
Ishwar Singh Saini and Others Vs Saraswati Devi

CM (M) 910 of 2011 and CM No. 14598 of 2011

Court: Delhi High Court

Date of Decision: May 9, 2012

Acts Referred:

Delhi Rent Control Act, 1958 & Section 14(1) Limitation Act, 1963 & Section 14

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: S.P. Jha, for the Appellant; Pushpender Sehgal, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.

Order impugned before this Court is the order dated 07.6.2011 vide which the application filed by the plaintiff u/s 14

of Limitation Act accompanying the suit filed by him (which was a suit for declaration) had been allowed and the period of limitation for which he

had sought exclusion, i.e. the period between 20.12.2004 to 02.11.2007, had been permitted. Record shows that an eviction petition had been

filed by the petitioner Ishwar Singh Saini u/s 14(1)(a) of the Delhi Rent Control Act against a purported tenant; this petition was decreed;

contention of the non-applicant Sarswati Devi is that she is in possession of the aforementioned property; it was only when the bailiff came to execute

the decree she learnt about those proceedings. In the executing court she had filed two applications; the first application had sought impleadment in

the aforementioned proceedings pending before the executing court and the second application was the objections filed by her disputing the decree; her

contention being that this decree had been obtained by fraud and she being in possession of the property has been directly affected by the

aforenoted decree which had been obtained by Ishwar Singh Saini, the same was liable to be set aside.

2. Record further shows that these proceedings were in progress when on 02.11.2007 a statement was made by the petitioner (Ishwar Singh

Saini) that he wishes to withdraw his execution proceedings which permission was granted to him. The order dated 02.11.2007 is reproduced

herein as under:

It is submitted by Ld. Counsel for L.Rs. of DH that the objector is in possession of the property in question and he has already filed a separate civil

suit for possession which is pending in the civil court therefore he does not wish to pursue the instant execution any further which on his request is

dismissed as withdrawn.

3. It is thus clear that the objections of the objector and her application for implement in the aforementioned proceedings yet remained undecided.

Vehement contention of the petitioner before this Court is that these objections had in fact been withdrawn by the objector; this does not find

mention in the record; this is a wrong submission. The objections could not be decided as the petitioner Ishwar Singh Saini had chosen to withdraw

his execution petition; contention being that Sarswati Devi has already filed a separate suit for possession; as such he did not wish to pursue this

execution petition.

4. Thereafter the present suit for declaration was filed by the non-applicant (Sarswati Devi) which was accompanied by an application u/s 14 of

Limitation Act. Contention being that the period of time spent in prosecuting the litigation before the executing court i.e. between 20.12.2004 to

02.11.2007 (when the execution was withdrawn) be excluded. The impugned judgment had rightly allowed this prayer.

5. In Roshanlal Kuthalia and Others Vs. R.B. Mohan Singh Oberoi, the Apex Court had an occasion to consider Section 14 of the Limitation; the

observation of the Apex Court in this context inter alia read as follows:

Certainly, Sec. 14 is wide enough to cover period covered by execution proceedings (See Raghunath Das Vs. Gokal Chand and Another, After

all Section 47 itself contemplates transmigration of souls as it were of execution petitions and suits. The substantial identity of the subject matter of

the lis is a pragmatic test. Moreover, the defects that will attract the provision are not merely jurisdictional strictly so called but others more or less

neighbours to such deficiencies. Any circumstance 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 a right [See (1071) 2 SCR 397 at 401 : (AIR 1871 SC 2313 at 2316)]. In the Associated Hotels case (i.e. the very lis in its earlier

round on the execution side) this Court pointed out The Associated Hotels Of India, Ltd. and Another Vs. R.B. Jodha Mal Kuthalia, that the

question was one of initial jurisdiction of the Court to entertain the proceedings. Thus in this very matter the obstacle was jurisdictional and the

exclusionary operation of Section 14 of the Limitation Act was attracted.

6. Provisions of Section 14 of the Indian Limitation Act have to be liberally construed and a right which has otherwise accrued to a party cannot be

shut out on a mere technical ground. If the petitioner has succeeded in showing (as in the instant case) that he was pursuing a litigation with diction

and diligence in another court, the time spent in pursuing that diligent litigation should be permitted to be excluded.

7. Reliance by the learned counsel for the petitioner upon the judgment of this Court reported in AIR 2003 Del 252 Anil Pratap Singh Chuhan Vs.

M/s Onida Savak Ltd. in fact supports the case of the respondent. In this case also the court had noted that the words ""defect of jurisdiction or

other cause of a like nature"" appearing in Section 14 have to be read as ejusdem generis; reading the word ejusdem generis it is clear that the

litigation being pursued by the non-applicant in the executing court was relating to a jurisdictional issue. His contention being that the Rent

Controller could not have passed the order u/s 14(1)(a) of the DRCA because there was no relationship of landlord and tenant between the

parties and the Rent Controller did not have the essential jurisdiction to do so. In this background impugned order having allowed the prayer of the

plaintiff/non-applicant Shanti Devi, seeking exclusion of the period spent in the earlier litigation, u/s 14 of the Limitation Act suffers from no

infirmity. Petition is without any merit. It is dismissed.