



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

THURSDAY, THE 16TH DAY OF OCTOBER 2025 / 24TH ASWINA, 1947

OP(C) NO. 1388 OF 2016

AGAINST THE ORDER DATED 04.01.2016 IN E.P.NO.46/2015 IN OS
NO.58 OF 2001 OF ADDITIONAL SUB COURT, THALASSERY

PETITIONER:

P.T.BABU
AGED 48 YEARS, S/O.DASAN, BUSINESS, PROPRIETOR BABU
HOSIERY, KP 2/262, ADOORPALAM, RESIDING AT "SANTHOSH
HOUSE", P.O. THOTTADA, KANNUR.

BY ADVS.
SRI.N.M.MADHU
SMT.C.S.RAJANI

RESPONDENTS:

- 1 VIJAYA BANK
EDAKKAD-670 001, REP. BY ITS PRESENT MANAGER.
- 2 C.K.PUSHPALATHA
AGED 53 YEARS, D/O.GOPALAKRISHNAN, HOMEOPATH DOCTOR,
RESIDING AT SANTHOSH HOUSE, PO THOTTADA,
KANNUR-670 007.
- 3 M.AJITH KUMAR
AGED 48 YEARS, S/O.MUKUNDAN, BUSINESS, NGO QUARTERS,
KANNUR AMSOM, KANNUR DISTRICT-670 001.
- 4 C.K.KARTHIYAYANI
AGED 76 YEARS, W/O.GOPALAKRISHNAN, HOUSE WIFE,
HARITHAM, P.O THOTTADA, KANNUR-670 007.



5 HEMALATHA
 AGED 55 YEARS, D/O.GOPALAKRISHNAN, HOUSE WIFE,
 HARITHAM, P.O. THOTTADA, KANNUR-670 007.

6 SREEKUMAR
 AGED 43 YEARS, S/O.GOPALAKRISHNAN, HARITHAM,
 P.O THOTTADA, KANNUR-670 007.

BY ADV SMT.LATHA ANAND,SC, VIJAYA BANK

THIS OP (CIVIL) HAVING COME UP FOR HEARING ON 17.09.2025, THE
COURT ON 16.10.2025 DELIVERED THE FOLLOWING:



CR

JUDGMENT

Invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, the petitioner, a judgment debtor, impugns the order of the executing court, rejecting his plea that the execution petition is barred by limitation, whereby the objection raised on limitation was negatived and the execution petition was found maintainable.

2. The decree in question was passed in a suit for recovery of money secured under a mortgage, on 02.01.2002. The first respondent, who is the decree holder, had initially filed an execution petition on 04.08.2009. The said execution petition was returned on 24.11.2010, after a lapse of 507 days, on the finding that only the Debt Recovery Tribunal had jurisdiction to entertain it, since, by then, the decretal amount had exceeded Rs.10 lakhs.

3. The first respondent, however, did not approach the



Tribunal, but instead instituted a fresh execution petition before the very same court on 06.03.2015. By that time, the original period of limitation prescribed for execution of the decree, namely twelve years, had expired, and a further period of 428 days had also elapsed. The contention urged by the decree holder is that, if 507 days, i.e., the period during which the first execution petition was prosecuted in good faith before the said court is added under Section 14(2) of the Limitation Act ('the Act', for short) to the period of limitation for executing the decree, the present execution petition would fall within the period of limitation.

4. The execution court proceeded to hold that the decree holder is entitled to get the time expired during the pendency of the earlier execution petition, as Section 14(2) of the Act is applicable to the fact-situation.

5. I have heard Sri. N.M Madhu, the learned counsel appearing for the petitioner and Smt.Latha Anand, the learned counsel appearing for the first respondent.



6. The short question that arises is whether the decree holder is entitled to get exclusion of the period during which the first execution petition was pending.

7. The learned counsel appearing for the petitioner contended that the execution petition is barred by limitation. Relying on the decision in ***Bakhtawar Singh and Another v. Sada Kaur and Another*** (AIR 1996 SC 3488), the learned counsel contended that the decree holder is not entitled to claim exclusion of the period during which the earlier execution petition was pending since the earlier proceeding was *not rejected for want of jurisdiction or for any other cause of a like nature*, as contemplated under Section 14 of the Act.

8. In response, placing reliance upon the decision in ***Consolidated Engg. Enterprises and Ors.v. Principal Secy. Irrigation Deptt. and Ors.*** [MANU/SC/7460/2008], the learned counsel appearing for the first respondent submitted that the underlying policy of Section 14 of the Act is to extend protection to a litigant who, in good faith and with due



diligence, prosecutes a proceeding which fails for some defects, without being adjudicated on merits. It is further submitted that while construing the provisions of Section 14, the approach of the court must be to interpret the provision in a manner which advances the cause of justice rather than to defeat the proceedings on the ground of mere technicality. The learned counsel also contended that the earlier execution petition was returned by the court on an erroneous perception of jurisdiction, and therefore, the essential precondition under Section 14(2) of the Act stands substantially satisfied.

9. Sub clause (2) of Section 14 of the Act is wider enough to cover execution proceedings as well. Though the provision employs the expression “application”, Section 2(b) of the Act defines “application” to include a petition; hence, an execution petition would fall within its ambit. In ***Roshanlal Kuthalia and Others v. R.B. Mohan Singh Oberoi***, (1975) 4 SCC 628), it was held that Section 14 (2) of the Limitation Act is applicable to execution proceedings.

10. Section 14(2) of the Act reads as follows:



“14. Exclusion of time of proceeding bona fide in court without jurisdiction.—

(1) xx xx xx

(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.”

The effect of this section is not to regard a proceeding, when refiled in the proper forum, as a continuation of the original one. Accordingly, the period of limitation for the refiled proceeding must be determined as if it were a new proceeding, while excluding the time during which the matter was *bona fide* prosecuted in the wrong forum. Then, how is the period of limitation for the subsequent execution petition reckoned?

11. A litigant seeking the benefit of Section 14 cannot *add* the period during which the previous proceeding remained pending *from the date of expiry of the original period of limitation*, as the computation must be made by excluding that period altogether. The period of limitation for the present execution petition shall be the period prescribed for such a petition, excluding, in its computation, the time during which



the earlier petition was diligently prosecuted before a court without jurisdiction. Therefore, such portion of the limitation period that remained unexhausted at the time of institution of the first proceeding will be available to the applicant for presentation of the subsequent one.

12. To illustrate, in the case of a suit for which the prescribed period of limitation is three years, if the plaintiff in good faith institutes the suit on completion of two years and it remains pending for two more years before being dismissed for want of jurisdiction, the time left for filing a fresh suit would be only one year from the date of dismissal and not another two years therefrom. This follows from the express language of Section 14 of the Act, which provides that *in computing the period of limitation* for any application, the time during which the applicant was prosecuting another civil proceeding shall be *excluded*. Thus, where the earlier proceeding was filed on the last day of limitation and was returned for presentation before the proper court, the litigant would not have any further time available for such presentation. [See ***Parameswara Kurup v. Vasudeva***



Kurup (1964 KLT 145)]. Therefore, while calculating the period of limitation in such circumstances, the entire period during which the first proceeding was pending must be treated as non-existent, and computation of limitation must proceed accordingly. This principle has been authoritatively clarified by this Court in *Parameswaran v. Ramachadram* (1986 KLT 982). [see also *Narain Das v. Banarsi Lal and others* (AIR 1970 Pat 50)].

13. Herein, the decree was passed on 02.01.2002. The twelve-year period of limitation for execution, under Article 136 of the Limitation Act would have expired on 02.01.2014. The decree holder instituted the first execution petition on 04.08.2009. The remaining period of limitation then available was approximately four years and five months. Consequently, if Section 14 of the Limitation Act is found applicable, the first respondent would be entitled to a further period of about four years and five months from 24.11.2010—the date on which the earlier petition was returned—to present a subsequent execution petition. As the second execution petition was filed on 06.03.2015, it is within the said



period.

14. The question that remains for consideration is, whether the conditions prescribed under Section 14(2) of the Act stand satisfied in the facts of the present case. The circumstances under which Section 14(2) of the Limitation Act can be invoked are well settled. In ***Consolidated Engg. Enterprises v. Principal Secretary, Irrigation Department*** [(2008) 7 SCC 169], the Hon'ble Supreme Court has delineated the essential conditions for the applicability of the provision as follows:

1. Both the prior and the subsequent proceedings must be civil proceedings prosecuted by the same party;
2. The prior proceeding must have been prosecuted with due diligence and in good faith;
3. **The failure of the prior proceeding must have been due to a defect of jurisdiction or other cause of a like nature;**
4. The earlier and the latter proceedings must relate to the same matter in issue; and
5. Both the proceedings must have been instituted in a court.

(Emphasis supplied)

15. In the case on hand, the controversy arises only with reference to condition No. (3) above. From the plain language



of Section 14, it is manifest that, to claim the benefit of exclusion of time, it must be established that the court which declined to entertain the earlier proceeding was unable to do so by reason of a *defect of jurisdiction or other cause of a like nature*. The provision attracts only when a party *bona fide* chooses a wrong forum and then diligently prosecutes it. The provision contemplates a situation where, the litigant, acting in good faith, had instituted a proceeding before a forum which, in law, lacked jurisdiction to entertain the matter, or for some cause of like nature the forum is unable to adjudicate the cause. When a court, which in fact has jurisdiction, refuses to entertain the proceeding holding that it lacks jurisdiction, it is only an erroneous order.

16. Resultantly, Section 14 does not extend to a case where the court, which possesses jurisdiction, erroneously declines to entertain the proceeding on a mistaken perception or wrong application of legal principles. In such a situation, the remedy available to the aggrieved party lies elsewhere—by way of a challenge before the higher forum or seeking



correction of that erroneous order by the same forum— and not by instituting a successive proceeding of the same nature before the very same forum. In such a case, resort cannot be made to Section 14. To permit such recourse would defeat the legislative intent of the provision and obliterate the distinction between lack of jurisdiction and erroneous exercise of jurisdiction. In *Bakhtawar Singh v. Sada Kaur* (supra) it is held as follows:

“As regards the exclusion of time under S.14 of the Limitation Act it was essential for its application to show that the proceedings related to the same matter in issue and the plaintiff prosecuted the suit in good faith in a court which, from defect of jurisdiction or other cause of like nature is unable to entertain it. As discussed above the plaintiffs / appellants have miserably failed to show as to what was the defect of jurisdiction or any other cause of like nature by reasons of which the earlier suit was not entertainable or competent. That being so, the benefit of the provisions of S.14 cannot be legitimately extended to the suit of the plaintiffs. In these facts and circumstances the plaintiffs suit has rightly been dismissed as barred by limitation.”

Similar view was expressed in *Rajarethna Naikkan v. Parameswara Kurup* (1997 (1) KLT 777).



17. In this case, both the execution petitions were filed in the very same court. The respondent/decreed holder concedes that the court in which the execution petitions were filed had jurisdiction to entertain the petition, but that under an erroneous order it returned earlier one. Therefore, one of the essential requirements of prosecuting a proceeding in a wrong forum and seeking exclusion of such a period in a subsequent proceeding before the proper forum, does not arise at all. Indeed, it is correct to say that Section 14 of the Act is to be liberally construed for advancing the cause of justice; however, at the same time, under the guise of liberal interpretation, the court cannot import or supplement new terms into the statute.

18. In view of the foregoing discussion, it has to be concluded that one of the essential conditions for invoking the said provision, namely, *“that the court was unable to entertain the matter owing to a defect of jurisdiction or other cause of a like nature”*, is not satisfied in the present case. Hence, the decreed holder is not entitled to get



exclusion of the period of pendency of the first execution petition. The present execution petition is filed beyond the period of limitation of twelve years prescribed under Article 136 of the Limitation Act and is hence time-barred. As Section 5 of the Act is not applicable to execution proceedings, there arises no question of condonation of delay. The execution petition is thus liable to be dismissed.

In the result, the original petition is allowed. The impugned order is set aside. The Execution Petition will stand dismissed as barred by limitation.

Sd/-

P. KRISHNA KUMAR

JUDGE

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APPENDIX OF OP(C) 1388/2016

PETITIONER EXHIBITS

- P1 : TRUE COPY OF THE EXECUTON PETITION BEARING EP NO.46/2015 IN OS 58/2001 ON THE FILES OF THE ADDITIONAL SUB COURT, THALASSERI.
- P2 : TRUE COPY OF THE OBJECTION DATED 27-7-2015 FILED BY THE PETITIONER.
- P3 : TRUE COPY OF THE ORDER DATED 4-1-2016 IN EP NO.46/2015 IN OS 58/2001 ON THE FILES OF THE ADDITIONAL SUB COURT, THALASSERI.