IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

Present:
The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

APO 27 of 2021

With

AP 74 of 2019

Kamlesh Kumar Agarwala

Vs.

The Estate of Manjan Devi Patni,
Represented by Nirmal Kumar Jain

For the appellant	:	Mr. Uttam Sharma, Adv. Ms. Vrinda Kedia, Adv.
For the respondent	:	Mr. Rajeev Kr. Jain, Adv. Mr. Kunal Shaw, Adv. Ms. Yamini Mahanka, Adv.
Hearing concluded on	:	06.05.2026
Judgment on	:	20.05.2026

Md. Shabbar Rashidi, J.:-

1. The appeal under Section 37 of the Arbitration and Conciliation Act, 1996 is in assailment of impugned judgment and order dated March 2, 2020 passed in A.P. No. 74 of 2019, G.A. No. 399 of 2019.

2. By the impugned judgment and order, the learned Single Judge rejected the challenge to the arbitral award dated February 28, 2018 and dismissed A.P. No. 74 of 2019 on the ground that challenge under Section 34 of the Act of 1996 was filed after the expiry of the time period prescribed under Section 34 (3) of the Act of 1996. The learned Trial Judge held that,

> *"It is not in dispute that the respondents filed the application under Section 29A of the Act of 1996, before a Co-ordinate Bench of this Court, for extension of time for making the award by the Arbitrator. By order dated September 05, 2017 a Co-ordinate Bench of this Court, in presence of the petitioner, extended the time to make and publish the award of the Arbitrator. A copy of the said order has been disclosed by the respondents in their affidavit and from a reading thereof, it is evident that the petitioner did not raise any objection to the jurisdiction of this Court to entertain the said application. Further, the petitioner accepted the said order dated September 05, 2017 and thereafter participated in the arbitral proceeding conducted by the Arbitrator. In the application filed in Misc. Case No.298 of 2018 before the learned District Judge at Alipore, the petitioner did not challenge the impugned award on the ground that the order dated September 05, 2017 passed by this Court was without jurisdiction and consequently, the impugned award made by the Arbitrator after termination of his mandate which took place before passing of the said order is also without jurisdiction and void. In the application filed in Misc. Case No.298 of 2018 the petitioner had not at all mentioned about the filing of the said application under Section 29A of the Act*

of 1996 before this Court or passing of the said order dated September 05, 2017 by a Co-ordinate Bench of this Court.

For all the forgoing reasons, I unable to convince myself to accept that the petitioner had prosecuted the said Misc. Case No. 298 of 2018 before the learned District Judge at Alipore with due diligence or in good faith. Thus, the petitioner cannot claim benefit of Section 14 of the Limitation Act, 1963. In the facts of the present case the decision of the Supreme Court in Modern Construction & Company (supra) is of no assistance to the petitioner. Accordingly, the application A.P. No.74 of 2019 filed by the petitioner for setting aside of the impugned award, beyond the period of the time stipulated in sub-Section (3) of Section 34of the Act 1996 read with the Proviso thereto cannot be entertained and the same stands rejected."

3. It is submitted on behalf of the appellant that the impugned judgment and order was passed without application of judicial mind and is erroneous in law. The same was passed in complete ignorance of the legal propositions governing the field. Learned advocate for the appellant submitted that the learned Trial Court came to an erroneous finding that the appellants did not pursue Misc. Case No. 298 of 2018 under Section 34 of the Arbitration and Conciliation Act, 1996 as well as C.O. No. 3328 of 2018 in good faith and with due diligence, as such, the appellant was not entitled for the benefits of Section 14 of the Limitation Act, 1963.

4. Learned advocate for the appellant further submitted that learned Single Judge committed error in law in so far as the period

spent in bona fide pursuance of Misc. Case No. 298 of 2018 as well as C.O. No. 3328 of 2018 was required to be excluded for the purpose of computing the period of limitation prescribed under Section 34 (3) of the Act of 1996. Such period being excluded in terms of the provisions of Section 14 of the Limitation Act, the challenge to the arbitral award being A.P. No. 74 of 2019 was filed well within the prescribed period. In support of such proposition, learned advocate for the appellant cited the decision reported in ***(2020) 12 Supreme Court Cases 667 (EXL Careers and Another Vs. Frankfinn Aviation Services Private Limited)***.

5. Learned advocate for the appellant further contended that the learned Single Judge did not appreciate that in the arbitral proceeding, the respondents had claimed award regarding recovery of possession of immoveable property which is situated beyond the territorial jurisdiction of the Calcutta High Court and therefore, the Calcutta High Court is not the appropriate Court within the meaning of Section 2(1) (e) of the Arbitration and Conciliation Act, 1996 to entertain the proceeding under Section 34 of the Act. Moreover, the issue of jurisdiction was never raised at the time of consideration of the application under Section 29A of the Act of 1996 filed on behalf of respondents which was disposed in terms of order dated September 5, 2017. For such reasons, the provisions of Sections 42 of the Act of 1996 would not be attracted in the facts and circumstances of the case.

6. Learned advocate for the appellant also submitted that the learned Single Judge erred in coming to a conclusion that while challenging the arbitral award by way of Misc. Case No. 298 of 2018, the appellant did not disclose the filing of application under Section 29A of the Act of 1996 and the order passed thereon. It was also contended that learned Trial Judge was not justified in dismissing A.P. No. 74 of 2019 merely on the ground that it was filed beyond the time stipulated under Section 34 (3) of the Arbitration and Conciliation Act. To such proposition, learned advocate for the appellant relied upon a decisions rendered by Karnataka High Court reported in ***2010 SCC OnLine Kar 5270 (M/s Kotak Securities Ltd., Bangalore Vs. Sri Chethan Bhandary and Others)***, ***Indian Law Reporter 1999 Kar 1543 (Seenappa & Ors. Vs. Subbaiah & Ors)***, ***(2008) 7 Supreme Court Cases 169 (Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and Others)*** and ***(2015) 7 Supreme Court Cases 58 (M.P. Steel Corporation Vs. Commissioner of Central Excise)***.

7. It was further the contention of the learned advocate for the appellant that the filing of A.P. No. 74 of 2019 on February 6, 2019 cannot be said to be beyond the period of limitation in so far as the signed copy of the award was not been served upon and received by the appellant i.e. party to the arbitration proceeding in terms of the provisions of Section 31 (5) of the Act of 1996. Service of copy of the

award upon an agent or advocate for the party cannot be considered for the purpose of limitation for challenging an award under Section 34.

8. On the other hand, learned advocate for the respondent contended that the application under Section 34 of the Act of 1996 was filed much after the expiry of time period prescribed under Section 34 (3) of the Act. It was further argued that the appellant has not pleaded any plausible reason for such delay or the reasons for not presenting the application which was returned for its presentation before the competent Court. In such view of the facts, the appellant is not at all entitled for the benefits of Section 14 of Limitation Act, 1963. It was also submitted by learned advocate for the respondent that the appellant has abandoned the original application under Section 34, returned by the earlier Court and proceeded to file a fresh application without obtaining due leave of the Court, contemplated under Order XXIII Rule 3 of the Civil Procedure Code, 1908. Therefore, the appellant is debarred from presenting a fresh application under Section 34 of the Act of 1996 in view of the provisions of Order XXIII Rule 4 of the Civil Procedure Code. In support of his contentions, learned advocate for the respondent relied upon order dated February 26, 2021 passed by Hon'ble Supreme Court in ***Special Leave to Appeal (C) No(s). 3269-3270 of 2021 (Manjan Devi Patni & Ors. Vs. Mohanlal Agarwal)***.

9. The learned advocate for the respondent stood by the impugned judgment and order and submitted that the learned Single

Judge rightly dismissed A.P. No. 74 of 2019 on the ground of delay in filing the challenge under Section 34 of the Act of 1996. According to learned advocate for the respondent, the impugned judgment and order is liable to be affirmed.

10. Owing to disputes and differences between the parties in respect of certain immoveable properties situated at premises No. 14, R.G. Kar Road, P.S. Ultadanga, Kolkata-700004, within the territorial jurisdiction of Alipur, South 24 Parganas, there was an arbitral reference at the behest of respondent Nos. 1 to 11 herein as claimants. Learned arbitrator entered into the reference and passed an award on February 28, 2018. By the said award learned arbitrator directed the appellant to pay ₹1,10,00,000/- to respondent Nos. 1 to 11 together with interests at varied rates for different periods. By the impugned arbitral award, the appellant was also directed to deliver possession of the immoveable property being premises No. 14, R.G. Kar Road, P.S. Ultadanga, Kolkata- 700004 along with all the documents etc. concerning such property to the aforesaid respondents.

11. Such arbitral award was challenged by the appellant by way of Misc. Case No. 298 of 2018 before learned District Judge at Alipore, South 24 Parganas, under the provisions of Section 34 of Arbitration and Conciliation Act, 1996 on the ground that the suit properties were situated within the territorial jurisdiction of learned District Judge, Alipore, the said Court had the jurisdiction to entertain an application

under Section 34 of the Act of 1996 concerning the disputes involved in the arbitral award.

12. The respondents entered appearance in the said Misc. Case and preferred a challenge to the maintainability of Misc. Case No. 298 of 2018 before learned District Judge at Alipore, South 24 Parganas. It was the contention on the part of the respondents that during the pendency of the arbitral proceeding, the respondents had filed an application under Section 29A of the Act of 1996 being A.P. No. 712 of 2017 before a Single Judge of High Court, Calcutta seeking extension of time of making and publication of the arbitral award. Such application on behalf of the respondents was allowed in presence of the appellant and by an order dated September 5, 2017 the time of making and publication of the arbitral award by the learned arbitrator was extended.

13. In such context, since an initial application was entertained and orders were passed in connection with the said arbitration, according to respondents, the Court of learned District Judge at Alipore lost jurisdiction in the proceeding in terms of the provisions of Section 42 of the Act of 1996. The respondents had thus prayed for rejection of the proceedings under Section 34. Section 42 of the Arbitration and Conciliation Act, lays down that,

> *"42. Jurisdiction.—Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in*

> *force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court."*

14. During the pendency of Misc. Case No. 298 of 2018, the respondents again approached a Single Judge of this Court by way of EC No. 327 of 2018 seeking execution of the impugned arbitral award dated February 28, 2018 as against the appellant. It was contended that the execution application was moved on behalf of the respondents upon due notice to the appellant. The said application was also disposed of by an order dated August 1, 2018 passed by a Single Judge of this Court, restraining the appellant from selling, disposing of, alienating and encumbering the properties involved in the arbitration. The said order dated August 1, 2018 was never challenged by the appellant.

15. The appellant contested the application questioning the jurisdiction of learned District Judge, Alipore, South 24 Parganas, filed on behalf of the respondents by filing written objection thereto. Upon hearing the parties and considering the materials on record, the learned District Judge at Alipore, by an order passed on August 14, 2018 directed return of the application under Section 34 of the Act of 1996 registered as Misc. Case No. 298 of 2018 to the appellant for its

presentation before the appropriate Court having requisite jurisdiction to entertain such application.

16. Order dated August 14, 2018 passed in Misc. Case No. 298 of 2018 was challenged by the appellant in a proceeding under Article 227 of the Constitution of India being C.O. No. 3328 of 2018 which was contested by the respondent Nos. 1 to 11. However, C.O. No. 3328 of 2018 was rejected by an order passed on January 24, 2019. It is thereafter, on February 5, 2019, the appellant proceeded to receive back the original arbitral award from the Court of learned District Judge at Alipore and subsequent thereto filed the proceeding under Section 34 of the Act of 1996 before this Court being A.P. No. 74 of 2019, which of course, was rejected in terms of the impugned judgment and order.

17. The issue which has fallen for our consideration in the present proceeding is, whether Misc. Case No. 298 of the Act of 1996 and C.O. No. 3328 of 2018 were pursued by the appellant with due diligence and whether the period spent in prosecuting such proceedings is liable to be excluded and the appellant is entitled to the benefits of the provisions of Section 14 of Limitation Act, 1963 which reads as follows:

> *"14. Exclusion of time of proceeding bona fide 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.

(2) In computing the period of limitation prescribed 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 in a Court of appeal, 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.

Explanation I. — 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.

Explanation II. — For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

Explanation III. — For the purposes of this section misjoinder of parties or of causes of action shall be deemed to be a cause of like nature with defect of jurisdiction.

Explanation IV. — In suitable cases proceedings in the Revenue Department may come within the expression civil proceedings as used in the section."

18. It has been contended on behalf of the appellant that since the immoveable properties involved in the arbitration proceeding, were situated within the territorial jurisdiction of learned District Judge at Alipore, South 24 Parganas, the appellant filed the challenge under

Section 34 of the Act of 1996 before such Court bona fide by way of Misc. Case No. 298 of 2018. An objection as to the jurisdiction of such Court was raised by the respondents on the ground of the provision contained in Section 42 of the Act of 1996. Such objection was accepted by learned District Judge at Alipore, South 24 Parganas, which was subsequently upheld by a Single Bench of this High Court in C.O. No. 3328 of 2018.

19. It is not in dispute that initially, an application under Section 29A of the Act of 1996 was filed and entertained by Single Bench of this Court under Section 29A of the Act of 1996 being A.P. No. 712 of 2017 seeking extension of time for making and publication of the arbitral award. Such application on behalf of the respondents was allowed in presence of the appellant and by an order dated September 5, 2017 the learned Judge extended the time of making and publication of the arbitral award by the learned arbitrator. Nothing has been placed before us to suggest that the appellant raised an objection as to the jurisdiction of such Court to entertain the application under Section 29A of the Act of 1996. Apparently, orders were passed in A.P. No. 712 of 2017 extending time for making and publication of the arbitral award.

20. If that be so, the Court of learned District Judge at Alipore, South 24 Parganas lost jurisdiction to entertain an application under Section 34 of the Act of 1996 in terms of the provisions of Section 42

of the said Act. In such view of the facts, learned District Judge at Alipore, South 24 Parganas, by its order dated August 14, 2018 accepted the objection as to its jurisdiction to entertain an application under Section 34 of the Act of 1996 and directed return of the application under Section 34 of the Act, being Misc. Case No. 298 of 2018. Such order of learned District Judge, Alipore was challenged in C.O. No. 3328 of 2018 and was upheld by a Single Bench of this Court. The impugned order notes that the application under Section 29A of the Act of 1996 filed at the behest of respondents was decided in presence of the appellant.

21. The impugned judgment and order also noted that by an order dated August 1, 2018 passed by a Single Judge of this Court in EC No. 327 of 2018, the appellant was restrained from transferring, alienating, encumbering or in any way dealing with the immoveable properties involved in the arbitration. Such order was never challenged by the appellant for lack of jurisdiction. The appellant was well aware of filing of application under Section 29A before the High Court at Calcutta and in fact, it was contested by the appellant there. Therefore, in terms of the forum selection clause envisaged under Section 42 of the Act of 1996, the High Court on its Original Side is the first Court having jurisdiction to entertain an application under Section 34. Nevertheless, the appellant proceeded to file an application under Section 34 before the learned District Judge, Alipore, South 24

Parganas and an order passed therein for return of the application was challenged up to the High Court in C.O. No. 3328 of 2018.

22. As noted above, the impugned award was passed on February 28, 2018. The judgment and order impugned herein, notes that the appellant filed the initial challenge to the award before learned District Judge at Alipore, well within the time prescribed under Section 34 (3) of the Act which, however, culminated into order dated August 14, 2018, directing return of the application on account of lack of jurisdiction for its presentation before the appropriate Court having jurisdiction. Such order was challenged and upheld by order passed by a Single Judge of this Court on January 24, 2019 in C.O. No. 3328 of 2018. It is after the disposal of C.O. No. 3328 of 2018, the appellant approached the Court of the learned District Judge, Alipore on February 5, 2019 to receive back the original award and thereafter, the application under Section 34 of the Act of 1996 being A.P. 74 of 2019 was filed before the High Court on its Original Side.

23. Therefore, the arbitral award dated February 28, 2018 came to be challenged under Section 34 of the Act of 1996 on February 6, 2019 by A.P. No. 74 of 2019. It was contended on behalf of appellant that the time consumed in prosecuting Misc. Case No. 298 of 2018 before the learned District Judge, Alipore and C.O. No. 3328 of 2018 before this Court should be excluded in terms of the provisions of Section 14 of the Limitation Act, 1963.

24. We have noted hereinbefore that the order dated September 5, 2017 in A.P. No. 712 of 2017 under Section 29A of the Act of 1996 was passed in presence of the appellant. Nothing is placed before us that the appellant raised any objection as to the jurisdiction of the Court passing such order. The said order was also not challenged by the appellant. If that be so, the appellant cannot be seen to subsequently turn around to raise objection as to the jurisdiction of the Court passing order dated September 5, 2017. In such view of the facts, it cannot be said that the appellant observed due diligence in pursuing the other proceedings namely Misc. Case No. 298 of 2018 and C.O. No. 3328 of 2018.

25. Moreover, after the order of return of the application under Section 34 by the learned District Judge, Alipore dated August 14, 2018, and order dated January 24, 2019 in C.O. No. 3328 of 2018 by the High Court, the appellant approached the Court of learned District Judge to receive back the original award on February 5, 2019 and thereafter came up with a fresh application under Section 34 on February 6, 2019 by way of A.P. No. 74 of 2019. No explanation, whatsoever, has been advanced to explain the delay occurring between January 24, 2019 when the order in C.O. No. 3328 of 2018 was passed and February 6, 2019 being the date of thing of fresh application under Section 34 of the Act of 1996.

26. Further, no explanation, whatsoever, has been placed on record to elucidate that when upon passing of the order dated January 24, 2019 in C.O. No. 3328 of 2018, the appellant approached the Court of learned District judge, Alipore to receive back the original award on February 5, 2019 for its presentation before the appropriate Court, what prevented him from receiving back the original application under Section 34 for the self-same purpose. A fresh application under Section 34 being A.P. No. 74 of 2019 came to be filed by the appellant on February 6, 2019 before the High Court. Ideally, the original application with the relevant endorsement by the Court concerned or with a copy of the order directing return of the application, ought to have been presented before the Court having jurisdiction which has apparently, not been done. True it is, the appellant was at liberty to file a fresh application under Section 34 of the Act of 1996 but such legal right is subject to the laws of limitation.

27. In ***EXL Careers and Another*** (supra) noted paragraph 17 of the decision rendered in ***ONGC Vs. Modern Construction & Co. (2014) 1 Supreme Court Cases 648*** and held thus,

> *"15. Modern Construction, referred to the consistent position in law by reference to Ramdutt Ramkissen Dass v. E.D. Sassoon & Co., Amar Chand Inani v. Union of India, Hanamanthappa v. Chandrashekharappa, Harshad Chimanlal Modi (2) and after also noticing Joginder Tuli, arrived at the conclusion as follows: (Modern Construction case, SCC p. 654, para 17)*

> *"17. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order 7 Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same."*

Joginder Tuli was also noticed in Harshad Chimanlal Modi (2) but distinguished on its own facts.

16. ……..

17. We regret our inability to concur with Oriental Insurance Co. Ltd., relied upon by Mr Patwalia, that in pursuance of the amendment dated 1-2-1977 by reason of insertion of Rule 10-A to Order 7, it cannot be said that under all circumstances the return of a plaint for presentation before the appropriate court shall be considered as a fresh filing, distinguishing it from Amar Chand. The attention of the Court does not appear to have been invited to Modern Construction and the plethora of precedents post the amendment."

28. The Karnataka High Court in the case of ***M/s Kotak Securities Limited*** (supra), held to the following:

> *"20. Even assuming that in certain circumstances, the filing of the same petition which was returned with an endorsement stating that the said Court had no jurisdiction is not mandatory in all cases and that a fresh petition could be presented before the Court having jurisdiction, ultimately it is for the Court which is to be satisfied about the cause shown. Therefore, it has to be stated that in the facts and circumstances of this case, where the appellant has not chosen to re-present the original papers, it was incumbent upon him to explain the circumstances under which it could not re-present the papers and chose to file a fresh petition, Therefore, we hold that in appropriate cases, appellant whose petition is returned due to want of jurisdiction can seek exemption from re-presenting the very papers on the Court being satisfied of the loss or destruction of papers for reasons beyond the control of the appellant and that the exclusion of time under Section 14 is not conditional on the appellant re-presenting the very papers in all cases,* ***but if the appellant chooses to file a fresh petition, it is incumbent upon him to explain to the satisfaction of the Court the reasons for his omission in not re-presenting the papers and to satisfy the requirements mentioned under Section 14(1) & (2) of the Limitation Act,*** *as the case may be to avail the benefit of exclusion of time taken in prosecuting the previous petition, In the instant case, there is no such explanation, Therefore, the appellant cannot avail the benefit of Section 14(1) or 14(2) of the Limitation Act."*
>
> [Emphasis supplied]

29. In the case at hand, we have noted that no explanation, whatsoever, has been offered by the appellant for not presenting the original application and instead filing a fresh one. In order to claim the benefits of Section 14 of the Limitation Act, the appellant was obliged to explain the circumstances for filing a fresh application under Section 34 instead of the one which was directed to be returned by the Court not having jurisdiction to entertain it, though, the original award under challenge was consciously received back from such Court.

30. In ***Consolidated Engineering Enterprises*** (supra), the Hon'ble Supreme Court laid down the difference in the applicability of Section 5 of the Limitation Act, 1963 vis-à-vis Section 14 thereof in the following terms:

> *"28. Further, there is fundamental distinction between the discretion to be exercised under Section 5 of the Limitation Act and exclusion of the time provided in Section 14 of the said Act. The power to excuse delay and grant an extension of time under Section 5 is discretionary whereas under Section 14, exclusion of time is mandatory, if the requisite conditions are satisfied. Section 5 is broader in its sweep than Section 14 in the sense that a number of widely different reasons can be advanced and established to show that there was sufficient cause in not filing the appeal or the application within time. The ingredients in respect of Sections 5 and 14 are different. The effect of Section 14 is that in order to ascertain what is the date of expiration of the "prescribed period", the days*

excluded from operating by way of limitation, have to be added to what is primarily the period of limitation prescribed. Having regard to all these principles, it is difficult to hold that the decision in Popular Construction Co. [(2001) 8 SCC 470] rules that the provisions of Section 14 of the Limitation Act would not apply to an application challenging an award under Section 34 of the Act.

29. As this Court holds that Section 14 of the Limitation Act, 1963 is applicable to an application filed under Section 34 of the 1996 Act for setting aside an award made by an arbitrator, the appeal arising from Special Leave Petition (C) No. 10311 of 2005 will have to be dismissed because the Division Bench of the High Court of Karnataka has in terms held that there was no lack of bona fides on the part of the respondents and that the respondents had diligently prosecuted the matter before the other court and had also immediately after coming to know the lack of jurisdiction of the court had filed the memo seeking withdrawal of the appeal and presented the same before the lower court which had the jurisdiction."

31. In the aforesaid authority the Hon'ble Supreme Court further laid down that,

"56. In Parson Tools this Court did not hold that Section 14(2) was excluded by reason of the wording of Section 10(3-B) of the Sales Tax Act. This Court was considering an appeal against the Full Bench decision of the Allahabad High Court. Two Judges of the High Court had held that the time spent in prosecuting the application for setting aside the order of dismissal of appeals in default, could be excluded when computing the period of limitation for filing a revision under

Section 10 of the said Act, by application of the principle underlying Section 14(2) of the Limitation Act. The minority view of the third Judge was that the revisional authority under Section 10 of the U.P. Sales Tax Act did not act as a court but only as a Revenue Tribunal and therefore the Limitation Act did not apply to the proceedings before such Tribunal, and consequently, neither Section 29(2) nor Section 14(2) of the Limitation Act applied. The decision of the Full Bench was challenged by the Commissioner of Sales Tax before this Court, contending that the Limitation Act did not apply to tribunals, and Section 14(2) of the Limitation Act was excluded in principle or by analogy. This Court upheld the view that the Limitation Act did not apply to tribunals, and that as the revisional authority under Section 10 of the U.P. Sales Tax Act was a tribunal and not a court, the Limitation Act was inapplicable. ***This Court further held that the period of pendency of proceedings before the wrong forum could not be excluded while computing the period of limitation by applying Section 14(2) of the Limitation Act. This Court, however, held that by applying the principle underlying Section 14(2), the period of pendency before the wrong forum may be considered as a "sufficient cause" for condoning the delay, but then having regard to Section 10(3-B), the extension on that ground could not extend beyond six months.*** *The observation that pendency of proceedings of the nature contemplated by Section 14(2) of the Limitation Act, may amount to a sufficient cause for condoning the delay and extending the limitation and such extension cannot be for a period in excess of the ceiling period prescribed, is in the light of its finding that Section 14(2) of the Limitation Act was inapplicable to revisions under Section 10(3-B) of the U.P. Sales Tax Act. These observations cannot be interpreted as*

laying down a proposition that even where Section 14(2) of the Limitation Act in terms applied and the period spent before wrong forum could therefore be excluded while computing the period of limitation, the pendency before the wrong forum should be considered only as a sufficient cause for extension of period of limitation and therefore, subjected to the ceiling relating to the extension of the period of limitation. As we are concerned with a proceeding before a court to which Section 14(2) of the Limitation Act applies, the decision in Parson Tools which related to a proceeding before a Tribunal to which Section 14(2) of the Limitation Act did not apply, has no application."

[Emphasis supplied]

32. ***Seenappa*** (supra) was rendered by Karnataka High Court in the context of a partition suit where a second partition suit was filed without taking leave in the earlier suit to file a fresh suit. The High Court observed that if the plaintiff does not avail the concession of taking return of the plaint and the Court fee and does not present the same plaint on which he paid the Court fee in a Court of competent jurisdiction, it does not bar him to file a fresh suit by again paying Court fee in a Court of competent jurisdiction. The High Court also observed that Order VII, Rule 10 of Civil Procedure Code does not disentitle a party from filing fresh suit in Court of competent jurisdiction, if he does not choose to take return of the plaint filed in a wrong Court for presentation in proper Court.

33. In ***M.P. Steel Corporation*** (supra) the Hon'ble Supreme Court noted that the provisions contained in Section 14 of the Limitation Act, 1963 should be construed liberally. It was laid down that,

> *"35. This judgment is in line with a large number of authorities which have held that Section 14 should be liberally construed to advance the cause of justice—see Shakti Tubes Ltd. v. State of Bihar [(2009) 1 SCC 786 : (2009) 1 SCC (Civ) 370] and the judgments cited therein. Obviously, the context of Section 14 would require that the term "court" be liberally construed to include within it quasi-judicial tribunals as well. This is for the very good reason that the principle of Section 14 is that whenever a person bona fide prosecutes with due diligence another proceeding which proves to be abortive because it is without jurisdiction, or otherwise no decision could be rendered on merits, the time taken in such proceeding ought to be excluded as otherwise the person who has approached the court in such proceeding would be penalised for no fault of his own. This judgment does not further the case of Shri Viswanathan in any way. The question that has to be answered in this case is whether suits, appeals or applications referred to by the Limitation Act are to be filed in courts. This has nothing to do with "civil proceedings" referred to in Section 14 which may be filed before other courts or authorities which ultimately do not answer the case before them on merits but throw the case out on some technical ground. Obviously the word "court" in Section 14 takes its colour from the preceding words "civil proceedings". Civil proceedings are of many kinds and need not be confined to suits, appeals or applications which are*

> *made only in courts stricto sensu. This is made even more clear by the explicit language of Section 14 by which a civil proceeding can even be a revision which may be to a quasi-judicial tribunal under a particular statute."*

34. Therefore, on the basis of ratio laid down in the aforementioned authorities, it is evident that in order to avail the benefits under Section 14 of the Limitation Act, the party claiming benefits has to establish that there was observance of due diligence on the part of such party in pursuing the proceedings in the wrong forum.

35. In the order dated February 26, 2021 passed by the Hon'ble Supreme Court in Special Leave to Appeal (C) No(s). 3269-3270 of 2021, between the self-same parties, it was observed that,

> *"Prima facie, the application filed by the Respondents under Section 34 of the Arbitration and Conciliation Act, 1996 is barred by limitation, the same having been filed in the High Court well beyond four months from the date of the receipt of the Award. The learned Single Bench has, by a reasoned judgment rejected the claim of the Respondents to the benefit of Section 14 of the Limitation Act, 1963.*
>
> ***Even assuming that the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 in the District Court, were instituted bona fide there could be no bona fide reason for pursuing a Civil Revision Application from the reasoned order of the District Court returning the application under Section 34 for presenting the same before the appropriate Court instead of re-filing the***

application under Section 34 in the Original Side of the High Court, the respondents filed a Civil Revisional Application, and thereby caused delay."

[Emphasis supplied]

36. In view of the observations made by the Hon'ble Supreme Court, the appellant cannot be said to have acted with requisite bonafide as contemplated under Section 14 of the Limitation Act, 1963, in pursuing the Civil Revision being C.O. 3328 of 2018 and as such, the appellant is not entitled to the benefits of such provision.

37. On the basis of discussion made hereinabove, we find no materials to interfere with the impugned judgment and order. The same stands affirmed. Consequently, **APO No. 27 of 2021** is hereby dismissed. Connected application(s), if any, shall also stand disposed of. There will be no order as to costs, however. Trial Court Records be returned to the appropriate Court.

38. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

39. I agree.

[DEBANGSU BASAK, J.]