IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

OMP Nos. 1468 & 1469 of 2025 in
C.S. No. 48 of 2025
Reserved on : 7.9.2026
Decided on: 30.9.2026
Uploaded on : 30.9.2026

M/s MMG Healthcare

... Plaintiff/Applicant

Versus

M/s Abil Chempharma Pvt. Ltd. & ors.

...Defendants/Non-applicants

Coram
Hon'ble Mr. Justice Virender Singh, Judge
Whether approved for reporting? yes

For the Applicant: Mr. Karan Singh Kanwar, Senior Advocate with Mr. Manish Kumar, Advocate.

For the Non-applicants : Mr. Neeraj Gupta, Senior Advocate, assisted by Mr. Pranjal Munjal, Advocate.

Virender Singh, Judge

The above titled OMPs have been filed by the applicant, in Civil Suit No. 48 of 2025. By way of OMP No.1468 of 2025, a prayer has been made for exclusion of the time, w.e.f.18.2.2022 i.e. filing of Civil Suit No. 11 of 2022, before the Court of learned Senior Civil Judge,

Nahan, District Sirmaur, H.P., which was dismissed as withdrawn on 7.4.2025, till the actual date of filing of the present suit, before this Court.

2. The said application has been filed under the provisions of Section 14 of the Limitation Act, in Civil Suit No. 48 of 2025, which has been filed by the applicant/plaintiff, for recovery of amount of Rs. 3,05,67,485/-, along with interest, @ 18% per annum, from the date of filing of the suit, till realization of the amount, against the defendants, along with the cost.

3. The plaintiff has earlier filed a Civil Suit No. 11 of 2022 before the Court of learned Senior Civil Judge, Nahan, District Sirmaur, H.P.

4. It is the pleaded case of the applicant that by filing the Civil Suit, before the Court of learned Senior Civil Judge, Nahan, the applicant has gained nothing and due to bonafide mistake, said litigation has been instituted before the Court of Learned Senior Civil Judge, Nahan, District Sirmour, H.P.

5. The applicant has also pleaded that he had acted with due diligence throughout and had taken timely

action in February, 2022 itself, for the redressal of his grievances. After passing of the order dated 7.4.2025, the applicant has obtained the opinion, in the matter, and contacted his present counsel.

6. On the basis of the averments, as made in the application, a prayer has been made to exclude the period w.e.f. 18.2.2022, till the actual date of filing of the present case, before this Court for the purpose of computing the limitation, for the purpose of filing the present suit.

7. OMP No. 1468 of 2025 has duly been supported by the affidavit of the partner of the applicant firm.

8. Along with the application, another application bearing OMP No. 1459 of 2025 has been filed to permit the applicant to deposit the cost, in terms of order dated 7.4.2025, passed by the Court of learned Senior Civil Judge, Nahan, District Sirmaur in Civil Suit No. 11 of 2022, reiterating the factual position, as to how on the application under Order 23 CPC, permission has been granted to the applicant to withdraw the suit, before the Court of learned Senior Civil Judge, Nahan and liberty

has been accorded to him to file the fresh suit, on the same cause of action, that too, subject to cost of Rs. 3000/-.

9. According to the applicant, after the withdrawal of the suit from the Court of learned Senior Civil Judge, Nahan, District Sirmour, H.P., the applicant has no other mode to pay cost to the non-applicant, save and except to deposit the same, before this Court, as he was not having any contact with the non-applicant. As such, a request has been made to deposit the amount of cost, in the Registry. Along with the application, a draft amounting to Rs. 3000/- dated 16.9.2025, has been annexed.

10. Both these applications were contested by the defendants.

11. While contesting the application, under Section 14 of the Limitation Act, the defendants have taken the preliminary objection that the application is not maintainable; application is misconceived, as the plaintiff had earlier instituted the suit for recovery at Nahan, on 18.2.2022 and the cause of action disclosed

in the plaint filed at Nahan, cannot be extended, under the garb of liberty granted to the plaintiff; suit of the applicant/plaintiff is stated to be barred by limitation and as such, according to the defendants, the liberty granted by the Court, cannot extend the period of limitation, as provided under Section 23 (2) of the CPC. According to the defendants, limitation for filing the suit has already expired.

12. Application has also been opposed on the ground that the conditions imposed by the learned Senior Civil Judge, Nahan, have not been complied with.

13. Apart from this, objection of estoppel has also been taken against the applicant, as according to the non-applicants, applicant has not exercised the due diligence, on its part to file the application, or to take action, in terms of order dated 7.4.2025.

14. On merits, factual position, as asserted in the application, has been controverted, with regard to the factual position, which leads to filing of the Civil Suit.

15. Application, under Section 151 of the CPC, has also been contested almost on the same grounds.

16. In the reply to the application, under Section 151 of the CPC, plea has also been taken that the conditional order was passed by the learned Senior Civil Judge, Nahan, H.P., directing the applicant to pay cost to defendants/non-applicants and the applicant has failed to deposit the cost, as directed by the Court. As such, applicant has no right to file and maintain the present application.

17. Another objection has also been taken in the reply that the applicant, despite knowing the fact that the suit, in which, a sum of Rs. 2,00,00,000/- was demanded, is liable to be instituted, before this Court and the learned Senior Civil Judge, Nahan has no jurisdiction to try and decide this suit, and the applicant has filed the said suit intentionally before the said Court.

18. According to the non-applicants, their application, under Order 7 Rule 11 of the CPC has simply been disposed of, on 7.4.2025, in view of the fact that the applicant was permitted to withdraw the suit. The act of the applicant to file the suit, before the

learned Senior Civil Judge, Nahan, District Sirmaur, H.P., according to the non-applicants, cannot be said to be bonafide, and the same was filed with an intention to unnecessarily harass the non-applicants.

19. On the basis of the above facts, a prayer has been made to dismiss both the applications.

20. The factual position, as asserted in the applications, has not been disputed, in this case, as the plaintiff/applicant has filed the suit, before the learned Senior Civil Judge, Nahan, District Sirmaur, H.P.

21. In the said suit, the plaintiff has moved the application for withdrawal of the suit, with the liberty to file a fresh one, which was considered by the learned trial Court and was allowed, subject to payment of costs of Rs. 3,000/-. Admittedly, the order dated 7.4.2025, permitting the plaintiff to withdraw the suit, with the liberty to file afresh, was passed in the presence of the defendants/non-applicants.

22. Admittedly, the said order has not been assailed by the defendants. So, once the order, permitting the plaintiff to withdraw the suit to file afresh, on the similar

cause of action, that too, subject of cost of Rs. 3000/- has attained finality, then, the bonafide of the applicant to file the present suit, before this Court, cannot be doubted and and the period, for which, the applicant was bonafidely pursuing its remedy, before the learned Senior Civil Judge, Nahan, is liable to be excluded, as per the provisions of Section 14 of the Limitation Act. Provisions of Section 14 of the Limitation Act are reproduced 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.*
>
> *(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 XXXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that 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.*
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> *Explanation.—For the purposes 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."*

23. The provisions of Section 14 of the Limitation Act have elaborately been discussed by Hon'ble Supreme Court in a case titled as, **'Purni Devi & anr. versus Babu Ram & anr.'**, reported in 2024 SCC Online SC 482. Relevant paragraphs 30 to 37 of the judgment are reproduced, as under:

> *"30. The principles pertaining to applicability of Section 14, were extensively discussed and summarised by this Court in Consolidated Engg. Enterprises (Supra), wherein while holding the exclusion of time period under Section 14 of the Limitation Act to a petition*

under Section 34 of the Arbitration Act it was observed:-

> *"21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:*
>
> *1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;*
>
> *(2) The prior proceeding had been prosecuted with due diligence and in good faith;*
>
> *(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;*
>
> *(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue; and*
>
> *(5) Both the proceedings are in a court."*

31. This Court in Consolidated Engg. Enterprises (Supra) further expounded that the provisions of this Section, must be interpreted and applied in a manner that furthers the cause of justice, rather than aborts the proceedings at hand and the time taken diligently pursuing a remedy, in a wrong Court, should be excluded.

32. In the present case, it is not in dispute that:-

> *(i) Both the proceedings are civil in nature and have been prosecuted by the Plaintiff or the predecessor in interest.(ii) The failure of the execution proceedings was due to a defect of jurisdiction.*
>
> *(iii) Both the proceedings pertain to execution of the decree dated 10.12.1986, which attains finality on 09.11.2000.*

(iv) Both the proceedings are in a court.

33. The only objection pointed out by the Respondent to the ingredients for invocation of Section 14, is that the Plaintiff have not approached this Court with clean hands and did not approach the Court of the Tehsildar diligently and in good faith.

34. The judgment of this Court in M.P. Steel (Supra) discussed the phrases, "due diligence" and "in good faith" for the purposes of invocation of Section 14 of the Limitation Act. While considering the application of Section 14 to the Customs Act, it was observed:

> *10. We might also point out that Conditions 1 to 4 mentioned in the Consolidated Engg. case [(2008) 7 SCC 169] have, in fact, been met by the Plaintiff. It is clear that both the prior and subsequent proceedings are civil proceedings prosecuted by the same party. The prior proceeding had been prosecuted with due diligence and in good faith, as has been explained in Consolidated Engg. [(2008) 7 SCC 169] itself. These phrases only mean that the party who invokes Section 14 should not be guilty of negligence, lapse or inaction. Further, there should be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party.*
>
> *xxx xxx xxx*
>
> *49. ..... the expression "the time during which the plaintiff has been prosecuting with due diligence another civil proceeding" needs to be construed in a manner which advances the object sought to be achieved, thereby advancing the cause of justice." (emphasis supplied)*

35. The judgments in Consolidated Engg. Enterprises (Supra) and M.P. Steel (Supra) have been followed consistently by this Court. For instance in Sesh Nath Singh v. Baidyabati Sheoraphuli Coop. Bank Ltd. 5 (2-Judge Bench), while holding Section 14 to be applicable to applications under Section 7 of the Insolvency and Bankruptcy Code, 2016 and the SARFAESI Act, it was observed:-

> *"75. Section 14 of the Limitation Act is to be read as a whole. A conjoint and careful reading of sub-sections (1), (2) and (3) of Section 14 makes it clear that an applicant who has prosecuted another civil proceeding with due diligence, before a forum which is unable to entertain the same on account of defect of jurisdiction or any other cause of like nature, is entitled to exclusion of the time during which the applicant had been prosecuting such proceeding, in computing the period of limitation. The substantive provisions of sub-sections (1), (2) and (3) of Section 14 do not say that Section 14 can only be invoked on termination of the earlier proceedings, prosecuted in good faith."*

36. More recently, in Laxmi Srinivasa R and P Boiled Rice Mill v. State of Andhra Pradesh and Anr.6 (2-Judge Bench), this Court followed the dictum in Consolidated Engg. Enterprises (Supra) and M.P. Steel (Supra) to exclude the time period undertaken by the Plaintiff therein in pursuing remedy under Writ Jurisdiction, in the absence of challenge to the bona fides of the Plaintiff, in view of Section 14.

37. No substantial averment has come on record to substantiate the claim that the predecessor in interest

> *of the Plaintiff approached the Tehsildar with any mala fide intention, in the absence of good faith or with the knowledge that it was not the Court having competent jurisdiction to execute the decree. The object to advance the cause of justice, as well must be kept in mind."*

24. Judging the facts and circumstances of the present case, in the light of the above provisions, this Court is of the view that admittedly, the Court, before which, the earlier suit was instituted, i.e., the learned Senior Civil Judge, Nahan, was having no pecuniary jurisdiction to try and decide the suit, by virtue of which, the damages, to the tune of Rs. 2,00,00,000/- have been demanded.

25. The reply filed by the non-applicants is totally silent about the object, which the applicant is going to achieve, in filing the suit before a Court, which has no pecuniary jurisdiction to grant the relief. In our country, the litigants are normally relying upon the advice given to them, by their counsel, and when, the Court of learned Senior Civil Judge, Nahan was having no pecuniary jurisdiction to grant the relief, then the bonafide of applicant, cannot be doubted, as the learned

trial Court has rightly permitted the withdrawal of the suit, mainly on the ground that on account of pecuniary jurisdiction, the plaint cannot succeed, on account of formal defect.

26. So far as the decision of Hon'ble Supreme Court in **Arifa & others versus Abhiman Apartment Co-operative Housing Society Limited & others,** reported in (2025) 10 SCC 700, as relied upon by the learned counsel for the non-applicants is concerned, the said decision, in no way, helps the case of the non-applicants, as the question of limitation is a mixed question of law and events, which would be proved during the trial, as held by the Hon'ble Supreme Court in **'Babasaheb Ramdas Shirole & ors. versus Rohit Enterprises & ors'**, reported in 2025 (4) CCC 346.

27. In such situation, the application for the purpose of excluding the time, taken by the applicant, in pursuing the remedy, before the learned Senior Civil Judge, Nahan is liable to be allowed. Consequently, OMP No. 1467 of 2025 is allowed.

28. Similarly, the application, filed under Section 151 CPC, permitting the applicant to deposit the cost, as imposed by the learned Senior Civil Judge, Nahan, District Sirmaur, H.P., vide order dated 7.4.2025 is also allowed, as the condition, was imposed by the learned Senior Civil Judge, Nahan, upon the applicant to file the fresh suit, on the same cause of action, subject to payment of cost of Rs. 3000/-. Meaning thereby, the said condition is to be complied with, when, the applicant will file the suit, on the same cause of action.

29. The procedural laws are meant for advancement of justice and the order passed by the learned trial Court cannot be interpreted in a manner to nullify the order passed by the learned Senior Civil Judge, Nahan dated 7.4.2025, by virtue of which, the conditional permission has been granted to the plaintiff to file the fresh suit on the same cause of action, after withdrawing the earlier litigation. The occasion for tendering/depositing the cost would only arise, if the applicant would file the suit before this Court, not prior to that.

30. Considering all these facts, so far as the objection of the learned counsel appearing for the non-applicants, qua the fact that the suit has not been filed, immediately after withdrawal of the earlier suit, before the Court of learned Senior Civil Judge,Nahan, District Sirmaur, H.P. is concerned, the applicant has specifically pleaded that after withdrawal of the suit, he has contacted his lawyer and thereafter, collected the documents, and filed the suit, before this Court. As such, merely on the aforesaid ground, bonafide of the applicant, cannot be doubted.

31. With these observations, both the applications are allowed.

32. It is clarified that the observations, made hereinabove, are confined to the disposal of the present applications and shall have no bearings on the merits of the case, and the defendants/non-applicants are at liberty to raise any objection, including the maintainability of the suit, as well as, the objection with regard to limitation, which would be decided, at the appropriate stage.

33. Civil Suit No. 48 of 2025

List on _____.

(Virender Singh)
Judge

30.9.2026
Kalpana