

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 1527 of 2025

Reserved on: 6.11.2025

Date of Decision: 27.11.2025.

Bidhi Chand

...Applicant/appellant

Versus

Rohit Kumar

...non-applicant/Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the Petitioner : Mr Mohit Thakur, Advocate.

Rakesh Kainthla, Judge

The applicant/appellant has filed the instant appeal before this Court against the judgment dated 21.2.2025, passed by learned Judicial Magistrate First Class, Barsar, District Hamirpur, H.P., (learned Trial Court) vide which the complaint filed by the appellant (complainant before learned Trial Court) was dismissed.

2. The Hon'ble Supreme Court held in ***M/s Celestium Financial Vs. A. Ganasekaran, etc. 2025 INSC 804***, that the

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

complainant in a complaint under Section 138 of the Negotiable Instruments Act (NI Act) has a right to file an appeal under the proviso to Section 372 of Cr.P.C. Hence, the applicant/appellant has filed the present application [Cr.MP No. 4426 of 2025] seeking permission to withdraw the present appeal with liberty to file the appeal before the learned Sessions Judge, Hamirpur (learned Appellate Court) and deduct the period spent in prosecuting the present appeal before this Court from the period of limitation.

3. Mr Mohit Thakur, learned counsel for the applicant, submitted that the present leave to appeal was filed based on the earlier interpretation of the law. Now the Hon'ble Supreme Court has clarified the law. Therefore, permission be granted to withdraw the appeal and file it before the learned Appellate Court, and the time spent before this Court be deducted from the period of limitation.

4. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

5. It was laid down by the Full Bench of Allahabad High Court in *Raghunath v. Ram Khelawan*, 1968 SCC OnLine All 147, that only the Court where the suit is filed can decide the question of

exemption and not the High Court exercising writ jurisdiction. It was observed:-

26...There cannot be any manner of doubt that throughout Naresh and the appellants acted in good faith in filing the suits first in the revenue court and then in the civil court. It cannot be doubted that they acted with diligence. In my opinion, therefore, Sec 14 of the Limitation Act was fully applicable to the facts of the present case. In any case, it is not a matter over which a writ petition could lie under Article. 226 of the Constitution of India. It was for the Assistant Collector, before whom the suit giving rise to this special appeal was filed, to decide whether or not Naresh was prosecuting his earlier suits with due diligence and in good faith. He decided in favour of Naresh. The Board of Revenue, which is the final court of appeal, also decided in favour of Naresh. There is clear evidence in support of the findings recorded by the Assistant Collector and the Board of Revenue. They had jurisdiction to decide the matter. They have committed no illegality in deciding the case. Consequently, in my opinion, the question of the applicability of Sec 14 of the Limitation Act could not be the subject matter of the writ petition....”

6. A similar view was taken by Kerala High Court in

Larsen & Tubro v. G.K. Granites, 2011 SCC OnLine Ker 3707, wherein

it was observed:-

3...Even though we do not find any specific declaration by the learned Single Judge on the entitlement of relief to the first respondent under S. 14 of the Limitation Act, we feel even an observation by this court has high persuasive value before the trial court before which suit is to be filed and so much so, the legality, propriety and correctness of the observation is to be considered in Writ Appeal to avoid unnecessary confusion in the mind of the trial court, if at all first respondent proceeds to file a suit For this purpose

we have to necessarily consider S. 14 of the Limitation Act and for easy reference, the said Section is extracted hereunder:

“S. 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 O. XXIII of the Code of Civil Procedure, 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.”

4. What is clear from sub-sections (1) and (2) of S. 14 is that the plaintiff claiming the benefit of S. 14 should plead and prove the following:

- (a) The exemption claimed should be for the period the plaintiff has been prosecuting a civil proceeding in a court of first instance, of appeal or revision against the defendant.

(b) Such proceedings prosecuted should have been done with due diligence and in good faith.

(c) the rejection of the claim by such court before which it is prosecuted should be on account of a defect in jurisdiction or other cause of a like nature which disentitles such court to entertain it.

5. Further, what is clear from sub-s. (3) of S. 14 is that the relief under S. 14 should be claimed in a subsequent suit after the first “civil proceeding” is turned down defective.

6. Order VII R. 6 of the C.P.C. states as follows:—

“6. Grounds of exemption from limitation law:—

Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the ground upon which exemption from such law is claimed:

Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.”

7. What is mandated in the above Rule is that the plaintiff shall show the ground upon which an exemption from the law of limitation is claimed. Obviously, when C.P.C. itself gives authority to the court trying the suit to decide justification or otherwise of the claim of exemption from limitation claimed by the plaintiff, it necessarily follows that the exemption from limitation is a matter to be pleaded and proved before the trial court where the suit is filed.

8. The powers of the High Court under Art. 226 is wide enough to render full justice to parties. Therefore, if a Writ Petition filed and admitted in the High Court was later found not to be the remedy to be pursued by the party, it is always open to the High Court to consider waiver of loss of time for the party to pursue an appropriate remedy before the right forum. However, going by the wording of S. 14 of the Limitation Act, we do not think the High Court can grant an exemption from limitation under the said Section while dismissing a Writ Petition as not the appropriate

remedy. We have already stated that unless the ingredients of S. 14 are pleaded and proved before the civil court before which the subsequent litigation is filed in terms of O. VII R. 6 of the C.P.C., the court cannot grant exemption from limitation in terms of the said Section. When the jurisdiction to grant an exemption under S. 14 of the Limitation Act is exclusively given to the civil court before which the suit is filed, it is not correct or proper for the High Court to consider eligibility for exemption of the petitioner while dismissing a Writ Petition. We have already observed that any observation in these lines will prejudice the mind of the civil court. So much so, we feel the High Court should only leave open the parties to claim exemption from limitation under S. 14 to be raised and proved before the civil court where the suit is filed.”

7. Heavy reliance was placed upon paragraph 12 of the judgment in *M/s Celestium Financial* (supra) wherein the Hon’ble Supreme Court was pleased to hold that if the appeal is filed within the period of four months, the question of limitation would not be raised. This direction was issued by the Hon’ble Supreme Court of India while exercising the jurisdiction under Article 142 of the Constitution of India, which jurisdiction is not available to this Court. Therefore, no such direction can be given by the Court, and it would be open for the appellant to seek exemption from limitation as per the law and to approach the Higher Court if aggrieved by the decision of the learned Appellate Court, as per law.

8. Therefore, the present application (Cr.MP No. 4426 of 2025) is allowed, and the applicant is permitted to withdraw the present appeal with liberty to file it before the learned Appellate Court. Needless to say that the learned Appellate Court will decide the question of limitation as per the law without being influenced by any observation made by this Court.

9. The pending miscellaneous application(s), if any also stands disposed of.

(Rakesh Kainthla)
Judge

27th November 2025
(Chander)