

GHASI RAM AND ORS.
v.
CHAIT RAM SAINI AND ORS.

JULY 22, 1998

[S.P. BHARUCHA AND V.N. KHARE, JJ.]

Limitation Act 1963—Section 14—Benefit and applicability—Civil Revision filed instead of fresh suit under order 21 Rule 103 CPC—Dismissed by High Court—Fresh suit filed, barred by Limitation—Munsif condoned delay—Affirmed by First Appellate Court—In Second Appeal High Court held, condonation of delay improper as Revision had been entertained, not dismissed for want of jurisdiction and so the time spent in prosecuting the civil revision petition could be excluded and a fresh suit was the only remedy under CPC—On appeal Held, Appellant entitled to condonation of delay—Illiterate litigant not to suffer on ill-advice of counsel—Civil proceedings before filing of fresh suit were prosecuted in good faith.

Civil Procedure Code, 1908—Order 21, Rules 97, 98, 99, 100 and 103—Scheme before Amendment Act, 1976—Decree holder could apply to court if delivery of possession resisted by some person—Court could secure possession of applicant after satisfaction in summary inquiry—Such order under Rule 98 was conclusive—Party other than judgment-debtor entitled to file fresh suit under Rule 103—Position changed after Amendment Act, 1976—All questions arising between parties to be adjudicated by executing court and not left to be decided in fresh suit.

Words and Phrases—“Conclusive”—Meaning of in the context of Order 21 Rule 103 CPC—“Good faith”—Meaning of in the context of Limitation Act of 1963—Section 14.

The defendant-respondent had filed a suit for recovery of certain tenanted premises which was decreed. The plaintiff-appellant obstructed the delivery of possession and filed some objections in the application moved for execution of the decree. The objection that he was a co-sharer in the property was rejected. So he filed a civil revision before the High Court, instead of a fresh suit under Order 21 Rule 103 CPC which was also dismissed. He then brought a suit under Order 21 Rule 103 CPC which was barred by limitation. The Munsif extended the benefit of Section 14 of the Limitation

A Act 1908 and condoned the delay. It was affirmed by the first appellate court. In the second appeal preferred by the defendant-respondent, before the High Court, the question that arose for considerations was whether the plaintiff-appellant was entitled to exclude the time spent in prosecuting the civil revision petition. The High Court allowed the appeal and held that as the revision had been entertained and not dismissed for want of jurisdiction, the benefit under Section 14 of the Act Could not be given; moreover the Code provided for a suit under Order 21 Rule 103, as the only remedy.

C Aggrieved the appellant appealed to this Court contending that the High Court while exercising revisional power had no jurisdiction to decide the matter on facts; and that the High Court Suffered form disability of adjudicate the matter and so the case fell within the expression "other cause of a like nature" appearing in Section 14 of the Act.

The respondent contended that Section 14 of the Act of 1908 did not apply to the present case.

D Allowing the appeal, this Court

E HELD : 1.1. Before the 1976 Amendment Act, if an order was passed under Rule 98 CPC allowing the application under Rule 97 CPC, it was conclusive between the parties except that a party other than the judgement-debtor against whom the order was passed was entitled to file a fresh suit under Rule 103 to establish his right to the possession. The position has changed after 1976. Now, all questions, including right, title, interests in the property arising between the parties to the proceedings under Rule 97, have to be adjudicated by the executing court itself and not left to be decided by way of a fresh suit. [870-A-C]

F 1.2. The word "conclusive" appearing in Rule 103 indicates that it creates a presumption in favour of facts relating to rights to property as well as legality of the matter stated in the order. Such an order passed under Rule 98 is not subject to any further enquiry in any other proceeding, except by bringing a fresh suit under rule 103. In case no suit is filed under Rule 103, the order passed under Rule 98 is final between the parties. The High Court could not have entertained the revision since it suffered from "other cause of a like nature" which precluded it from deciding the rights of the parties on facts. It entertained the revision petition for hearing, which gave a reasonable ground to the plaintiff appellant to think that the original order may be set aside in revision. [870-D-E]

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Radha Kishun v. Sri Niwas Ram Kumar, A.I.R. (1944) Pat. 225, A distinguished.

2.1. It was not disputed that the civil proceeding was prosecuted with diligence. The dispute was regarding prosecution of civil proceeding in good faith. "Good faith" as defined in the Limitation Act shows that an act done with care and attention satisfies the best of "good faith". "Due care" means that sufficient care was taken so far as circumstances demanded and there was absence of negligence or sufficient care which a reasonable man is expected to take in order to avoid any injury. [871-D] B

2.2. When a party proceeds contrary to a clearly expressed provision of law, it cannot be regarded as prosecution in good faith, but the said rule can not be enforced in rigidity in every case as each case has to be judged on its own merits. In the instant case, the appellant is illiterate and not a legally trained person, and he sought advice of his counsel who advised him to file revision in the High Court instead of bringing a fresh suit under Order 21 Rule 103 C.P.C., which was entertained by the High Court giving him an expectation that the order of the executing court may be set aside and that there was no inordinate delay in filing the suit under Rule 103. When there was no lack of due care, there is no reason why he should not be accorded the benefits to Section 14 of the Act. An illiterate litigant cannot be made to suffer when he is ill-advised by his counsel and the earlier civil proceeding were prosecuted in good faith. [871-G-H; 872-A-B] C D E

3. The judgement and order in Second Appeal passed by the High Court is set aside. Since the High Court has allowed the second appeal only on the point of limitation, this case is sent back to the High Court for decision on surviving points. [872-C] F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4935 of 1985.

From the Judgment and Order dated 5.9.85 of the Allahabad High Court in S.A. No. 2062 of 1984. G

N.C. Sikri, Pawan Saxena and Ms. Madhu Sikri for the Appellants.

V.A. Mohta, Sunil Kumar Jain, Vijay Hansaria and J.K. Bhatia for the Respondents.

The Judgment of the Court was delivered by H

- A **V.N. KHARE, J.** This civil appeal raises only one question that is, as to whether the benefits of provisions of Section 14 of the Indian Limitation Act, 1908 (hereinafter referred to as the Act) can be extended to a suit filed by the plaintiff-appellant under Order 21 of Rule 103 CPC and is directed against the judgment of a Learned Single Judge of the Allahabad High Court, whereby the Second Appeal filed by the defendant-respondent was allowed and the suit filed by the plaintiff-appellant was dismissed.

- C Since the High Court had dismissed the suit on the ground of limitation, the facts of the case which are somewhat complicated, need not be set out in detail, but reference may be made only to such facts which have direct bearing upon the question involved in this case.

- D The defendant-respondent had filed suit No. 279 of 1950 against one Chhutan for recovery of rent and ejection from the premises which was decreed and the execution proceeding No. 331 of 1951 ensued. Since the Amin could not deliver the possession of the property due to obstruction by the plaintiff-appellant, the defendant-respondent moved an application under Order 21 Rule 97 CPC before the executing court. The plaintiff-appellant filed objections to the said application claiming himself to be the co-owner and in possession over the property. After hearing the objections, the application of the defendant-respondent was allowed by the executing court on 3.2.1956 and the objections raised by the plaintiff-appellant were rejected. Under such circumstances, although the plaintiff-appellant had a remedy of filing a fresh suit under Order 21 Rule 103 CPC, but instead he filed a revision before the High Court on 9.2.1956 which was dismissed on 30.10.1957. After the revision petition was rejected, the plaintiff-appellant brought suit No. 390 of 1958 on 26.9.1958 under Order 21 Rule 103 CPC. In the said suit the plaintiff-appellant prayed for a declaration that he is the co-sharer and is entitled to possession on the land in dispute. Since the said suit was barred by limitation, the plaintiff-appellant claimed the benefit of Section 14 of the Act. The Learned Munsif, on facts, extended the benefits of provisions of Section 14 of the Act and on merits the suit was decreed. The first appellate court dismissed the appeal of the defendant-respondent and affirmed the decree. The defendant-respondent, thereafter filed Second Appeal before the High court. In the Second appeal, the question that arose for consideration was whether the plaintiff-appellant was entitled to exclude the time spent in prosecuting the civil revision petition in the High Court. The view taken by the High Court was that the plaintiff's revision petition filed against the order passed by the Court on an application filed under Order 21 Rule 97 having been entertained

by the High Court and not dismissed for want of jurisdiction, the plaintiff-appellant was not entitled to the benefit of Section 14 of the Act. On the question of "good faith", the view of the High Court was that, since there being clear provision in the Code of Civil Procedure that against an order passed on an application filed under Order 21 Rule 97, the only remedy available to an objector is to file suit under Rule 103, the revision petition filed by the plaintiff-appellant was ill-advised and, therefore, the plaintiff-appellant did not prosecute the proceeding in good faith. In that view of the matter, the High Court allowed the second appeal and dismissed the plaintiff-appellant's suit. Aggrieved, the plaintiff-appellant has come to this Court by special leave.

Before us learned counsel for the appellant contended that the High Court while exercising its revisional power had no jurisdiction to decide the matter on facts and as such, the High Court suffered from disability to adjudicate the matter and thus the case fell within the expression "other cause of a like nature" appearing in Section 14 of the Act and in that event of the matter, plaintiff-appellant is entitled to exclude the period spent in prosecuting the civil revision before the High Court. The case of the respondent is that Section 14 of the Act did not apply in terms to the present case. Since the suit was filed in the year 1958, the provisions of the Indian Limitation Act, 1908 would be applicable although it is repealed and replaced by the Limitation Act of 1963. Section 14 of the Act as it stood then is extracted below:-

"14. Exclusion of time of proceeding *bonafide* in Court without jurisdiction -(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.

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Explanation-1. In excluding the time during which a former suit or application was pending the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

A Explanation - II. For the purposes of this section, a plaintiff or an applicant. Resisting an appeal shall be deemed to be prosecuting a proceeding.”

B A perusal of the aforesaid provision would show that in order to get the benefit of sub-section (1) of Section 14 of the Act, the party seeking its benefit must fulfil the following four conditions:-

(1) The plaintiff who filed the suit had been prosecuting another civil proceeding with due diligence.

C (2) The earlier proceeding resorted by the plaintiff was based on the same cause of action.

(3) The former proceeding was prosecuted by the plaintiff in good faith in a Court.

D (4) The Court, due to the defect of jurisdiction or other cause of a like nature, was unable to entertain such proceeding.

E It is not disputed in the present case that the plaintiff-appellant satisfied the Court that he prosecuted the earlier civil proceeding with due diligence and the earlier civil proceeding was based on the same cause of action. What is disputed is that the Court where the proceeding was taken was not one which was unable to entertain it (i) from the defect of jurisdiction or (ii) other cause of a like nature and, secondly, the earlier proceeding was not prosecuted in good faith. In order to appreciate whether conditions Nos. 3 and 4 were satisfied in the present case or not, it is worthwhile to extract the provisions of Order 21 Rules 97,98,99,100 and 103, as they stood prior to Amendment Act, 1976.

F , “97. (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property he may make an application to the Court complaining of such resistance or obstruction.

G (2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

H 98. Where the Court is satisfied that the resistance or obstruction was

occasioned without any just cause by the judgment-debtor or by some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation, to be detained in the civil prison for a term which may extend to thirty days. A B

99. Where the Court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the Court shall make an order dismissing the application. C

100. (1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the court complaining of such dispossession. D

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made and answer the same.

103. Any party not being a judgment-debtor against whom an order is made under rule 98, rule 99 or rule 101 may institute a suit to establish the right which he claims to the present possession of the property, but, subject to the result of such suit (if any), the order shall be conclusive." E

A perusal of the aforesaid provisions would show that the scheme commencing under Rule 97 and onwards before the enactment of the Amendment Act, 1976 was that where a decree holder or the purchaser at the court sale of property was obstructed in obtaining possession of such property by any person, he was entitled to apply to the court complaining of such resistance or obstruction. On such an application, the executing court was required to make a summary inquiry in regard to the question of possession. In such an inquiry it was not permissible to the parties to lead evidence and insist upon an elaborate hearing. After inquiry, if the court was satisfied that the obstruction was occasioned without any just cause by the judgment-debtor or by any other person, the court was empowered to put the party in possession over the property. But if the obstruction was offered by a person F G H

A other than the judgment-debtor, claiming possession over the property in good faith, the court was entitled to dismiss such application. If an order was passed under Rule 98 allowing the application under Rule 97 C.P.C., such an order was conclusive between the parties except that a party other than the judgment-debtor against whom the order was passed was entitled to file a fresh suit under Rule 103 to establish his right to the possession. It is with reference to these provisions that Article 11A of Schedule-I of the Act provided the period of one year to be computed from the date of the order passed under Order 21 Rule 98 C.P.C. However, the position has changed after amendment of the Code of Civil Procedure by the Amendment Act of 1976. Now, under the amended provisions all questions, including right, title, interests in the property arising between the parties to the proceedings under Rule 97, have to be adjudicated by the executing court itself and not left to be decided by way of a fresh suit.

The word "conclusive" appearing in Rule 103 indicates that it creates a presumption in favour of facts relating to rights to property as well as legality of the matter stated in the order. Such an order passed under Rule 98 is not subject to any further enquiry in any other proceeding, except by bringing a fresh suit under Rule 103. Thus, in view of the conclusiveness attached to the order passed by the executing court on an application filed under Rule 97, which is subject to result of a suit, if any, filed under Rule 103, is not assailable in any other proceedings. In case no suit is filed under Rule 103, the order passed under Rule 98 is final between the parties. Accordingly, we are of the opinion that the High Court could not have entertained the revision since it suffered from "other cause of a like nature" which precluded it from deciding the rights of the parties on facts.

Learned counsel for the respondents relied on the decision of Patna High Court reported in AIR 1994 Patna p.225 for the proposition that in the case like the present one, limitation would run from the date of order in the claim case and not from the date of High Court's order discharging the rule, and the plaintiff-appellant would not be entitled in such a case to an extension of time under Section 14(1) of the Act. In the said case the plaintiff filed an appeal before the High Court against the order passed under Rule 98 C.P.C. The High Court while issuing rule cautioned the plaintiff that the appeal is not maintainable, yet he persisted to prosecute the same, whereas in the present case the High Court entertained the revision petition for hearing which gave a reasonable ground to the plaintiff appellant to think that the original order may be set aside in revision. Thus, the decision referred to above has no application to the present case and is distinguishable.

Learned counsel appearing for the respondents urged that, assuming the High Court suffered from disability to decide the rights of party on facts, the plaintiff appellant did not prosecute the revision petition before the High Court in good faith, therefore, the appellant cannot derive any benefit of Section 14 of the Act. Before the High Court it was not disputed that the plaintiff-appellant has prosecuted the other civil proceeding with due diligence. What is disputed is that the plaintiff did not prosecute the civil proceeding in good faith. "Good faith" is defined in the Act as under:

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(h) "good faith" - nothing shall be deemed to be done in good faith which is not done with due care and attention;"

The aforesaid definition shows that an act done with due care and attention satisfies the test of "good faith". "Due care" means that sufficient care was taken so far as circumstances demanded and there was absence of negligence. In other words, plaintiff has taken sufficient care which a reasonable man is expected to take in order to avoid any injury. It is not shown here that the plaintiff-appellant has not taken sufficient care in prosecuting the remedy. Where a plaintiff is illiterate and is not acquainted with the procedural law, the only thing that he can do is to consult some lawyer for advice. It is not disputed that the plaintiff-appellant filed the revision before the High Court on the advice of his counsel, although it may be that he was ill-advised. Learned counsel for the respondents contended that any act done in violation of law cannot be described as act done with due care. No doubt, when a party proceeds contrary to a clearly expressed provision of law, it cannot be regarded as prosecuting the other civil proceeding in good faith.

It is based on sound principle of law. But the said rule can not be enforced in rigidity in every case. Each case has to be judged on its own merits. In the present case the plaintiff-appellant is not a legally trained person and thus he sought advice of his counsel for future course of action. The counsel advised him to file revision in the High Court instead of bringing a fresh suit under Order 21 Rule 103 C.P.C. It is also true that at that time there was no unanimity about remedy of revision amongst various High Courts. Plaintiff-appellant's revision was entertained for hearing by the high Court and that gave expectation to the plaintiff-appellant that order of the executing court may be set aside and further there was no inordinate delay in filing the suit under Rule 103. If, on examining the facts, it is found that there was no lack of due care, there is no reason why the plaintiff-appellant should not be

- A accorded the benefits of Section 14 of the Act. Does the interest of justice demand that plaintiff should be refused benefit of Section 14 of the Act on account of the negligence on the part of his counsel, ill advising him to file a revision instead of filing a fresh suit? An illiterate litigant cannot be made to suffer when he is ill-advised by his counsel. On the facts and circumstances of this case, we are satisfied that the plaintiff-appellant prosecuted the earlier civil proceeding in good faith.
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- For the aforesaid reasons this civil appeal deserves to be allowed. Consequently the judgment and order dated 5.9.1985 in Second Appeal No. 2062 of 1984 passed by the High Court is set aside. Since the High Court has allowed the second appeal only on the point of limitation, this case is sent back to the High Court for decision on surviving points. The matter being quite old, we request the High court to decide the second appeal expeditiously preferably within six months from the date of production of certified copy of this order. The appeal is allowed. However, in the circumstances of the case, there shall be no order as to costs.
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A.Q.

Appeal allowed.