APPELATTE CIVIL

A *FIRM* KHUSHI RAM BEHARI LAL.....PETITIONER

Vs.

FIRM JAGAN NATH KUTHIALA.....RESPONDENTS

(H. R. KHANNA & PRAKASH NARAIN, JJ.)

R.F.A.No. 90-D of 1959

B *Decided on 10-2-1969*

Limitation Act (1963), S. 14-Object of—"good faith"—meaning of—plaintiff instituting a suit in a wrong court in absolute good faith but under a mistaken notion-entitled to benefit to this section—Civil P.C., S-21-objection as to lack of territorial jurisdiction raised in appeal-not tenable unless consequent failure of justice shown.

C Section 14 has been enacted with the object of affording protection against the bar of limitation to a person in good faith doing his best to get his case tried on the merits but failing through the Court being unable to give him such a trial. It is intended to provide relief to one who initiates proceedings which by reason of some technical defect are thrown out. Such a party is given the right to exclude the time spent, over infructuous proceedings in computing the period of limitation for D filing the suit; it provides for cases where a plaintiff in absolute good faith but under a mistaken notion sues in a wrong court. [Page 491 paras E & F]

The words "good faith" for the purpose of section 14 have to be construed in the sense they have been defined in the Limitation Act and not in the General Clauses Act. According to the General Clauses Act "a thing shall be deemed to be done in good faith where it is in fact done E honestly, whether it is done negligently or not." The definition, as given in the Limitation Act, is however, to the effect that "nothing shall be deemed to be done in good faith which is not done with due care and attention." The question as to whether a plaintiff had prosecuted an earlier suit or civil proceedings in good faith and with due diligence is a question of fact depending upon the circumstances of each case. Although no hard and fast rules can be laid down, it can be stated as F a broad proposition that the section does not help a person who is guilty of negligence, laches, inaction or carelessness. At the same time it has to be borne 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. A mistaken view of law would not necessarily connote lack of good faith. To adopt this view could result in G making a dead letter of Section 14. All that has to be seen is whether there was material on the basis of which the plaintiff could have reasonably taken the view, however erroneous it may be, that the remedy he was pursuing or the forum he was selecting would secure for him the relief he was seeking in the suit. [Page 492 paras E to H]

A suit was instituted, in the first instance, in the Court of Senior H Subordinate Judge, Simla, but the plaint was returned for presentation to a proper Court on the ground that the Court of Simla had no jurisdiction to try the suit. The plaintiff went up in appeal to High Court but the appeal failed. The plaintiff thereafter filed the plaint in the

Court of Delhi. It, however, appeared from the documents filed by the plaintiff in Court that the defendant was ready to remit the amount of Rs. 10,000 to the plaintiff at Simla and enquired from him as to whether the same should be sent by cheque or draft. In the subsequent letter the defendant expressed his apprehension about the security of the draft and asked the plaintiff to draw a Hundi on the defendant.

Held, that on the basis of the above documents the plaintiff could have reasonably formed the view, however mistaken it might be, that the Civil Court at Simla had jurisdiction to try the suit. When the learned Senior Subordinate Judge, Simla, held that the Court at Simla had no jurisdiction to try the suit, the plaintiff went up in appeal to the High court and though the plaintiff's appeal failed there, it cannot be said that there was any lack of good faith in the prosecution of the suit and appeal. In fact the circumstances of the case point to the conclusion that the plaintiff filed the earlier suit in the Court of Senior Subordinate Judge at Simla as well as the appeal in the High Court in good faith and prosecuted the same with due diligence. **[Page 493 paras F, G & H]**

Held also, that the objection about the lack of territorial jurisdiction in Delhi would have no force in appeal unless it is shown that there has been a consequent failure of justice. **[Page 495 para H]**

Regular First Appeal from the decree of the Court of Shri G. C. Jain, Sub Judge, 1st Class, Delhi.

For the petitioner :—Mr. R. L. Aggarwal with Mr. A. L. Joshi.

For the respondents :—Mr. Rameshwar Nath.

Cases referred :—

1. Ramdutt Ramakissen Dass *Vs.* E. D. Sassoon & Co., AIR 1929 P.C. 103.
2. S. Niranjan Singh *Vs.* Jagjit Singh and another, AIR 1955 Punjab 128.
3. Firm Hira Lal Girdhari Lal and another. *Vs.* Baij Nath Hardial Khatri, AIR 1960 Punjab 450.
4. Sham Lal and Others, *Vs.* Bainka Mal and Others, in 14 Indian Cases P. 19.
5. Dina Nath *Vs.* Munshi Ram and others, AIR 1953 Punjab 298.
6. Firm Bansi Dhar Baldev Parshad and another *Vs.* Firm Alopi Pershad and Sons Ltd., AIR 1963 Punjab 556.

H. R. Khanna, J.—This regular first appeal filed by Messrs Khushi Ram Behari Lal defendant-firm is directed against the judgment and decree of the learned Subordinate Judge, Delhi, whereby a decree for recovery of Rs. 10,700/- was awarded in favour of firm Jagan Nath Kuthiala Arhati plaintiff-respondent.

The plaintiff-firm which is carrying on business at Simla, filed the present suit for recovery of Rs. 10,725/6/6 against the defendant-firm which was previously carrying on business at

Lyallpur, on the allegation that the plaintiff placed on order for the purchase of 1400 maunds of wheat with the defendant at Lyallpur in the beginning of June, 1947. The defendant wrote back to the plaintiff on June 18, 1947 that the wheat would be despatched to the plaintiff after obtaining the necessary permit from the food grain authorities. The plaintiff was asked to send at least Rs. 5,000/- in advance. It was added that for the balance of price a *hundi* would be drawn on the plaintiff and would be sent along with the railway receipt for the goods. The plaintiff agreed to the terms offered by the defendant and sent Rs. 10,000/- in advance and requested the defendant to despatch the goods to the plaintiff at Simla and to realise the balance of the price by drawing a *hundi* on the plaintiff. The plaintiff thereafter sent many letters to the defendant asking for the despatch of wheat to Simla but the defendant failed to do so. On August 11, 1947 the defendant wrote a letter to the plaintiff expressing inability to despatch the goods on the ground that the Superintendent Food Grains had refused to grant permit for the despatch of wheat from Lyallpur to any other district as there was shortage of food grains at Lyallpur. The plaintiff was asked by the defendant as to whether the amount of Rs. 10,000/- was to be sent back to Simla. The plaintiff thereupon wrote to the defendant that since the latter had not been able to consign the wheat for two months, the defendant should remit the money back to Simla along with permit for 1400 maunds of wheat. On receipt of that letter the defendant wrote back to the plaintiff that the defendant was willing to refund Rs. 10,000/- to the plaintiff but the amount could not be sent by draft lest it might be lost in transit on account of disturbances. The plaintiff was asked to draw a *hundi* on the defendant for Rs. 10,000/-. The plaintiff thereafter drew a *hundi* on the defendant and sent it to Lyallpur through Hindustan Commercial Bank Ltd., but the *hundi* was received back. The plaintiff thereafter served a notice upon the defendant demanding refund of Rs. 10,000/- along with interest at the rate of 6% per annum. According to the plaintiff-firm the defendant-firm was liable to pay Rs. 725/- as interest because of wrongfully withholding the amount of Rs. 10,000/-.

The suit of the plaintiff was initially instituted in the Court of Senior Subordinate Judge at Simla on November 2, 1948. The learned Senior Subordinate Judge, Simla, as per order dated April 11, 1949 held that the plaintiff should have sued the defendant at Delhi and not at Simla, and that Simla Court had no jurisdiction to try the suit. The plaint was, accordingly, ordered to be returned to the plaintiff for presentation to the proper Court. The plaintiff filed an appeal against the aforesaid order but the plaintiff's appeal was dismissed by the Punjab High Court on November 23, 1950. The plaintiff thereafter presented the plaint in the Delhi Court on December 27, 1950. Along with the plaint the plaintiff presented an application stating that after

the decision of the High Court the plaint had been returned to the plaintiff on December 23, 1950. Protection was sought of Section 14 of the Limitation Act. The plaintiff added that the plaintiff-firm had been advised that the Simla Court had got jurisdiction and was right in choosing the forum. Proceedings were stated to have been carried on *bona fide* at Simla and thereafter in the High Court.

The defendant-firm in the written statement filed through Banwari Lal stated that the plaintiff-firm was not registered and as such was not competent to file the suit. The defendant-firm was stated to have ceased to exist on the exodus of its partners from Pakistan. As such, it was averred that the suit against the defendant-firm was not maintainable. On merits it was admitted that the defendant received Rs. 10,000/- from the plaintiff for purchase of wheat. The amount was stated to be payable at Lyallpur and the bank charges were to be borne by the plaintiff and not by the defendant. According further to the defendant, the defendant purchased wheat and stored it at Abbaspur railway station for despatch to Simla. From the date of purchase the goods became the property of the plaintiff and were lying at Abbaspur at the plaintiff's risk. The defendant made all out efforts for transporting the goods to Simla but these efforts failed as the Food Grains Officer prohibited the export of wheat from Lyallpur district on the ground that the same was needed by the Government for its own purposes. Finding it impossible to export the wheat to Simla, the defendant proposed to the plaintiff to sell the wheat to some mill-owner at Lyallpur in case the Government did not requisition it. The defendant intended and proposed to send Rs. 10,000/- to the plaintiff on realising the sale proceeds of the wheat. The plaintiff sent no instructions and the Government did not purchase the wheat. The wheat was looted by frenzied mob during communal disturbances. The defendant thereafter migrated to India. As regards the *hundi*, referred to by the plaintiff, the defendant-firm averred that the same was not presented to the defendant-firm. The suit was stated to be barred by limitation. The plaintiff-firm, it was averred, was not entitled to seek protection of Section 14 of the Limitation Act. Delhi Court was further stated to have no jurisdiction to try the suit.

After replication by the plaintiff, following issues were framed by the Court below:—

(1) Has this court not the jurisdiction to entertain this suit ?
(2) Can the plaintiff bring the suit without registration ?
(3) Is the suit within time ?
(4) Is the defendant not liable to pay the suit amount ?
(5) Is the plaintiff entitled to interest ? If so, at what rate ?
(6) Relief.

All the issues were decided in favour of the plaintiff and against the defendant. In the result, decree for recovery of Rs. 10,700/- was awarded in favour of the plaintiff against the defendant with costs.

Mr. Aggarwal on behalf of the defendant appellant has argued that the suit of the plaintiff is barred by limitation and the plaintiff is not entitled to seek protection of section 14 of the Limitation Act. In this respect we find that sub-clause (1) of Section 14 of the Limitation Act, 1908 reads as under:—

> "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."

The wording of clause (1) of Section 14 of the Limitation Act of 1963 is the same as in the old Act except that the word "prescribed" occurring after the words "period of limitation" has been omitted, the words "or of appeal or revision" have been substituted for the words "or in a Court of appeal" and the words "relates to the same matter in issue" have replaced the words "founded on the same cause of action". Section 14 has been enacted with the object of affording protection against the bar of limitation to a person in good faith doing his best to get his case tried on the merits but failing through the Court being unale to give him such a trial. It is intended to provide relief to one who initiates proceedings which by reason of some technical defect are thrown out. Such a party is given the right to exclude the time spent over infructuous proceedings in computing the period of limitation for filing the suit; it provides for cases where a plaintiff in absolute good faith but under a mistaken notion sues in a wrong Court. Dealing with the above section their Lordships of the Judicial Committee observed in the case of *Ramdutt Ramakissen Dass* v. *E.D. Sassoon & Co.*, (1):—

> "It may be assumed that it had been ascertained before these provisions were formulated that there was a serious risk of injustice arising if the period of limitation, which is in many cases shorter than in England, should be too strictly applied. In Indian litigation it is consistent with the experience of their Lordships that the time necessary for the decision in a suit may be of much longer duration than one is accustomed to in the Courts of Great Britain. Hence the necessity for some provision to protect a *bona fide* plaintiff from the con-

sequences of some mistake which had been made by his advisers in prosecuting his claim."

Perusal of sub-section (1) of section 14 shows that the plaintiff in order to invoke the benefit of the Section has to show affirmatively,

(1) that he had been prosecuting with due diligence the suit in the Court of the Senior Subordinate Judge at Simla and thereafter the appeal in the High Court,

(2) that the suit was founded on the same cause of action,

(3) that it had been prosecuted in good faith, and,

(4) that the Court at Simla was unable to entertain the suit on account of defect of jurisdiction or other cause of a like nature.

It is not disputed that conditions (2) and (4) are satisfied. The point of controversy between the parties relates to conditions (1) and (3). It is urged on behalf of the appellant that the previous suit was not prosecuted in good faith and there was want of due diligence in the filing of that suit. In this respect we may observe at the outset that the words "good faith" for the purpose of section 14 have to be construed in the sense they have been defined in the Limitation Act and not in the General Clauses Act. According to the General Clauses Act "a thing shall be deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not." The definition, as given in the Limitation Act, is, however, to the effect that "nothing shall be deemed to be done in good faith which is not done with due care and attention." The question as to whether a plaintiff had prosecuted an earlier suit or civil proceedings in good faith and with due diligence is a question of fact depending upon the circumstances of each case. Although no hard and fast rules can be laid down, it can be stated as a broad proposition that the section does not help a person who is guilty of negligence, laches, inaction or carelessness. At the same time it has to be borne 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. A mistaken view of law would not necessarily connote lack of good faith. To adopt this view would result in making a dead letter of Section 14. All that has to be seen is whether there was material on the basis of which the plaintiff could have reasonably taken the view, however erroneous it may be, that the remedy he was pursuing or the forum he was selecting would secure for him the relief he was seeking in the suit.

Applying the above principle to the facts of the present case we find that on August 11, 1947 the defendant wrote the following letter to the plaintiff:—

> "Today again I had gone to the Food Grain Superintendent. He had totally refused saying that when there is shortage of wheat in Lyallpur District how the wheat could be supplied to another District. So you should try in this behalf, if possible write as to whether the money be remitted by cheque or by draft.
>
> Order shall be for the sale of goods to some Mills at Lyallpur."

On August 16, 1947 the plaintiff wrote to the defendant to send back the money to Simla by means of a draft along with the wheat permit. On August 22, 1947 the defendant wrote to the plaintiff as under:—

> "Your letter dated the 16th August, 1947 has been received. Letters are written from here regularly but the same were not reaching the destination due to dislocation in the Postal and Telegraphic services, and transfers. The permit is lying in the Government office and cannot be obtained. You should draw a Hundi for Rs. Ten thousand on us. In case a draft is sent, it is possible that the same may not reach you. We have tried much but have been bothered on account of the shortage of wagons and IV class permit. Had it been of A. class, the goods would have been sent much earlier."

It would appear from the above documents that the defendant was ready to remit the amount of Rs. 10,000/- to Simla and enquired from the plaintiff as to whether the same should be sent by cheque or draft. In the subsequent letter the defendant expressed his apprehension about the security of the draft and asked the plaintiff to draw a Hundi on the defendant. On the basis of the above documents the plaintiff, in our opinion, could have reasonably formed the view, however mistaken it might be, that the Civil Court at Simla had jurisdiction to try the suit. When the learned Senior Subordinate Judge, Simla, held that the Court at Simla had no jurisdiction to try the suit, the plaintiff went up in appeal to the High Court, and though the plaintiff's appeal failed there it cannot, in our opinion, be said that there was any lack of good faith in the prosecution of the suit and appeal. In fact the circumstances of the case point to the conclusion that the plaintiff filed the earlier suit in the Court of Senior Subordinate Judge at Simla as well as the appeal in the High Court in good faith and prosecuted the same with due diligence. It was after the decision of the High Court that the plaintiff received the plaint back and filed it in the Court at Delhi.

Mr. Aggarwal on behalf of the appellant has argued that the plaintiff filed the suit at Simla on the assumption that a debtor was bound to seek the creditor and as such the Simla Court had jurisdiction. It is urged that the above principle of English Law is not applicable in India for the purpose of determining the local jurisdiction of the Courts. Reference in this connection is made to *S. Niranjan Singh* v. *Jagjit Singh and another*, (2), wherein it is observed that the common-law rule of England that a debtor must seek a creditor for payment, though applicable in India, does not apply for the purposes of determining the forum where the suit is to be instituted. Similar view was expressed in Full Bench case *Firm Hira Lal Girdhari Lal and another* v. *Baij Nath Hardial Khatri*, (3). The above cited cases, in our opinion, are not of much avail to the defendant-appellant because, as observed above, the plaintiff did not merely rely upon the factum of his residence in Simla but sought to confer jurisdiction on the Simla Court by relying in addition upon the letters sent by the defendant.

On behalf of the appellant, reference has been made to the case of *Sham Lal and others* v. *Bainka Mal and others* (4). In that suit the plaintiffs, who were residing at Khurja in Aligarh District, owned a share in partnership business managed by the defendants at Hansi. On March 31, 1904 the plaintiffs brought a suit in the Court of Subordinate Judge, Aligarh, for recovery of money due on account of their share of profits. It was alleged by the plaintiffs that there was an agreement between the parties by which paintiffs' profit share was to be paid to them at Khurja and the plaintiffs were receiving their share at Khurja. The Subordinate Judge held that the agreement alleged by the plaintiffs was not proved and that the suit was not cognizable by his Court. The decision of the Subordinate Judge was affirmed on appeal by the High Court. The plaint was returned to the plaintiffs and was presented to the Court of District Judge, Hissar, in which district the defendants carried on their business. It was held that the suit was not prosecuted in good faith in the Aligarh Court within the meaning of Section 14 of the Limitation Act, and as such the plaintiffs could not invoke the benefit of Section 14 of the Limitation Act. In our opinion, the defendant-appellant cannot derive much assistance from the above authority because perusal of the facts of that case goes to show that the only evidence in support of the alleged agreement set up by the plaintiffs was the oral statement of one of the plaintiffs. In the present case, apart from the oral statement of the plaintiff we find there was documentary evidence, referred to above, on which the plaintiff relied and according to which the defendant undertook to remit the money to Simla.

Another case, referred to on behalf of the defendant-appellant, is *Dina Nath* v. *Munshi Ram and others*, (5). The said case has again no bearing because in that case the legal adviser of the

party had made a mistake as to jurisdictional value and court-fee. It was held that the mistake was such that if the legal adviser had only taken the trouble of looking up any elementary book on Court fees and Suits Valuation Act, he would have discovered it. No question of *bona fide* mistake or good faith was held to arise in the circumstances. Lastly, reference has been made on behalf of the defendant-appellant to the case of *Firm Bansi Dhar Baldev Pershad and another* v. *Firm Alopi Pershad and Sons Ltd.*, (6). This again is a case of which the facts are clearly distinguishable as the previous suit had been instituted in the Khem Karan Court. while according to the agreement between the parties, the Delhi Court alone had jurisdiction.

We, therefore, see no cogent ground to interfere with the finding of the Court below that the plaintiff was entitled to invoke the benefit of Section 14 of the Limitation Act.

It has next been argued that the Delhi Court had no jurisdiction to try the suit. In this respect we find that Banwari Lal, partner of the defendant-firm through whom the defendant was sued, is admittedly carrying on business at Delhi. Banwari Lal, when appearing as a witness, has deposed that Ganga Ram too was a partner of the defendant-firm. Ganga Ram died at Amritsar in September, 1947 and on his death the defendant-firm stood dissolved. No plea was, however, taken in the written statement that Ganga Ram was a partner of the defendant-firm and on his death the firm stood dissolved.

It may be mentioned that the Senior Subordinate Judge, Simla, while holding that the Court at Simla had no jurisdiction, gave a finding that it was the Court in Delhi which had jurisdiction in the matter. Be that as it may, the objection about the lack of territorial jurisdiction in Delhi would have no force in appeal unless it is shown that there has been a consequent failure of justice. Section 21 of the Code of Civil procedure expressly provides that no objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the court of first instance at the earliest possible opportunity, and unless there has been a consequent failure of justice. As there is nothing to show that there has been any failure of justice because of the trial of the suit in Delhi, the objection about the lack of territorial jurisdiction of Delhi Court will have to be repelled.

Lastly, it has been argued that the defendant-firm was acting as the agent of the plaintiff for the purchase of wheat. It is urged that the defendant purchased the wheat in the account of the plaintiff and stored it at Abbaspur railway-station. The property in the said wheat had consequently passed to the plaintiff. The wheat was thereafter taken possession of by the Pakistan authorities. The defendant-firm, in the circumstances, it is contended, is not liable to refund the money received by it. In this connection

we find that the case of the defendant, as set up in the written statement, was that the wheat in question had been looted by frenzied mob. It was, however, sought to show in evidence that the wheat had been taken possession of by the Pakistan authorities. The defendant in this connection examined two witnesses on commission in Pakistan. One of the witnesses, namely, Mian Nur Shah, District Food Controller, Lyallpur, did not give any material evidence on the point. The other witness was Chowdhry Mohammad Akram, District Food Controller, Lyallpur. According to this witness, 443 bags of wheat containing 1205 maunds 31 seers and 10 chhatanks were taken over into the provincial reserve at Lyallpur. The price of the said wheat amounting to Rs. 9,830/3/3 was transferred to the Deputy Rehabilitation Commissioner, Lyallpur, in the account of Pacca Arhti's Association, Abbaspur, on May 23, 1949. It is not shown as to how the statement of the above witness can be held to relate to the wheat which was to be purchased by the defendant on behalf of the plaintiff because the weight of that wheat was 1400 maunds. Chowdhry Mohammad Akram makes it clear that the permit in respect of that wheat was not in the name of the defendant but in the name of Pacca Arhti's Association, Abbaspur. It is also clear from the question asked on behalf of the defendant-appellant in the interrogatories issued for the examination of Chowdhry Mohammad Akram that the wheat taken into possessions by the Pakistan authorities was intended to be despatched not to the plaintiff-firm but to firm Dayalu Ram Mast Ram of Simla. Two very material documents, of which note has to be made, are the letters dated August 11, 1947 and August 22, 1947 addressed by the defendant to the plaintiff. These letters have already been reproduced above and in those letters the defendant clearly undertook to remit the amount of Rs. 10,000/- to the plaintiff. If the wheat had been purchased by the defendant in the account of the plaintiff, it is not likely that the defendant would have been ready and willing to refund the amount of Rs. 10,000/- to the plaintiff. We, therefore, have no hesitation in repelling the contention of the defendant-appellant that the property in 1400 maunds of wheat had passed to the plaintiff and it would be the plaintiff-firm who would have to bear the loss on account of the taking into possession of the wheat by the Pakistan authorities.

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The appeal consequently fails and is dismissed with costs.

Appeal dismissed.

A.N.K.