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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 7th March, 2022

\+ CS(OS) 155/2021 & I.As. 3707/2021, 3708/2021.

JANAK DATWANI ..... Plaintiff

Through: Mr. Abhimanyu Mahajan, Ms. Anubha Goel and Mr. Mayank Joshi, Advocates.

versus

KISHIN DATWANI ..... Defendant

Through: Mr. Vivek Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA HYBRID MODE]

SANJEEV NARULA, J. (Oral):

I.A. No. 8667/2021 *(u/Order VII Rule 11 of the Code of Civil Procedure, 1908, seeking dismissal of the plaint as barred by law)*

1. ESSENTIAL FACTS:

1.1. The Plaintiff and Defendant are brothers and shareholders of a Company named CNA Exports Private Limited.[1]

1.2. The Plaintiff seeks specific performance of the agreement contained in Letter dated 29th January 1992 bearing no. KD/019/92 that was mailed by the Plaintiff to Defendant, offering to purchase Defendant's

[1] Incorporated in India in 1975; ceased business activities in 1990; but currently owns and holds valuable

1500 shares of stock in CNA Exports Private Limited. The said offer was accepted by Defendant *vide* handwritten Letter dated 5th February 1992, wherein he also acknowledged receipt of $6000 from Plaintiff as 100% advance consideration. [*hereinafter, '**Agreement**'*].

1.3. The Plaintiff claims that acceptance of the Agreement by the Defendant was unqualified and absolute, with the understanding that the Plaintiff has fully satisfied and complied with his obligations under the Agreement.

1.4. The Agreement does not prescribe any scheduled date for performance, however, in order to effectuate the transfer of shares in the name of the Plaintiff, a Share Transfer Form [*hereinafter, '**STF**'*] was required to be signed by the Defendant.

1.5. Upon Defendant's failure to execute the STF for a considerable period of time, Plaintiff issued a legal notice dated 9th November 2011, asking the Defendant to execute the STF by 11th November 2011.

2. ENSUING LITIGATION:

2.1. On Defendant's failure to comply with the afore-noted legal notice, Plaintiff embarked upon litigation to seek performance of Defendant's obligations. On 14th November 2011, the Plaintiff instituted a complaint against the Defendant [*hereinafter, '**New York complaint**'*] for specific performance of the Agreement, before the Supreme Court of State of New York, County of New York, bearing No. 112937/2011, and also for directions to the Defendant to sign and

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property in India.

execute the STF. Plaintiff also sought an injunction restraining Defendant from creating third-party rights *qua* the shares in question. The Defendant defended the action on several grounds, including the subject-matter being intimately connected with the subject matter of previously ongoing litigation(s) before Indian Courts.

2.2. The afore-noted complaint was dismissed on 18th December 2013 on the ground of *forum non conveniens*.

2.3. In the meantime, Defendant approached this Court on 15th July 2013, by way of a suit bearing CS(OS) 1461/2013.[2] The same was dismissed *vide* Order dated 23rd August 2013, noting that comity of jurisdictions should be respected and decision of foreign courts might result in conflicting orders.

2.4. Next, on 15th January, 2014, the Plaintiff assailed the order passed in the New York complaint. The said appeal before the Appellate Division of the Supreme Court, New York was dismissed on 7th October, 2014. Thereafter, a second appeal, filed on 16th November, 2014 by the Plaintiff before the Court of Appeals, State of New York, was also rejected on 18th December 2014, with costs.

2.5. In the above circumstances, the Plaintiff filed the instant suit on 13th December, 2017, praying for decree of specific performance of the

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[2] Praying for: (a) declaration against Mr. Janak Datwani that the letter dated 29th January 1992 and the alleged receipt thereof does not constitute a valid, binding and legally enforceable contract;

(b) a decree of declaration that Mr. Kishan Datwani continues to be the lawful owner of 13.33% shareholding in CNA Exports Pvt. Ltd. and has never gifted, sold, transferred alienated, charged, mortgaged or agreed to sell his shareholding to any person;

(c) restraining Janak Datwani from representing himself to be the recipient/transferee/donee in respect of the 1500 shares of the Plaintiff in CNA Exports Pvt. Ltd.

Agreement, along with direction to the Defendant to sign the STF and complete other formalities in that regard.

3. APPLICANT'S CONTENTIONS:

3.1. The limitation period began to run from 14th November 2011, when the Plaintiff instituted the New York complaint. In fact, the cause of action stood crystalized on this date and cannot be said to have occurred later than this date. The present suit has, in fact, been filed after a gap of six years and 63 days from such date, is therefore *ex facie* barred by limitation.

3.2. When the Plaintiff issued the legal notice on 9th November 2011 and later instituted a suit for specific performance before the Court of jurisdiction in New York on 14th November 2011, the cause of action stood crystallized. The ground for dismissal of suit is based on established facts which can be adjudicated purely as a question of law.

3.3. As a matter of fact, in the plaint, while narrating the cause of action, the Plaintiff alleges that it is a "continuing cause of action", which is clearly contrary to the statutory mandate of Article 54 of the Limitation Act, 1963.

3.4. There is no pleading in the suit to the effect that the Plaintiff is entitled to exclusion of time while computing limitation, or for taking the benefit of Section 14 of the Limitation Act, 1963.

3.5. The Plaintiff is not entitled to the benefit of Section 14 of the Limitation Act, 1963. The benefit of exclusion is not automatic, but rests on the discretion of this Court. A key ingredient of Section 14 is that the proceeding in respect of which exclusion of limitation is

sought, ought to have been prosecuted and pursued in good faith. Where the conduct of a party does not disclose good faith, the Court will decline to afford benefit of the abovesaid provision to the Applicant. In support, reliance is placed on the judgments of this Court in ***Mahinder Kaur and Anr. v. Pamela Manmohan Singh and Ors.***,[3] and ***S.V. Krishnier v. A.R. Ramchandra Iyer and Ors***.[4]

3.6. This Court, in several cases, had declined the exercise of discretion in a Plaintiff's favour and refused to afford such benefit of exclusion of time in terms of Section 14 of the Limitation Act, 1963 as their conduct demonstrated a lack of good faith. In the instant case, there were other suits pending between the parties where rival claims as to ownership of shares were hotly contested for many years. No logic has been put forth by the Plaintiff for instituting the New York complaint when litigation in five other suits, concerning the same subject matter i.e., shareholding of the parties, was already pending adjudication before this Court. This demonstrates that the Plaintiffs only sought to circumvent and bypass the jurisdiction of Indian Courts, by filing the New York complaint, and this *prima facie* shows a lack of good faith.

3.7. The word 'court', as occurring in Section 14 of the Limitation Act, 1963 does not include a 'foreign court'. Reliance is placed upon the judgment of the Bombay High Court in ***Chanmalapa Chenbasapa Tenguikai v. Abdul Vahab Hussein***.[5]

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[3] 2015 SCC OnLine Del. 9959.

[4] AIR 1961 Mad. 197.

[5] (1910) 12 BOM. L. R. 977.

3.8. The relaxation permissible under Section 14 cannot be extended to the gap period between the dismissal of the New York complaint and the filing of its appeal; and then again, between the dismissal of the first appeal and the institution of the second appeal. Therefore, the period when no proceedings were pending before any court of law, should be excluded while computing the period of limitation while extending the benefit of Section 14 of the Limitation Act, 1963.

4. PLAINTIFF'S CONTENTIONS

4.1. Under Order VII Rule 11 of the CPC, the plaint is liable to be rejected, only if it appears from a reading of the plaint that the same is barred by law. Disputed questions cannot be adjudicated at the time of deciding application under Order VII Rule 11(d) of the CPC.

4.2. Under Article 54 of the Limitation Act, 1963, computation of limitation begins from the date when cause of action has accrued. The cause of action was continuing till the filing of the suit. It first arose on 29th January 1992, when the Defendant agreed to transfer his entire shareholding to the Plaintiff for a consideration of $6000; then, when the Defendant signed receipt dated 05th February, 1992; then again, when the Plaintiff issued a legal notice dated 09th November 2011; further, when the Defendant failed to sign the STF by 11th November 2011; and then also on 18th December 2014, when an order was passed by the Court of Appeals, State of New York. Thus, the present suit is within limitation.

4.3. Plaintiff instituted the suit before the New York Court in good faith. The Orders passed by the courts in New York demonstrate that the

Plaintiff's action was *bona fide* and in good faith and therefore the period spent from 14th November, 2011 to 18th December, 2014 is liable to be excluded. Thus, the suit is within limitation (two years and 360 days).

4.4. The benefit of Section 14 of the Limitation Act, 1963 is available even if an action has been initiated in a foreign court. Reliance is placed upon the judgment of the full bench of the Rajasthan High Court in ***Firm Ramnath Ramchandra v. Firm Bhagatram & Co.***[6]

4.5. The entire period spent litigating in Courts which lacked jurisdiction has to be excluded, notwithstanding the fact that there have been some gaps in prosecuting the intra-court appeals. In support of this contention, reliance is placed upon ***Raghunath Das v. Gokal Chand and Anr.***[7]

ANALYSIS AND FINDINGS

5. On the basis of the above stance of the parties, following issues emerge for consideration:

(i) Whether the cause of action has been crystalized for determination of the plea of limitation as a ground for rejection of the plaint.

(ii) Whether the Plaintiff is entitled to take the benefit of Section 14 of the Limitation Act, 1963 and exclude the period spent in prosecuting the complaints/appeals in New York, for the purpose of computing the period of limitation.

(iii) Whether Section 14 of the Limitation Act, 1963 would apply to

[6] 1959 SCC OnLine Raj 14.

[7] 1959 SCR 811.

foreign courts.

(iv) Whether the period between intra-court appeals has to be excluded for extending the benefit of Section 14 of the Limitation Act, 1963.

6. The proposition advanced by both the counsel - relating to the scope of jurisdiction of this Court under Order VII Rule 11 of the CPC - is not at variance. Indeed, at this stage, a view has to be taken on a *prima facie* basis alone. In case there are indeed disputed questions of facts, parties should be relegated to trial. That said, the question of limitation is ordinarily a mixed question of fact and law, and rejection of the plaint on the ground of limitation is impermissible if the date of commencement of cause of action is uncertain. However, there can be situations, where the essential facts giving rise to cause of action are undisputed or easily discernible. In such a scenario, as no triable issue would arise, the question of limitation can be examined under Order VII Rule 11 of the CPC.

WHAT IS THE DATE OF ACCRUAL OF CAUSE OF ACTION IN THE INSTANT CASE?

7. The suit is for specific performance of an Agreement and would thus be governed by Article 54 of the Limitation Act, 1963. The said Article reads as under:

The Schedule
(Period of Limitation)
First Division - Suits

Description of suit	*Period of limitation*	*Time from which period begins to run*
54. For specific performance of a contract.	*Three years.*	*The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.*

8. In the instant case, the Agreement does not fix any date for

performance, and therefore, cause of action would commence from the date when Plaintiff had noticed that performance has been refused. Plaintiff issued a legal notice dated 9th November, 2011 calling upon the Defendant to transfer the shares by 11th November 2011. The said request was not acceded to, prompting the Plaintiff to file the New York complaint on 14th November 2011. Thus, the cause of action in the instant case stood crystallized on 14th November 2011, and the same can be assumed to be the commencement date for calculation of the period of limitation.

WHETHER THE PLAINTIFF IS ENTITLED TO BENEFIT OF SECTION 14 OF THE LIMITATION ACT, 1963?

9. Section 14(1) of the Limitation Act, 1963 relates to exclusion of time, in computing the period of limitation, of such time during which the Plaintiff has been prosecuting other civil proceeding(s) with due diligence, whether in a court of first instance or of appeal or of revision, against the Defendant, 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.

10. Plaintiff claims exclusion of the time spent in prosecuting the compliant and its appeals in USA for the same subject matter. On this issue, Defendant has raised a jurisdictional objection that cases instituted in a 'foreign court' cannot be included in the calculation of limitation. This contention cannot be accepted, in light of the decisive view taken by the full bench of the Rajasthan High Court in ***Firm Ramnath Ramchandra v. Firm***

Bhagatram & Co.[8] where it has been held that:

> *"In 33 Cal WN 485: (AIR 1929 PC 103) two questions were raised before their Lordships of the Privy Council. The first question was whether the Indian Limitation Act of 1908 applied to arbitration proceedings and the second question was, whether in the facts of that case, the Indian Limitation Act barred the respondents' claim under the arbitration award in their favour. Regarding the first point, it was observed by their Lordships that "although the Limitation Act does not in terms apply to arbitrations, they think that in mercantile references of the kind in question it is an implied term of the contract that the arbitrator must decide the dispute according to the existing law of contract, and that every defence which would have been open in a Court of law can be equally proponed for the arbitrator's decision unless the parties have agreed to exclude that defence." Their Lordships, therefore, answered the first question in the affirmative. Then adverting to the second question, it was observed that "In their Lordships' opinion the analogy of the Indian Limitation Act requires that an arbitrator should exclude the time spent in prosecuting in good faith the same claim before an arbitrator who was without jurisdiction. The Limitation Act has no application in terms to arbitration proceedings and as Greaves J. has pointed out if the words "suit instituted, appeal preferred and application made" in Section 3 are to be applied to arbitration proceedings, it seems to follow that the same interpretation must be put upon them in Section 14, and that civil proceedings in a Court must be held to cover civil proceedings before arbitrators whom the parties have substituted for the courts of law to be the Judges of the dispute between them." It would thus appear that the provisions of Section 14 were construed liberally by their Lordships and they were applied even to an award of the arbitrators. In our opinion, foreign courts do not stand on a worse footing than the domestic tribunals of arbitrators and we see no reason why the word "Court" should not be interpreted liberally so as to include foreign courts. In the present case, the plaintiffs had filed their suit in the court at Beawar, because the Defendant s were residing within the jurisdiction of that court and that suit was founded on the same cause of action on which the subsequent suit was filed at Kishangarh in 1949. Even if they had got a decree from Kishangarh court, it would have been necessary for them to file another suit at Beawar and get another decree on the basis of the judgment of the Kishangarh court, because that decree could not be got executed in the State of Ajmer. To avoid this double litigation, they straightway filed their suit in the court at Beawar. It is not the Defendant s' case that they had sufficient property at Kishangarh to satisfy the decree-if it were passed by the Court of the Kishangarh State. There is therefore no doubt about the fact that the plaintiffs prosecuted the first suit in good faith."*
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> [emphasis supplied]

11. This court is in agreement with the reasoning supplied by the Rajasthan High Court giving liberal construction to the expression 'court' as

[8] 1959 SCC OnLine Raj 14.

found in the provision. Section 14 of the Limitation Act, 1963 allows for exclusion from the limitation period such time which is spent litigating before the wrong forum. There can be no reason for excluding the applicability of Section 14 of the Limitation Act, 1963 even if the proceedings were before a foreign court. In fact, recently, the Supreme Court has held that in an application under Section 7 of the Insolvency and Bankruptcy Code, 2016, the applicant can claim the benefit of Section 14 of the Limitation Act, 1963 in respect of proceedings instituted under the SARFAESI Act, 2002.[9] The expression 'Court' in Section 14(2) would be deemed to be any forum for a civil proceeding including any Tribunal, and cannot be construed in a narrow, pedantic manner to exclude foreign courts. Thus, proceedings instituted before New York courts cannot be excluded from consideration under Section 14 of the Limitation Act, 1963.

12. Having established the above, the Court next has to form an opinion as to whether the action of the Plaintiff in filing the said suits was in good faith or not. The best way to discern this is to read the orders of the various Courts where proceedings were filed by the parties herein, in chronological order.

13. The first order is dated 7th February, 2012, in the New York Complaint, granting an injunction in favour of the Plaintiff, in the following

[9] ***Sesh Nath Singh v. Baidyabati Sheoraphuli Coop. Bank Ltd***., (2021) 7 SCC 313, dated 22nd March 2022. Upon research by the undersigned, the said caselaw was found to be relevant, and has thus been inserted in-chamber, prior to uploading the instant judgment although the same was delivered after the order was dictated in court.

words:

> *"(…) Twenty years ago, both sides signed a letter in which 1,500 equity shares were to be sold for $6,000. The enforceability of that agreement is in dispute. Is the enforcement of the contract barred by the Statute of Limitations? If not, what about laches? Is the $6,000 a deposit or is it full payment? Is the letter itself a complete agreement or an agreement to agree?*
>
> *In the meantime, there is another lawsuit before the High Court of India involving a third brother in which the ownership of these shares is being litigated. This raises the possibility of inconsistent verdicts. Also, does the law of New York apply or the law of India, since only one of the brothers in this case resides in New York, the other in Europe, and although it is alleged that the letter was signed in New York, the company is situated in India.*
>
> *Accordingly, there are grounds for a stay because of the action in India which the Court is informed is the older action.*
>
> *Accordingly, it is*
>
> *ORDERED that the Defendant is stayed from selling the shares pending a final disposition and this action is stayed pending a decision on the ownership of the shares in question by the High Court of India."*

14. From the above it emerges that the Court found a good case for grant of interim order. It was then vacated upon appeal *vide* order dated 31st January 2013 of the Supreme Court Appellate Division, holding as follows:

> *"Plaintiff satisfied the requirements for a preliminary injunction barring the transfer of the stock shares (see Doe v Axelrod, 73 NY2d 748, 750 [1988]). Plaintiff demonstrated a likelihood of success on the merits (see id.), as the writings of the parties seem to include all material terms of the agreement for a sale of the shares (see Matter of Express Indus. & Term. Corp. V New York State Dept. of Transp., 93 NY2d 584, 589-590 [1999]). Plaintiff's claim for specific performance is not barred by laches, as Defendant did not affirmatively change his position in reliance on plaintiff's alleged delay in seeking relief and could have sought the transfer of shares himself at any time. (see Martin v Briggs, 235 AD2d 192, 199 [1st Dept 1997]). Further, Defendant has not shown any prejudice by the delay, given that the corporation's board must still approve the transfer of shares and -there is no indication that the existing board does not provide adequate protections. Nor-do we have to decide whether Defendant 's statute of limitations defense bars plaintiff's claim at this time. Indeed, Defendant concedes that discovery is required to determine the issue.*
>
> *Plaintiff, who is engaged in a battle for corporate control, has shown that he would be irreparably harmed by a sale of the shares to someone else (see Doe, 73 NY2d at 750), and that a balance of equities tips in his favor (id.). Defendant cannot complain of the burden of a preliminary injunction, as he says he has no intention of selling the shares.*

Although the IAS court's decision and order were cursory in their treatment of the merits of plaintiff's motion, there is no authority to vacate the order on that ground (cf. CPLR 6312 [c]). However, the IAS court should have provided for an undertaking for the injunction, pursuant to CPLR 6312 (b). The matter is therefore remanded for the IAS court to determine the amount of the undertaking."

15. Later on, *vide* order dated 18th December 2013 of The State of New York, County of New York: IAS,[10] the New York complaint was dismissed, as follows:

"(…)
Nonetheless, after careful consideration the Court concludes that dismissal on the ground of forum non conveniens is appropriate. As the First Department stated, the issues involved in this case are not identical to the issues in the India action. However, this rests on plaintiffs' characterization of the lawsuit as one for breach of contract. The Court has read both the India and the New York complaints, and notes the following similarities: both seek to determine whether Kishin or Janak own the shares in question. If this were the end of the analysis, the Court would deny Defendant 's motion. However, the India action is more comprehensive, as it seeks a ruling as to whether Kishin, Janak or Anand own the shares. As stated earlier, Anand claims that Kishin signed an agreement giving him ownership and control of the shares. A ruling in India that Anand owns the shares would be inconsistent with any ruling by this Court. In addition, if the Court retained the case it would allow Kishin time to answer, and his answer, including any affirmative defenses and counterclaims he might bring, may well intertwine the two cases more inextricably.

xx … xx … xx

However, the dispute does not end with the contract. The Court already has mentioned that another brother, Anand Datwali, has claimed the stock is his, and both Kishin and Janak have challenged Anand's claim as fraudulent. In fact, Kishin's lawsuit includes challenges to Janak and Kishin's claims of ownership of his stock and challenges both sets of papers as forgeries. The India Court will determine whether Janak, Anand or Kishin owns the shares. Either Anand or Janak's arguments must be rejected in the India action, as both cannot possess the legal right to 100% of Kishin's interest in the company. The possibility of inconsistent rulings is evident. Moreover, Anand is not a party to this lawsuit, so not all of the claims of ownership can be addressed in this action.

xx … xx … xx

The convenience of the parties and the locations of witnesses and

[10] *Datwani v. Datwani*, 2013 N.Y. Slip Op. 33523 (N.Y. Sup. Ct. 2013).

> *evidence also militate in favor of the India lawsuit. Though Janak says his case only involves breach of contract and only seeks declaratory and injunctive relief, Kishin has made it clear that if this case is not dismissed he will allege fraud and forgery of his signature on the alleged contract in his answer.*[4] *In his motion papers, he has explained that he will seek the testimony of witnesses in India, where CNA is located and incorporated, about various transactions. Board meetings, and proxy agreements. Kishin claims their testimony will support his contention that Janak and the other owners of the company treated him as a 13.33% shareholder throughout the period in question and up to the time of this lawsuit. This also militates in favor of dismissal of the New York lawsuit.*
>
> [4] *Kishin's motion requests that if this case is not dismissed he receive additional time to answer. Janak opposes this request. In the interest of fairness and judicial economy, and given the different characterizations of the parties' agreement regarding this matter, the Court would have granted this prong of his motion if it did not dismiss the case."*

16. The afore-noted observations made by the aforenoted court at New York indicate that the suit has been dismissed essentially on the principle of *forum non conveniens*, on account of multiplicity of proceedings in various jurisdictions and having regard to the comity of jurisdictions.

17. In the meanwhile, a suit was instituted in India [*being* CS(OS) 1461/2013] on 15th July 2013. The Order of this Court dated 23rd August, 2013, disposing of said suit, also becomes relevant, operative portion whereof reads as under:

> *"13. Mr. Sibal rightly points out that despite the above orders having been passed prior to the Plaintiff filing the present suit, the Plaintiff has neither chosen to describe in detail what those orders were nor has he placed on record copies thereof. Relying on a decision in Shiju Jacob Varghese v. Tower Vision Ltd. 196 (2013) DLT 385, Mr. Sibal urged for dismissal of the suit as it constituted an abuse of the process of the Court. He urged that if the reliefs sought for in the present suit are entertained, it might result in conflicting orders being passed. He urged that the comity of jurisdictions should be respected and the present suit should be dismissed.*
>
> *14. Learned counsel for the Plaintiff, on the other hand, placed reliance on the decision of the Supreme Court in Alka Gupta v. Narender Kumar Gupta (2010) 10 SCC 141 and submitted that at present the Court ought not to take a precipitate decision on dismissal of the suit at the initial stage. The passing of an interlocutory order by the New York Court would, according to him, not constitute res judicata.*

15. The Court is inclined to accept the plea of the Defendant No. 1 at this stage that the comity of jurisdictions should be respected. The Court does not wish to express an opinion on the merits of the contentions of either party as that might prejudice them in the case pending in the New York Court. It is seen that the Plaintiff herein has filed a motion to dismiss the suit filed in the Court in New York and that is yet to be decided. All that this Court wishes to observe at this stage is that in the event the Plaintiff succeeds in his motion to dismiss the suit filed in the Court in New York, then his right to revive his plea by filing a fresh suit in this Court is kept open. This should sufficiently protect the interests of the Plaintiff.

16. With the above observations, the suit and application are dismissed."

18. Next, on 15th January, 2014, the Plaintiff assailed the order passed in the New York complaint, before the Appellate Division of the Supreme Court, New York, which was dismissed on 7th October, 2014. Relevant portion of the said order reads as follows:

"Indeed, shortly after bringing the instant motion in New York, defendant filed an action in India against both plaintiff (his brother) and his other brother regarding ownership of the shares. While that action was dismissed out of "respect[]" for "the comity of jurisdictions," the Indian court stated that the case could be refiled in the event defendant prevailed on his motion to dismiss in New York. There is nothing preventing plaintiff from filing a similar action in India.

Among the other Pahlavi factors that support dismissal is the presence of substantially, all the witnesses and evidence in India. Contrary to plaintiff's argument that the stock transfer agreement is unambiguous and there is no need for parol evidence, as the motion court found, issues of fact exist as to the authenticity of the agreement, which defendant claims is a forgery. There is also a potential for prejudice and hardship to defendant posed by the continuation of the New York action, most significantly, as indicated, the possibility of inconsistent judgments.

We have considered plaintiff s remaining arguments and find them unavailing." [Emphasis supplied]

19. Lastly, a second appeal, filed on 16th November, 2014 by the Plaintiff before the Court of Appeals, State of New York, was also rejected *vide* order dated 18th December 2014 which reads as follows:

"Appellant having moved for leave to appeal to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that, the motion is denied with one hundred dollars costs and necessary reproduction disbursements."

20. On a combined reading of the afore-noted orders, we cannot agree with the Defendant that the instant action before this Court is in bad faith. On the contrary, it manifests that the Plaintiff was prosecuting the suit and proceedings arising therefrom, in good faith and with ample diligence. The Plaintiff carried the matter in appeals and exhausted his legal remedies - hoping that the courts therein would entertain the suit. The reason for the New York courts to deny relief was only on jurisdictional grounds, as has been noted above, and not on merits of the matter. Thus, the requirements for applicability of Section 14 of the Limitation Act, 1963, are evidently met, for the Plaintiff to be entitled to seek exclusion of the time spent before the New York courts, for the purpose of exemption from calculating limitation.

21. The next question that arises for consideration is whether the gaps between the legal actions taken by the Plaintiff should be excluded for calculating limitation.

22. In the opinion of the Court, the answer has to be in favour of the Plaintiff. The language of the statute includes both the court of first instance as well as the appellate courts. The appeals in the Supreme Court of New York were an extension of the suit and were filed promptly. The same have not been rejected on the ground of limitation, but for other reasons as noted above. No material has been placed on record to show that such appeals were filed belatedly or there was deliberate delay or laches on the part of the

Plaintiff in prosecuting the same. The Plaintiff filed appeals within the period of limitation prescribed, and therefore, the gap that occurred in filing the intra court appeals would fall within the scope of the period contemplated under Section 14 of the Limitation Act, 1963. No ground is made out to exclude the same.

23. In that light, the period from 14th November 2011 to 18th December, 2014 deserves to be excluded for computing the period of limitation.

24. Thus, the instant suit, filed within three years from 18th December 2014, is within limitation.

25. The Court does not find any merit in the present application and accordingly, the same is dismissed.

CS(OS) 155/2021

26. List the matters for framing of issues on 10th May, 2022.

SANJEEV NARULA, J

MARCH 7, 2022
as

(Corrected and released on 21st April, 2022)