

(2) attract the  
application of section  
14 of



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(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding 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. (3) Notwithstanding anything contained in Rule 2 of Order XXIII of the Code of Civil Procedure, 1908, the provision of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the Court under Rule 1 of the Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the Court or other cause of a like nature. As per Explanation, for the purpose of this section,— (a) In excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted; (b) A plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding; (c) Misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction. In order to attract the application of Section 14 of the Limitation Act, the following conditions have to be satisfied: (i) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party; (ii) The prior proceedings had been prosecuted with due diligence and good faith; (iii) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature; (iv) The earlier proceeding and the later proceeding must relate to the same matter in issue; and (v) Both the proceedings are in a Court. In *Vijay v. Diwan*, (AIR 1985 SC 1669), it has been expressed that Section 14 has to be liberally construed and unless

there is sufficient material to come to the finding that plaintiff had acted dishonestly and with lack of good faith he cannot be denied the benefit of Section 14 of the Limitation Act. Section 14 of the Limitation Act contains general principle based on justice, equity and good conscience and the principle may be applied liberally but not in disregard of the express words of the section.

The main factor which would influence the Court in extending the benefit of Section 14 of the Limitation Act to a litigant would be whether the applicant's conduct would satisfy the test of prosecuting the suit in good faith and due diligence. Section 2(h) of the Limitation Act, 1963 explains the term 'good faith' stating that 'nothing shall be deemed to be done in good faith which is not done with due care and attention'. The expression 'good faith' qualifies prosecuting the proceeding in the Court which ultimately is found to have no jurisdiction.

Failure to pay the requisite Court fee found deficient on a contention being raised or the error of judgment in valuing a suit filed before a Court which was ultimately found to have no jurisdiction has absolutely nothing to do with the question of good faith in prosecuting the suit as provided in Section 14 of the Limitation Act. In *Globe Transport v. Triveni*, [(1983) 4 SCC 755], it has been held by the Supreme Court that the party prosecuting the suit in good faith in a Court having no jurisdiction is entitled to exclusion of that period.

Section 14 of the Limitation Act in terms applies to suits and application only. Section 14 and Section 5 of the Limitation Act, though independent, are not

mutually exclusive. Even in case where Section 14 applies, Section 5 is not excluded. Though Section 14 does not in terms apply to an appeal, the principle underlying the section can be invoked in aid of sufficient cause contemplated by Section 5. But one of the basic requirements of Section 14 is that the remedy pursued must fail on the ground of defect of jurisdiction or like cause. Section 14 of the Limitation Act provides for exclusion of time or proceeding bona fide in Court without jurisdiction. In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding against the defendant shall be excluded where the proceeding relates to the same matter in issue and is prosecuted in a good faith in a Court which from a defect of jurisdiction is unable to entertain it.

Section 14 of the Limitation Act is mandatory as if the Court has to exclude the time spent in prosecuting a case in good faith, the Court must determine whether the prosecution was in fact in good faith or not and it appears to be necessary corollary that if the prosecution time of the suit is divided into stages, it must, in order to arrive at the period which is to be excluded, also determine how much time must be excluded whether by reason of prosecution in bad faith or owing to any other reason. The object of Section 14 of Limitation Act is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. Section 14 of the Limitation Act will not be attracted when the plaint is filed in a wrong Court out of time. When a party has been bona fide pursuing a wrong remedy, it

would be a fit case for applying the principle embodied in Section 14 of the Limitation Act. In *Ch. Anjaneyulu v.*

*Alapati Hari Prasad*, (1996 (4) ALT 798), it has been held that in order to attract the Section 14, it is essential that the Court, in which the prior proceeding was prosecuted, must have been unable to entertain it for the reasons specified, namely, defect of jurisdiction or other cause of a like nature. Thus, the benefit of the Section 14 cannot be obtained where the prior proceedings were dismissed on merits. The benefit of the provision of Section 14 is not available to criminal proceedings. In *Union of India v.*

*Abdul Khadir*, (ILR (1964) 1 Ker. 355), it has been held when the suit was rightly filed in the Munsifs Court but subsequently there was change of forum resulting in the plaint being returned for presentation to District Court then no question of invocation of Section 14 arises and the suit should be deemed to be continuing from its first presentation. Section 14 of the Limitation Act applies to proceeding before Court. In *P. Kaur v. S. Singh*, (AIR 1983 P&H 363), it is held that Section 14 is applicable to a suit for possession by way of redemption before the Collector as the Collector acts as Court and proceeding is a civil proceeding.

In *R. R. Shah v.*

*J. C. Co.*, (AIR 1988 Bom.

193), it is held that Section 14 as applicable to the proceedings before the Registrar of Small Causes Court, Bombay adjudicating disputes under Maharashtra Cooperative Societies Act acts as Court. In *Commissioner of*

Sales Tax (The) v. Parson Tools & Plants, [(1976) 1 SCJ 242], that Sections 5 to 14 of the Limitation Act cannot be made to apply for the proceedings under U.

P. Sales Tax Act as the appellate authority and Judge (Revision) Sales Tax exercising jurisdiction under U. P. Sales Tax Act are merely administrative tribunals. In W. K. Deshmukh v.

P. B. Deshmukh, [(1998) 7 SCC 447], it has been held that when the writ-petition has been filed by the plaintiff to decide contractual obligation and High Court directed the matter to be decided by Civil Court then the plaintiff in filing civil suit shall get the benefit of Section 14 of the Limitation Act to exclude the time taken for prosecuting the writ petition. In Union of India v. Orissa State Electricity Board, (AIR 2001 Ori. 109), the claim was wrongly filed in Civil Court though the same should have been filed before the Railway Claims Tribunal.

The Civil suit was dismissed for want of jurisdiction. Thereafter claim was filed before the Railway Claims Tribunal. It is held that the time taken before Civil Court in pursuing the civil remedy has to be excluded for computing the period of limitation on the ground that the petitioner had sufficient cause for delay should be condoned under Section 17 of the Railway Claims Tribunal Act, 1987. A plaintiff can claim the benefit of the Section 14 of the Limitation Act only where the previous proceedings had been brought by himself or by some person through whom he derives title to sue.

If the former proceedings had been instituted by a wrong plaintiff, no deduction can be made. A plaintiff is entitled to claim the benefit of the

provision of Section 14 whether he comes up on the second occasion with the original plaintiff or a new plaintiff. It is not necessary that plaintiff must have been prosecuting the previous proceeding as a plaintiff.

He is entitled to a deduction of the period of pendency of a former suit in which he as defendant was urging the same claim as he afterwards prefers as plaintiff. All that is required of a plaintiff or applicant to prove is that he prosecuted the previous civil proceedings in good faith, and if he proves that he may avail himself on Section 14, even though he was not described as a plaintiff or as an applicant in the previous proceedings. The Section 14 of the Limitation Act is in terms restricted to civil proceedings. A civil proceedings is one in which a person vindicates his civil right.

In *Narayana Rao v. Kshwarlal*, (AIR 1965 SC 1818), the Supreme Court observes that a civil proceeding is one in which a person seeks to enforce by appropriate relief the alleged infringement of his civil rights against another person or the State, and which if claim is proved would result in the declaration of the right claimed and also specific relief such as payment of debt, delivery of specific property, damages, compensation, enforcement of personal rights, determination of status etc. Civil proceedings would include not only appeal but also civil revision. Some examples of civil proceedings are: (i) a proceeding which seeks relief against the enforcement of a taxation statute; (ii) execution proceedings; (iii) proceedings before revenue Courts; (iv) an insolvency proceeding before an Official Assignee; (v) a suit to recover on a pronote in a Panchayati Adalat. Some examples of non-civil proceedings are: (i) The proceedings before authority appointed under Section 15(1) of the Payment of Wages Act; (ii) The proceedings before

Railway authority; (iii) The proceedings under the Child Marriage Restraint Act; (iv) The proceedings under Cattle Trespass Act. The term 'defect of jurisdiction' in Section 14(2) do not cover such mistakes as the presentation and prosecution of an appeal which did not lie in any Court. The benefit of this section can be availed of only where there is initial want of jurisdiction.

If the Court in fact has no jurisdiction but assumes jurisdiction, the Section 14 applies. This section does not require any order of the Court which had no jurisdiction recognising the fact. All it requires is that the Court which has to decide the question of limitation must find that the other Court was unable to entertain the proceeding because it had no jurisdiction. The words "or other cause of like nature in Section 14(1) of the Limitation Act should be liberally construed.

In *Gurdit v. Munsha*, (AIR 1977 SC 640), it has been expressed that the words "or other cause of like nature" must be construed ejusdem generis with defect of jurisdiction, that is to say, the defect must be of such a character as to make it impossible for the Court to entertain the suit or application and to decide it on merits. In *Johrimal v. Surjan Singh*, [(1970) 72 Punj.

L. R. 385], it is held that the expression "other cause of like nature" of howsoever wide amplitude, has to be read ejusdem generis to and along with earlier part of the same provision, which relates to the defect of jurisdiction of the Court. It is not possible to lay down an exhaustive list of all causes showing defect of jurisdiction and each case will depend on its own facts and circumstances. The legislature in clause (c) of the explanation has provided that misjoinder of parties or of cause of action shall be deemed to



be cause of a like nature with defect of jurisdiction. But, Res judicata does not constitute a “ cause of a like nature”.

Section 14 of the Limitation Act does not apply where the previous proceeding was dismissed after adjudication on its merits, and not because the Court was unable to entertain it. Where the Court which is not in a position to decree the suit as framed permits the plaintiff to withdraw and file a fresh suit, the plaintiff is entitled to the benefit under Section 14(1). Section 14 of the Limitation Act does not apply where the previous suit was voluntarily abandoned or withdrawn by the plaintiff and then he brings a fresh suit after the expiry of the period of limitation. If the Court was not competent to entertain the suit, and the suit was withdrawn with the leave of Court, the order of withdrawal might be treated as an order returning the plaint, and the provisions of Section 14 would apply to the suit when re-instituted. There is no real conflict between Rule 2 of Order XXIII of the CPC and the Section 14 of the Limitation Act. In Rabindra Nath v. Sivakami, (AIR 1972 SC 730), one S filed a suit without impleading the Government. The suit was ultimately dismissed by the High Court on the ground that the State was a necessary party.

A subsequent suit by S impleading the State was dismissed on the ground of limitation. It was held that S was not entitled to the benefit of Section 14 of the Limitation Act. Where there is ground for excluding certain periods under Section 14, in order to ascertain what is the date of the expiration of the prescribed period, the days excluded have to be added to what is primarily the prescribed period. Only the period during which the provisions suit was pending in the wrong Court can be deducted. If a plaint presented on the last

date or limitation is returned for presentation within a week to the proper Court, the suit will be barred even if the plaint is refilled within a week. In sub-section (2) of Section 14 of the Limitation Act, the words 'civil proceeding' includes a suit.

Section 14(2) is applicable to execution case also. Section 14(2) can be availed of only when there was initial want of jurisdiction. The words 'the same relief in Section 14(2), have reference to the precise relief sought and cannot be construed in a liberal sense so as to look, to the ultimate object with which that relief is sought.

There can be no exclusion, under Section 14(2), of time occupied by the insolvency proceedings against the judgment-debtor, in computing the period of limitation for a decree against him as the proceedings are not for obtaining the same relief. The sub-section (3) of Section 14 is in the nature of a proviso to Order XXIII, Rule 2 of CPC. The expression 'other cause of the like nature' has to be read ejusdem generis (of the same kind); it does not include res judicata. Where a plaint is ordered to be returned for presentation to the proper Court but is actually returned several days later, the suit in the wrong Court is said to terminate on the day on which the plaint is actually returned and not on the day on which it is ordered to be returned. The plaintiff is not entitled to any deduction after the date of the endorsement on the plaint required by Rule 10(2) of Order VII of CPC except perhaps where he can show that the Court delayed the return of the plaint in spite of his endeavour to take it back.

In *Brij Mohandas v. Narasinghdas*, (AIR 1971 MP 243), it has been held that where an application for execution is returned for filing in proper Court and the same is filed on the next day to the proper Court, no question of limitation arises. In *V. S Managaraja Shetty v. V.*

*C. K. Subbaiah*, [(1969) 17 LR 274], it has been held that if the order returning the plaint is passed on the 4th May and the plaintiff is given time till the 30th June for presentation in the proper Court, the period between 4th May and 29th June is to be excluded under Section 14 of the Limitation Act. According to Section 29(2) of the Limitation Act, Section 14 applies although the case is governed by a special or local law of limitation, unless it expressly excludes by the special or local law. Hence Section 14 of the Limitation Act does not apply to adjudication under Section 9 of the Provincial Insolvency Act.