MISCELLANEOUS CIVIL

Before R. S. Narula and R. N. Mittal, JJ.

MUNSHI—*Petitioner/Appellant.*

versus

PUNNA RAM—*Respondent.*

C. Misc. No. 1919-C of 1973.

In

E. F. A. No. 310 of 1973.

October 29, 1973.

Limitation Act (XXXVI of 1963)—Sections 5 and 14—Circumstances contemplated in section 14—Whether can be taken to constitute "sufficient cause" under section 5—Applicability of section 14 to a suit or an application and its principles to an appeal—Distinction between—Stated—"Sufficient cause"—Meaning of—Proof of sufficient cause for each day's delay—Whether a condition precedent for the exercise of discretion under section 5.

Held, that though section 14 of the Limitation Act, 1963 in terms applies to suits and applications only and not to appeals, yet the circumstances contemplated in the section can justifiably be taken to constitute a "sufficient cause" within the meaning assigned to that phrase in section 5 of the Act for purposes of appeals also. The only distinction between the applicability of section 14 to a suit or an application on the one hand, and the invocation of its principles to an appeal on the other, is that whereas it entitles a plaintiff or an applicant to get the period during which the suit or application was pending and prosecuted *bona fide* in the wrong Court excluded as a matter of right, the remedy based on the principles of that provision under section 5 of the Act in the case of an appeal is discretionary. The Court may condone the delay in filing an appeal in the correct Court, if the requirements of section 14 are satisfied and on the facts and in the circumstances of a given case, they are held to constitute a sufficient cause in the sense in which that expression is used in section 5 of the Act. Even if considerations of good faith and due diligence which are necessary ingredients of section 14 may not be applicable in their rigidity to proceedings under section 5 of the Act, lack or want of *bona fides* can never justify the raising of an inference of sufficient cause in any circumstances.

Held, that the expression "sufficient cause" as used in section 5 of the Act means a cause which is beyond the control of the party invoking the aid of the section or a cause for delay which a party

could not have possibly avoided despite due care and attention. Proof of sufficient cause for the delay of each day in prosecuting the appeal after the period of limitation is a condition precedent to the exercise of discretion under section 5 of the Act.

Application under section 5 read with section 14 Limitation Act praying that the delay be condoned and the appeal admitted.

(*Original Case No. 230 of 1972, decided by Shri P. L. Sanghi Senior Sub-Judge, Karnal, on 18th January, 1973*).

Diali Ram Puri, Advocate, *for the petitioner.*

G. C. Mittal, Advocate, *for the respondent.*

JUDGMENT

Judgment of the Court was delivered by:—

R. S. NARULA, J.—One Darya Ram (who has not been impleaded as a party to this appeal) had entered into a written agreement for the sale of the property in dispute to Punna Ram, plaintiff-respondent (hereinafter referred to as the decree-holder) on August 30, 1967, wherein he had agreed to execute the sale-deed on or before June 5, 1968. The decree-holder came to know that Darya Ram was proposing to commit breach of the agreement by selling away the property in question to Munshi appellant (hereinafter referred to as the judgment-debtor), and, therefore, filed a suit for injunction against Darya Ram to restrain him from selling the property to the judgment-debtor. The judgment-debtor who had also been impleaded as a defendant in that suit contested it, filed his written statement and even appeared as a witness in that suit. It is stated that on an objection against the maintainability of the suit for injunction, the said suit was withdrawn by the decree-holder and thereafter the suit for specific performance of the agreement for sale from which the present proceedings have arisen, was instituted by him. In the period that intervened between the dismissal of the suit for injunction and the institution of the suit for specific performance, Darya Ram conveyed the property to the judgment-debtor. The judgment-debtor resisted the suit for specific performance also, but the same was ultimately decreed by the trial Court on July 23, 1971. Along with Regular First Appeal No. 350 of 1971, which was filed by the judgment-debtor against the decree for possession by specific performance of the agreement for sale, the judgment-debtor made an

application for stay of execution of that decree. While admitting the appeal on August 11, 1971, Dhillon, J. directed the stay of execution proceedings *ad interim* with notice of the application for stay to the other side. After hearing the counsel for the judgment-debtor and the decree-holder, Dhillon, J. dismissed the said application (C.M. 2391-C of 1971) in the Regular First Appeal, by his detailed order, dated September 6, 1971, and vacated the ex-parte stay granted by the learned Judge earlier on August 11, 1971. The Regular First Appeal had admittedly been correctly filed in this Court as the jurisdictional value of the suit for specific performance was Rs. 25,000.

(2) After the vacation of the stay order by the High Court, the judgment-debtor filed objections against the execution of the decree in the executing Court which were dismissed on January 13, 1973. Though the judgment-debtor had himself filed the Regular First Appeal against the decree in this Court, he chose a wrong forum for preferring his appeal against the order of the executing Court, dated January 18, 1973. He filed the appeal before the learned District Judge, Karnal, on February 15, 1973. Along with the memorandum of appeal, the judgment-debtor made an application for stay of the execution of the decree against him. While admitting the appeal on the same day, that is on February 15, 1973, the learned District Judge, Karnal, is stated to have issued notice of the appeal to the decree-holder for September 19, 1973, and notice of the application for April 4, 1973. He also granted ex-parte *ad interim* stay of the execution proceedings. Since a long date had been given for the disposal of the application for stay, the decree-holder made an application under order 39 Rule 4 of the Code of Civil Procedure on February 28, 1973, for vacating the ex-parte stay order mainly on two grounds, viz., (i) the Court of the District Judge had no jurisdiction to entertain or deal with the appeal as the valuation of the suit from which the execution proceedings had arisen was Rs. 25,000; and (ii) the High Court had already vacated the stay order on September 6, 1971. When the application came up for motion hearing before the learned District Judge, he chose to issue notice of the same to the decree-holder for the date already fixed in the stay proceedings, that is for April 4, 1973. It is not disputed by Mr. Diali Ram Puri, learned counsel for the judgment-debtor, that notice of that application along with a copy of the application for vacating the stay was served on the judgment-debtor appellant before April 4, 1973, and that the judgment-debtor-appellant appeared before the learned District Judge on that

day in pursuance of that notice. On the date of hearing of the stay proceedings, the judgment-debtor filed a written reply to the application for vacating ex-parte stay wherein he insisted that the District Judge and not the High Court had the pecuniary jurisdiction to hear the execution appeal. It is somewhat strange that the learned District Judge did not decide the stay matter on that day, but merely directed that the application for stay as well as the application for vacating the ex-parte stay would be heard with the appeal itself on September 19, 1973, for which date the notice in the appeal had already been issued. In our opinion, the order of adjournment, dated April 4, 1973, virtually amounted to confirming the stay order till the hearing of the appeal, and for all practical purposes amounted to a dismissal of the application for vacating the ex-parte stay order.

(3) Faced with the situation referred to above, the decree-holder rushed to this Court and filed Civil Revision 535 of 1973, against the ex-parte order of the learned District Judge, dated February 15, 1973, and against the order of that Court, dated April 4, 1973, whereby he had not disposed of the application for vacating the ex-parte stay. The revision petition was allowed by this Court (Dhillon, J.), after notice to the judgment-debtor, and after hearing his counsel on May 31, 1973. The stay order granted by the District Judge was vacated. It was specifically observed by the learned Judge allowing the revision petition that the District Judge should not have granted the stay after the High Court had refused to stay the execution proceedings by order dated September 6, 1971. When the judgment-debtor found that the stay order had been vacated, and he would have to be dispossessed in execution of the decree of the trial Court, he went to the Court of the District Judge and made an application to that Court to return the appeal to him on the ground that the Court of the District Judge lacked pecuniary jurisdiction to hear the appeal. He had refused to admit this position and in fact he had not only contested it in writing in his reply to the decree-holder's application on April 4, 1973 before the District Judge, but had also joined issue with the decree-holder on that point at the hearing of the revision petition in the High Court. It was in that situation that the High Court had expressly left the question of pecuniary jurisdiction of the District Court to hear the execution appeal open as that point was pending consideration in the appeal itself which was at that time *sub-judice* before the District Judge. Yet, suddenly the

correct legal position dawned on him after the stay order had been vacated by the High Court. The learned District Judge allegedly passed an ex-parte order, dated June 6, 1973, on the application of the judgment-debtor without even giving notice of that application to the decree-holder who was a party to the appeal, and on whom the notice of the appeal had already been served for September 19, 1973. The learned District Judge observed that as per the statement of the counsel for the appellant (judgment-debtor), the jurisdictional value in the case was Rs. 26,000, and the appeal had, therefore, been wrongly filed in his Court instead of being filed in the High Court. He, therefore, ordered (on June 6, 1973) that in view of the jurisdictional value of the appeal being Rs. 26,000, the appeal had been wrongly filed in his Court and it should be returned (to the judgment-debtor-appellant) for presentation to the proper Court. The judgment-debtor lost no time at all in taking back the appeal from the Court of the District Judge on the same day and presented the same to this Court on June 7, 1973, along with the miscellaneous applications. In C.M. 1918-C of 1973, under Order 41 Rule 5 of the Code, prayer was made for staying dispossession of the judgment-debtor in execution of the decree in question till the final decision of the appeal. In C.M. 1919-C of 1973, the prayer was for condonation of delay or extension of time for filing the appeal under section 5 of the Limitation Act (hereinafter called the Act) on the ground that delay in the presentation of the appeal had resulted from a *bona fide* mistake in preferring the appeal to the Court of the District Judge, Karnal.

(4) Since the Execution First Appeal and the two applications had been filed during the vacation, those were put up before Koshal, V.J., who passed the following order on June 11, 1973:—

> "Stay dispossession till hearing by the Motion Bench. C.M. 1919-C/73 also to be placed before that Bench for orders."

In pursuance of the order of the learned Vacation Judge, the appeal and C.M. 1919-C of 1973, were put up before us on August 24, 1973, for motion hearing. We gave notice of the C.M. only at that stage. In response to that notice, the decree-holder has appeared through Mr. Gokal Chand Mittal, Advocate, and has vehemently and seriously contested the application for extension of time.

(5) Though section 14 of the Act in terms applies to suits and applications only and not to appeals, the circumstances contemplated

in the section can justifiably be taken to constitute a "sufficient cause" within the meaning assigned to that phrase in section 5 of the Act for purposes of appeals also. A contrary view taken by some High Courts in the earlier days is against the concensus of legal authority on this subject. The only distinction between the applicability of section 14 in terms in the case of a suit or an application on the one hand, and the invocation of the principles of section 14 in the case of an appeal on the other, is that whereas section 14 confers a right on a plaintiff or an applicant to get the period during which the suit or application was pending and prosecuted *bona fide* in the wrong Court excluded as a matter of right, the remedy based on the principles of that provision under section 5 of the Act in the case of an appeal is discretionary, and the court may condone the delay in filing an appeal in the correct Court if the requirements of section 14 appear to have been satisfied, and on the facts and in the circumstances of the given case they are held to constitute a sufficient cause in the sense in which that expression is used in section 5 of the Act. Even if the considerations of good faith and due diligence which are necessary ingredients of section 14 may not be applicable in their rigidity to proceedings under section 5 of the Act, lack or want of *bona fides* can never justify the raising of an inference of sufficient cause in any circumstances.

(6) The sufficient cause pleaded in paragraph 7 of the application for condonation of delay has been couched in the following language:—

> "That it transpired a couple of days ago that the execution of appeal had been wrongly presented to the District Judge, Karnal, as it was entertainable only by the High Court; the wrong presentation of the appeal to the District Judge having been occasioned by the fact that the jurisdictional value of the suit claim was not indicated in the order against which the appeal was presented."

The allegations made in the above-quoted paragraph of the application appear to be *prima facie* incorrect. The application is dated June 6, 1973. The defect of pecuniary jurisdiction in the Court of the District Judge to hear the execution appeal had been patently brought to the notice of the judgment-debtor in writing sometime before April 4, 1973, in the decree-holder's application to the District Judge to vacate the ex-parte stay order. Notwithstanding the notice

of that defect he had insisted not only in the Court of the District Judge on April 4, 1973, on his decision about the forum of the appeal being correct, but also stuck up to that position at the hearing of Civil Revision 535 of 1973, before Dhillon, J., on May 31, 1973. It is, therefore, plain that whereas at earlier stages the deliberate attempt of the judgment-debtor was to keep the appeal before the District Judge pending despite notice of the defect of jurisdiction on the plea that it was the Court of the District Judge which had in fact jurisdiction to entertain and hear the appeal, he has now coined out an absolutely inconsistent plea in this application to the effect that the execution appeal was filed in the District Judge's Court by an error occasioned by the jurisdictional value not having been indicated in the order of the executing Court dismissing the objections against execution. If the judgment-debtor was able to convince us of the truth of the ground pleaded in paragraph 7 of his application, it would indeed have deserved consideration; but that plea is on the face of it untenable in the circumstances to which detailed reference has already been made. Moreover, it cannot possibly be held in the circumstances of this case that the judgment-debtor had been prosecuting the appeal in the Court of the District Judge with due diligence, particularly during the period commencing from April 4, 1973, to June 6, 1973. The burden of proving due diligence is on the litigant claiming the benefit of the provision or principles of section 14. The facts of this case are eloquent enough to show that the judgment-debtor had not preferred the appeal to the Court of the District Judge on account of some possible mistake, and his continuing the appeal in that Court after April 4, 1973, till June 6, 1973, was in any case, not *bona fide*. Proof of sufficient cause for delay of each day in prosecuting the appeal after the period of limitation is a condition precedent to the exercise of discretion under section 5 of the Act. Sufficient cause has been consistently interpreted in judicial decisions to mean a cause which is beyond control of the party invoking the aid of the section or a cause for delay which a party could not possibly have avoided despite due care and attention. The judgment-debtor in this case must fail on both those tests. It appears to us that the application for stay as well as the application for extending the time filed by the judgment-debtor in these circumstances amounts to abuse of the process of the Court.

(7) Mr. Gokal Chand Mittal states that the decree-holder was not aware of the stay order granted by the learned Vacation Judge

when the decree-holder actually took possession of the property in dispute in execution of the decree on June 15, 1973. Mr. Puri on the other hand states that the decree-holder was aware of the stay order and that an application for contempt proceedings has already been filed by his client against the decree-holder. We refrain from expressing any opinion on that matter.

(8) In the above-mentioned circumstances we do not find any justification whatsoever for allowing C.M. 1919-C of 1973, for extension of time, and have no hesitation in dismissing the same with costs. Counsel's fee Rs. 200.

(9) As the appeal is admittedly barred by time it shall stand dismissed *in limine*. Since no notice of the appeal has so far been issued, there can be no order as to costs therein. C.M. 1918-C of 1973, in which the *ex-parte* stay order was granted stands dismissed in view of the appeal itself having been dismissed.

B.S.G.

MISCELLANEOUS CIVIL

Before Balraj Tuli, J.

DILAWAR SINGH —*Petitioner.*

versus

THE STATE OF PUNJAB, ETC. —*Respondents.*

C.W. No. 2747 of 1972.

October 31, 1973.

Constitution of India (1950)—*Articles* 14 *and* 15—*Land belonging to the Government notified for sale by auction restricted to landless workers of Scheduled Castes—Such restricted auction—Whether discriminatory and hit by Articles* 14 *and* 15 *of the Constitution.*

Held, that where the State Government is the owner of the land, which is notified for sale by auction confining it to landless workers of the Scheduled Castes, such a restricted auction does not amount to discrimination and is not hit either by Article 14 or by Article 15 of the Constitution of India. The course adopted by the State is