

**SUPREME COURT OF INDIA**

Shakti Tubes Ltd. Tr. Director

Vs

State of Bihar

C.A.No.7315 of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

16.12.2008

**JUDGMENT**

**S.B. Sinha, J:**

1. Leave granted.
2. Whether the period spent on pursuing a writ petition should be excluded for the purpose of computing the period of limitation in filing a suit in terms of Section 14 of the Limitation Act, 1963 is the question involved in this appeal which arises out of a judgment and order dated 3.10.2007 passed by the High Court of Judicature at Patna in First Appeal No. 388 of 1997.
3. The basic fact of the matter is not in dispute.

“Appellant was a contractor of the State. It entered into a contract for supply of black pipes to the Minor Irrigation Department of the State of Bihar (for short "the Department") at the rate of Rs. 174.95 per meter. The said agreement contained a clause for escalation of price. On the premise that the price of steel had gone up from Rs. 10804 per MT to Rs. 13031 per MT, appellant, by its letter dated 18.06.1992, stated that as per the terms and conditions of the agreement supply would be made only at the escalated rate for which the additional price was calculated at Rs. 24.09 per meter.”

4. Orders for seven lakh meters of supply of black pipes were placed on 16.07.1992. The State worked out the escalation and determined the total increase at Rs. 24.09 per meter. On or about 4.11.1992, 'the Department', however, fixed the escalated rate of price of steel at Rs. 190.48 instead of Rs. 199.04.
5. On or about 18.03.1993, orders were placed for further supply of 50000 meters.
6. It is also not in dispute that 90% of the payment was to be made at the time of making supply and the rest 10% of the consideration was to be paid within a month thereafter.

7. Appellant, by its letter dated 4.06.1993, stated:

"We find that the escalation granted to us is not correct as it does not take into account the full impact of the price increase. The rates of HR Coils immediately before the increase on 19.05.92 were Rs. 10804/- and after the increase, these went upto Rs. 13031/- per MT. Thus there was an increase of Rs. 2227/- per MT. This, taken together with taxes on purchase of raw material and sale of pipes, gives a total impact of Rs. 2408.72 per MT or Rs. 24.09 per meter of pipe. As against this, we have been given an escalation of Rs. 15.53 per meter only. In support of the price of the HR Coils mentioned by us above, we are enclosing herewith copies of two invoices issued by SAIL. These clearly show that rates as have been mentioned by us above. We invite your attention to our letters dated 09.11.92 and 10.12.92 through which we have brought this mistake to your notice. We regret that despite it, you have not taken any action on the subject. As a result, our funds to the tune of about Rs. 35 lacs are lying unnecessarily blocked. This is causing severe financial problems for us. We, therefore, request you to please settle this matter quickly now, otherwise, we shall claim interest on this amount for the period of delay."

The said letter was not responded to.

8. Appellant filed a writ petition before the Patna High Court on or about 10.01.1994 praying inter alia for the following reliefs:

"(i) Issue rule NISI in the nature of mandamus commanding the respondents to pay the admitted dues which comes to Rs. 39,04,497.84 to the petitioner for the supply made by the petitioner in accordance with the provisions of law and upon return of the rule and after hearing of the parties make the rule absolute;

(ii) Issue rule NISI in the nature of mandamus commanding the respondents to pay interest to the petitioner on the supply made by the petitioner in accordance with the provisions of interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Ordinance, 1992 on account of delay in making payment of the price of the goods by the respondents and upon return of the rule and after hearing of the parties make the rule absolute;

(iii) Issue rule NISI commanding the respondents to perform statutory duty and obey and fulfill the provisions of the Act made by the Parliament and upon return of the rule and after hearing the parties make the rule absolute;"

9. A notice was directed to be issued by a learned Judge of the High Court.

10. By an order dated 14.09.1995, a learned Single Judge of the said Court, opined:

"The Petitioner in this application seeks two directions to the concerned authorities from this Court (i) for the payment of a sum of Rs. 30 lacs and odd as the price for certain materials (steel pipes) supplied by him under a government contract and (ii) for the payment of interests, the terms of the Small Scale and Ancillary Industrial Undertakings Act, 1992 on payments made to him after some delays.

A counter affidavit has been filed in this case on behalf of the Respondent Nos. 1 and 2 in which any liability to make any payment to the petitioner is totally denied. In that view this Court aspect give nay relief (sic) to the petitioner in respect of his first claim and this writ petition is, accordingly, rejected in so far as the petitioner's first claim is concerned. The rejection of this writ petition, however, will not come in the way of the petitioner in case he files a suit or a representation for the realization of his alleged dues. If any suit or representation is filed by the petitioner that would be disposed of in accordance with law and on its merits without being influenced by the fact that the petitioner failed to get any relief from a writ court. The respondents also dispute the petitioner's claim for interests on delayed payments on the plea, that the supplies were made by the petitioner beyond the stipulated dates and that the petitioner's claim relates to the period prior to 03.04.1993, the date on which the Act came into force. A question thus arises whether the petitioner can be allowed interests on delayed payments by a writ court, in view of these disputed facts.

However, I am inclined to admit this writ petition on this limited question as some writ petitions have been admitted and referred for hearing before a Division Bench on the question of payment of interests and delayed payments."

11. Appellant issued a notice under Section 80 of the Code of Civil Procedure on or about 7.10.1995. On 25.06.1996, a suit was filed for a decree for a sum of Rs. 65,97,319.00. The said suit was decreed by a judgment and order dated 28.06.1997, and thereby rejecting the contention of the respondents that the suit was barred by limitation. The learned Trial Judge held that the appellant was entitled to the benefit of the escalation clause contained in the agreement between the parties.

12. An appeal was preferred there against. A learned Single Judge of the High Court held:

"Therefore, I am of the view that the same escalation rate should also be granted in case of second tender allotted to the plaintiff on 21.03.1992. Admittedly, the lowest rate of supply of the tender which is the subject matter of the suit was Rs. 174.95 per meter. This rate was granted before increase in price of steel. As per the terms of the agreement, the plaintiff is entitled to get the escalation rate in case of increase in price of steel. Since it is established that increase in price of steel was to the extent of Rs. 24.08, as such this increase should be added in the rate fixed by the defendants for supply of MS black pipe. Thus, after adding Rs. 24.08 in the lowest rate of supply of pipe, which was fixed at Rs. 174.95 the total amount will come to Rs. 199.08 and this will be the actual escalated rate which the plaintiff will be entitled to receive towards price of per metre M.S. black pipe after escalation of price of steel. Thus, on the basis

of the above discussion, I find and hold that the plaintiff is entitled to get escalated price at Rs. 199.04 and not at Rs. 190.48 granted by the State of Bihar."

13. The learned Single Judge, however, allowed the appeal filed by the State and dismissed the suit, holding:

"21. It has been argued by the learned Advocate of the plaintiff - respondent that the period during which the plaintiff was pursuing writ application before the High Court should also be excluded for computing the period of limitation. In this regard the learned Advocate of the plaintiff has placed reliance upon the decision reported in *Lal Bihar Lal and another, plaintiffs Vs. Bani Madhava Khatri and others, Defendants*<sup>1</sup>. But I am of the view that the said decision will not apply in this case as the principle laid down in the decision cited above is applicable in such cases where the suit is filed in wrong Court that is a Court having no jurisdiction to entertain it or where a suit is instituted in the court in consequence of a bonafide mistake of law or defect of procedure and not in cases where the party has chosen altogether a different remedy before a different Court having jurisdiction to grant relief. Under circumstances, the plaintiff cannot be entitled to exclude the period during which he was pursuing writ application before the High Court in computing the Limitation period. Thus, I find no difficulty in holding that the plaintiff's suit is barred by law of limitation..."

14. Mr. R.F. Nariman, learned senior counsel appearing on behalf of the appellant, in assailing the judgment would contend that the High Court committed a serious error insofar as it failed to take into consideration that in a case of this nature Section 14 of the Limitation Act, 1963 would apply.

15. Dr. Rajeev Dhawan, learned senior counsel appearing on behalf of the State of Bihar, on the other hand, submitted that the suit filed by the plaintiff - appellant having nothing to do with the applicability of the escalation clause, the impugned judgment is unassailable. It was furthermore contended that as the appellant having accepted that the cause of action for filing the suit arose on 4.11.1992, the same should have been filed within a period of three years thereafter.

16. We will proceed on the premise that the cause of action for filing the suit arose on 4.11.1992. Indisputably, appellant served a notice upon the State on or about 7.10.1995 in terms of Section 80 of the Code of Civil Procedure itself. As in terms of Section 80 of the Code of Civil Procedure, a statutory notice of sixty days is required to be served, the said period must be excluded for the purpose of computation of the period of limitation. The suit should have, therefore, been filed in or about January, 1996 which in fact was filed on 25.06.1996. It is in this situation, the question as regards applicability of Section 14 of the Limitation Act has to be determined.

17. It is not in dispute that the writ petition was filed on 10.01.1994 and the same was disposed of on 14.09.1995. Indisputably, if the period taken for pursuing the remedy is

excluded, the suit must be held to have been filed within the period prescribed by the Limitation Act, 1963..

18. Dr. Dhawan is not correct in contending that the writ petition filed by the appellant had nothing to do with the escalation clause.

19. We are not unmindful of the fact that the plaintiff filed three suits being Money Suit Nos. 97 of 1996, 153 of 1997 and 131 of 1997, but we are concerned herein with filing of Money Suit No. 97 of 1996.

20. In the writ petition, the entire contention of the appellant revolved around the arbitrary refusal on the part of respondent to pay the price of the steel in terms of the escalation clause. Even the amount claimed in the writ petition, viz., Rs. 39,04,497.84 was the same for which the suit was filed. The price of the steel, as contended in the writ petition, is the same in the suit as would appear from the writ petition and the judgment passed in Money Suit No. 97 of 1996, the relevant averments whereof are as under: Writ Petition

"17. That the petitioner in this regard states and submits that the petitioner is entitled for escalated price of steel as per the terms of agreement and it has wrongly been fixed at 190.48 paise whereas according to the admitted position as accepted by the Secretary of the Department and as approved by the Minister incharge, it should have been 199.04 paise."

Money Suit No. 97 of 1996

"...It is also said further that due to price escalation the defendants had to fix the rate at 199 and 4 paise per metre with effect from 19.07.92 but the granted escalation price only at rupees 190 and 40 paise which is an apparent calculation mistake."

21. Sub-section (1) of Section 14 of the Limitation Act, 1963 reads as under:

"14 - Exclusion of time of proceeding bona fide in court without jurisdiction

(1) In computing the period of limitation 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 of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue 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..."

The said provision should be construed liberally.

It is not in dispute that the writ remedy was resorted to by the plaintiff. A part of the writ petition was admitted. The writ petition was not entertained in respect of the escalated price by the High Court for the reasons stated by the High Court in its order

dated 14.09.1995. It has not been held that the writ petition was not maintainable. It was not dismissed at the threshold. In view of the fact that a part of the writ petition was admitted for hearing, there cannot be any doubt whatsoever that the same was maintainable. Appellant was, therefore, pursuing the said remedy bona fide and in good faith.”

22. Section 14 of the Limitation Act speaks of prosecution of the proceedings in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. What would be the true purport of the words "other cause of a like nature"? The same must relate to the subject matter of the issue. A Three-Judge Bench of this Court had an occasion to consider the same in *Rameshwarlal v. Municipal Council, Tonk and Others*<sup>2</sup> wherein it was held:

"3. Normally for application of Section 14, the court dealing with the matter in the first instance, which is the subject of the issue in the later case, must be found to have lack of jurisdiction or other cause of like nature to entertain the matter. However, since the High Court expressly declined to grant relief relegating the petitioner to a suit in the civil court, the petitioner cannot be left remediless. Accordingly, the time taken in prosecuting the proceedings before the High Court and this Court, obviously pursued diligently and bona fide, needs to be excluded."

23. The question again came up for consideration before this Court in *Union of India and Others v. West Coast Paper Mills Ltd. and Another (III)*<sup>3</sup> wherein Lahoti, J. (as the learned Chief Justice then was), held as under:

"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 as 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 v. R.B. Mohan Singh Oberoi* 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 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."

24. We may also notice that in *India Electric Works Ltd. v. Jamesh Mantosh & Anr.*<sup>4</sup> this Court 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 mis-joinder 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 mis-joinder or non-joinder of parties could hardly be regarded as a defect of jurisdiction or something similar or analogous to it."

25. Provisions of Section 14 of the Limitation Act have been held to be applicable even in a proceeding arising under Section 34 of the *Arbitration and Conciliation Act, 1996*. [See *Gulbarga University v. Mallikarjun S. Kodagali & Anr.*<sup>5</sup>

26. We, therefore, have no hesitation in holding that the provisions of Section 14 of the Limitation Act, 1963 were applicable to the fact of the present case.

27. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed with costs. Counsel's fee assessed at Rs. 50,000/-.

<sup>1</sup>*AIR (36) 1949 Patna 293*

<sup>2</sup>*(1996) 6 SCC 100*

<sup>3</sup>*(2004) 3 SCC 458*

<sup>4</sup>*1971 (2) SCR 397:(1971) 1 SCC 24*

<sup>5</sup>*(2008) 11 SCALE 79*