondent regarding power of attorney annexed in the Appeal.

31. In the Rejoinder Affidavit, Appellant has submitted that by mistake power of attorney given by the Appellant with regard to another company was annexed. In the Rejoinder, the Applicant has brought on record power of attorney dated 01st August, 2022 executed by the Appellant in favour of Shri Satishkumar Tiwari who has filed the Affidavit in support of Application under Section 5 as well as Rejoinder Affidavit. Shri Satishkumar Tiwari claims himself to be power of attorney of the Appeal and annexed the copy of the power of attorney dated 01st August, 2022 as Annexure-1 to the Rejoinder. Learned Sr. Counsel for the Respondent submits that said power of attorney was executed on stamp duty which is claimed purchased on 16th November, 2021 and power of attorney can not be validly executed. The fact of the matter is that power of attorney was executed on 01st August, 2022 which has been brought on record and we for the purposes of prosecuting this Appeal, are not persuaded to accept the submission of the Respondent that since power of attorney was executed on stamp paper which was purchased earlier we should reject the Appeal and Application on this ground. Power of attorney has been executed by the Appellant with regard to the Corporate Debtor in question, we are not persuaded with the objection of the Respondent to reject the Delay Condonation Application on this ground.

32. In view of the foregoing discussions and conclusion, we are of the view that Appellant is entitled for the exclusion of period from 26th December, 2022 to 01st May, 2023. The Appeal having been e-filed on 19th May, 2023 and after excluding the aforesaid period by giving benefit of Section 14 of the Limitation Act to the Appellant, this Appeal under Section 61 of the Code has to be treated to be filed within 30 days from the date of the Impugned Order.

33. In result, we allow delay condonation application and hold the Appeal to be filed within limitation. Application I.A. No. 2315 of 2023 is disposed of, accordingly.