



2025:KER:36901

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR. JUSTICE P. KRISHNA KUMAR

THURSDAY, THE 29TH DAY OF MAY 2025 / 8TH JYAISHTA, 1947

RFA NO. 469 OF 2017

AGAINST THE JUDGMENT AND DECREE DATED 30.11.2016 IN OS NO.7

OF 2016 OF ADDITIONAL SUB COURT, NORTH PARAVUR

APPELLANTS/DEFENDANTS:

- 1 M/S. NATIONAL COLLATERAL MANAGEMENT SERVICE LTD.
GAYATRI TOWERS, 954, APPASAHEB MARATHE MARG,
PRABHADEVI, MUMBAI-400025,
REPRESENTED BY ITS MANAGING DIRECTOR.
- 2 THE STATE HEAD
NATIONAL COLLATERAL MANAGEMENT SERVICES
LTD., 283(1), THOPPUMKADAVY, BYE LANE NO.1, PERIYAR
GARDENS-GCDA, THOTTAKKATTUKARA, SEMINARIPADY JN., (NH
47), ALUVA-683108, KERALA.

BY ADVS.

SRI.K.NARAYANAN (PARUR)

SRI.GILBERT GEORGE CORREYA

SRI.T. KRISHNANUNNI, SR.COUNSEL

RESPONDENTS/PLAINTIFFS:

- 1 VALIYAPARAMBIL TRADERS
NEDUMKANDAM, THOOKKUPALAM, KALLAR.P.O,
PIN-685552, IDUKKI DISTRICT,



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REPRESENTED BY THE MANAGING
PARTNER, SHAJAHAN.V.E.

- 2 SHAJAHAN.V.E
SON OF IBRAHIM RAWTHER, VALIYAPARAMBIL
HOUSE, THOOKKUPALAM, KALLAR.P.O,
PIN 685552, IDUKKI DISTRICT.
- 3 MAJIDA SHAJAHAN
WIFE OF SHAJAHAN, VALIYAPARAMBIL
HOUSE, THOOKKUPALAM, KALLAR.P.O,
PIN 685552, IDUKKI DISTRICT.

BY ADVS.
KUM.T.S.ATHIRA
SRI.M.P.JOSEPH TIJO
SRI.MILLU DANDAPANI
SRI.PREMCHAND R.NAIR
SMT.PRIYANKA RAVINDRAN
SRI.ROSHEN.D.ALEXANDER
SRI.ROY THOMAS MUVATTUPUZHA
SMT.TANYA JOY
SRI.S.VISHNU V-736

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON
29.05.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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C. R.

SATHISH NINAN & P. KRISHNA KUMAR, JJ.

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Dated this the 29th day of May, 2025

JUDGMENT

Sathish Ninan, J.

The decree in a suit for money is under challenge by the defendants.

2. The 1st plaintiff is a registered partnership firm. Plaintiffs 2 and 3 are its partners. The plaintiffs are engaged in trading of spices. The 1st defendant is a company engaged in the business of bulk purchase of hill produces from traders. The 2nd defendant is the Kerala State Head of the 1st defendant company. There were various business transactions between the plaintiffs and the defendants. The transactions were on credit basis. Alleging that the



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accounts were running irregular, the suit was filed for recovery of money allegedly due to the plaintiffs.

3. The defendants in their written statement, while admitted the business dealings with the plaintiffs, denied the claim of the plaintiffs that any amounts are due. It was contended that the suit is barred by *res judicata* in view of the judgment in O.S.No.314 of 2013. It was also contended that the suit is barred by limitation.

4. The trial court held that the suit is not barred by *res judicata* and is within the period of limitation. The claim of the plaintiffs was upheld on the merits and accordingly, the suit was decreed.

5. We have heard Shri.T. Krishnanunnni, the learned Senior Counsel on behalf of the appellants-defendants and Smt.Sumathi Dandapani, the learned Senior



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Counsel for the respondents-plaintiffs.

6. The point that arises for determination in this appeal is;

“Was the trial court right in having held that, while computing limitation, the plaintiffs are entitled for exclusion of the period during which the earlier suit O.S.No.314 of 2013, was pending?”

7. The argument of the learned Senior Counsel for the appellants is confined to the issue of limitation. The plaintiffs had filed an earlier suit as O.S.No.314 of 2013 against the defendants for the very same relief. The suit was dismissed as barred under Section 69(2) of the Indian Partnership Act since the firm was unregistered. Thereafter the present suit was filed. The trial court erred in holding that the plaintiffs are entitled for exclusion of the period during which the earlier suit was pending. The benefit of Section 14 of the Limitation Act would be available only if the



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earlier proceeding was prosecuted 'bonafide'. The conduct of the plaintiffs in the earlier suit reveals lack of bonafides. Hence, the plaintiffs are not entitled to exclusion of the limitation under Section 14 of the Limitation Act, is the argument.

8. The learned Senior Counsel for the respondents-plaintiffs would, on the other hand, submit that, it is well settled that Section 14 of the Limitation Act has to be liberally construed to save the *lis*. The trial court has rightly done so and the decree warrants no interference, it is argued.

9. Admittedly, for the very same relief, the plaintiffs had earlier filed O.S.No.314 of 2013. At that time the plaintiff firm was unregistered. Section 69 (2) of the Partnership Act bars the institution of a suit on a contract with a third party by an unregistered firm.



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In the suit, the defendants raised the plea of bar under Section 69(2). After the trial, the court found that the firm is unregistered, and accordingly dismissed the suit as barred under Section 69(2). After the dismissal of O.S.No.314 of 2013, the firm was got registered and the present suit was filed.

10. That, if the period during which the earlier suit was pending is not excluded, the present suit will be barred by limitation, is not in dispute. It is not attempted to contend otherwise. The plaintiffs claim exclusion of the period during which the earlier suit was pending, under Section 14(1) of the Limitation Act. Section 14 (1) reads thus;

“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



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good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.”

For the applicability of the Section, the following ingredients are to be satisfied;

- (1) *Both proceedings must be civil proceedings in a court.*
- (2) *The earlier proceeding must have been prosecuted with due diligence.*
- (3) *The earlier proceeding must have been in respect of the same matter in issue.*
- (4) *The earlier proceeding must have been prosecuted in good faith in a court which enable to entertain the suit for defect of jurisdiction or other cause of a like nature.*

11. In ***Haldiram Bhujiawala v. A.K. Deepak [(2000) 3 SCC 250]***, the Apex Court held that if the suit by an unregistered partnership firm is dismissed for the bar under Section 69 (2), it falls within the words “other cause of like nature” in Section 14 of the Limitation Act and can seek for exclusion of the period during which such suit was pending.



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12. In *Deena (Dead) through Lrs. v. Bharat Singh (Dead) through Lrs.* [(2002) 6 SCC 336], the Apex Court held that the words “or other cause of a like nature” are to be construed ejusdem generis with the words “defect of jurisdiction”. The defect must be of such a character as to make it impossible for the court to entertain the suit.

13. Section 69(2) of the Partnership Act reads thus;

“No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.”

Evidently, there is a prohibition against institution of a suit on a contract by an unregistered firm. By virtue of the prohibition, a court is disabled from entertaining it. The prohibition is imperative and is irrespective of whether the defendant sets up a plea of



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bar under Section 69(2) or not. (See: *Capithan Exporting Co. & ors. v. The New India Assurance Co.Ltd & ors. [2024 (6) KHC 69]*). The Apex Court has in *Haldiram Bhujiawala (supra)* held that dismissal of a suit under Section 69(2) is a “cause of like nature” under Section 14(1) of the Limitation Act.

14. Therefore, the dismissal of the earlier suit on the ground of bar under Section 69 (2) falls within the purview of Section 14 of the Limitation Act.

15. Now we proceed to the argument of the learned Senior counsel that the earlier suit was not being prosecuted bonafide and with due diligence, and hence the plaintiffs cannot seek shelter under Section 14(1) of the Limitation Act.

16. In the written statement in the earlier suit, a specific plea was raised with regard to the bar of suit under Section 69(2) of the Partnership Act. A specific



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issue was raised on such plea with regard to the maintainability of the suit. In spite of the same, the plaintiffs proceeded with trial of the suit and ultimately invited a judgment holding the suit to be barred under Section 69(2). It cannot be held that the prosecution of the earlier suit even on the face of such contention by the defendants was bonafide. Therefore, the plaintiffs are not entitled for the benefit of Section 14 of the Limitation Act, it is argued. To substantiate the submission, the learned Senior Counsel relied on the judgment of the Bombay High Court in *Surajmal Dagduramji, Shop v. M/s.Shrikisan Ramkisan* [AIR 1973 Bom. 313].

17. As noticed earlier, having bonafide prosecution of the earlier suit in a court unable to entertain it and having prosecuted the suit with due diligence are essential ingredients to seek exclusion under Section



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14(1). In *Madhavrao Narayanrao Patwardhan v. Ramkrishna Govind Bhanu and Ors. [AIR 1958 SC 767]*, the Apex Court noticed the difference in the definition of the term “good faith” as occurring in the General Clauses Act and in the Limitation Act. It was held that while under the General Clauses Act a mere honest action, even if negligent, would amount to good faith, under the definition given in Section 2(7) of the Limitation Act any act not done with due care and attention is not deemed to be done in good faith. The Apex Court held that, the definition in the Limitation is to be applied while construing Section 14 of the Limitation Act and not the definition under the General Clauses Act. The Court held,

“Both the courts below have viewed the controversy under Section 14 of the Limitation Act, as if it was for the defendant to show mala fides on the part of the plaintiff when he instituted the previous suit and was carrying on the proceedings in that court. In our opinion, both the courts below have misdirected themselves on this question.



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Though they do not say so in terms, they appear to have applied the definition of “good faith” as contained in the General Clauses Act, to the effect that “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.” But the Indian Limitation Act contains its own definition of good faith to the effect that “nothing shall be deemed to be done in good faith which is not done with due care and attention” - (Section 2(7)). We have, therefore, to see if the institution and prosecution of the suit in the Munsiff's Court at Miraj, was done with due care and attention.”

The Apex Court further held,

“The question is not whether the plaintiff did it dishonestly or that his acts or omission in this connection were mala fide. On the other hand the question is whether, given due care and attention, the plaintiff could have discovered the omission without having to wait for about 10 years or more.”

18. The very same principle was reiterated by the Bombay High Court in *Surajmal Dagduramji, Shop* (supra) cited by the learned Senior Counsel. Therein the Court held that, if despite the defendant's plea in the written statement with regard to the bar under Section 69(2),



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the plaintiff made no efforts to find out the true position and went for regular trial and got the suit dismissed, the proceedings could hardly be regarded as bonafide.

19. In *Rabindra Nath Samuel Dawson v. Sivakasi And Others* (AIR 1972 SC 730), the Apex Court, while considering whether the plaintiff therein is entitled to the benefit of exclusion under Section 14(1), observed that therein the objections as to maintainability was taken at the very initial stage, but that was resisted and the suit prosecuted. In that background it was held that, at every stage thereafter, the plaintiff could not be said to have been prosecuting the previous proceeding bona fide. It was held that the plaintiff took a chance which boomeranged against him, and thereafter it could not be said that he was prosecuting the earlier proceedings



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bonafide.

20. In *Mac-N-Hom Systems v. P.S. Varrier* [2003 (3) KLT 1179], this Court held,

“The cardinal policy of the provisions of Section 14 is to furnish protection against the bar of limitation to a person who honestly and diligently solicits a trial on merits in a forum having no jurisdiction and which forum cannot afford him such a trial. Petitioner cannot be said to have prosecuted the suit with due diligence within the meaning of Section 14 when owing to his own negligence or default, the suit is so framed that the court cannot try it on the merits.”

21. Now coming to the facts of the present case, Ext.B1 is the judgment in the earlier suit O.S.No.314 of 2013. It reveals that, even in the plaint it was pleaded that the plaintiff firm is an unregistered one, and that the defendants in their written statement had specifically urged the plea that the suit is not maintainable in view of Section 69(2) of the Indian Partnership Act. An issue was raised on the maintainability of the suit. Still the plaintiffs chose



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to proceed to trial and invited the judgment. Law in the said regard, as notice supra, is categorical that such prosecution of the suit even after being put on notice with regard to the non-maintainability was at their peril and cannot be said to be bonafide prosecution. Hence, we have no hesitation to hold that the plaintiffs are not entitled for the benefit of exclusion for the period of limitation under Section 14 of the Limitation Act. We are unable to agree with the view adopted by the trial court to the contrary.

22. Though the learned Senior Counsel appearing for the respondents would place a host of decisions to contend that a liberal approach is to be taken in interpreting the provisions of the Limitation Act, especially under Section 14, to save a *lis* and not to abort it, we are afraid that how much ever be the



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elasticity given, unless the ingredients mentioned in Section 14 are not satisfied, the parties cannot claim its benefit.

23. Having held that the plaintiffs are not entitled for the benefit of exclusion of period of limitation under Section 14 of the Act, the suit is bound to fail.

Resultantly, the appeal is allowed. The decree and judgment of the trial court are set aside and the suit will stand dismissed.

Sd/-

**SATHISH NINAN
JUDGE**

Sd/-

**P. KRISHNA KUMAR
JUDGE**

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