



**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**RFA No. 53/2025
CM No. 7225/2025**

**Reserved on: 12.03.2026
Pronounced on: 10.04.2026
Uploaded on: 10.04.2026**

Whether the operative part or full judgment
is pronounced: Full judgment.

M/s HSL Enterprises, Through Its
Proprietor Namely, S. Harvinder Singh Lahri,Appellant(s)/Petitioner(s)
Age 57 years, S/o Late Sh. Swaran Singh,
R/o House No. 24-B, Sector 2, Lane No. 3,
Nanak Nagar Jammu.

Through: Mr. Ashish Sharma, Advocate

Vs

1. **M/s Thermax Ltd.,** C/o Wakadewadi Sai
Chamber, 15 Mumbai Pune Road,
411003.
2. **UT of Jammu and Kashmir** Through Its Respondent(s)
Chief Secretary, Civil Secretariat,
Jammu.
3. **Economic Reconstruction Agency**
(ERA), Through Its Head Office, Gandhi
Nagar, Jammu.

Through: Ms. Nazia Fazal, Advocate vice
Ms. Monika Kohli, Sr. AAG
Mr. P. D. Singh, Dy. AG
Mr. R. S. Lalotra, Advocate

**Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

JUDGMENT

'OSWAL-J'

1. The appellant prefers this appeal under Section 13(1-A) of the
Commercial Courts Act, 2015 against an order dated



19.08.2025 passed by the Commercial Court of the Additional District Judge, Jammu (for short 'the trial court'), in a suit bearing on **File No. 434/2025** titled '*M/s HSL Enterprises vs. M/s Thermax Ltd.*'

2. By way of impugned order, which literally amounts to decree, the trial court has dismissed the appellant's suit as being barred by limitation by first rejecting an application for the exclusion of time sought by the appellant under the umbrage of Section 14 of the Limitation Act, 1963.
3. The appellant, being aggrieved of the impugned order, challenges it on the premise that the learned trial court failed to appreciate the factual genesis of the litigation and, thus, fell in error of judgment.
4. Upon the respondent No.1's purported failure to release alleged pending payments' claims, the appellant had initially filed a writ petition-**OWP No. 1516/2013** before the learned writ court.
5. The respondent No. 1 had appeared to contest said writ petition on the grounds inter alia of maintainability by asserting that it involved a private contract and, thus, a dispute not subject to judicial review jurisdiction. Consequently, the appellant withdrew the writ petition by seeking liberty to pursue a civil remedy for enforcement of its claim and consequent recovery.



6. Consequently, civil suit was filed promptly thereafter, but the trial court erroneously dismissed it by wrongly concluding that the appellant lacked due diligence or *bona fides* in pursuing the writ proceedings.
7. Mr. Ashish Sharma, learned counsel appearing for the appellant, asserts that the appellant is entitled to avail benefit of Section 14 of the Limitation Act, 1963 so as to salvage the maintainability of its suit. He maintains that the time spent in prosecuting the writ petition for period ranging from 2013 to 2022 constituted a 'prior proceeding' pursued with due diligence and therefore, the trial court's finding of lack of *bona fides* on the part of the appellant is contrary to the record, and the dismissal of the suit is unsustainable in law.
8. Mr. R. S. Lalotra, appearing for the respondent No. 1, on the other hand argues that the exploit of Section 14 of the Limitation Act, 1963 is unavailable to a litigant who wilfully pursues a patently non-available legal remedy. He submits that despite the respondent No.1's categorical objections to the writ petition's maintainability, the appellant continued to pursue and prosecute the writ petition as misconceived and a wrong remedy for years at its own risk and costs. Such a conduct, he argues, disentitles the appellant from claiming premium of 'due diligence'. Consequently, the respondent No.



1 asserts that the trial court rightly held the suit to be barred by limitation.

9. Heard learned counsel for the parties and perused the record.
10. Before adjudicating upon merits of present appeal, it is pertinent to observe a procedural necessity which is that with respect to a civil suit, pleas for exclusion of time under Section 14 of the Limitation Act, 1963 are meant and should ideally be pleaded within the plaint itself as against time barred appeals or applications where condonation of delay is sought under Section 5 of the Limitation Act, 1963 by an application to effect but there is no such provision for 'condonation of delay' by an application in filing of a civil suit. Rather, the period spent *bona fide* in pursuing a remedy before a legal forum lacking jurisdiction is meant to be statutorily excluded when computing limitation period for which a plaint is supposed to bear averments in detail.
11. In the present case scenario, the underlying dispute pertains to execution of site-enabling works for 30 MLD Sewage Treatment Plant at Bhagwati Nagar, Jammu. The appellant is said to have executed these works at the instance of the respondent No. 1 for which a part payment was released but balance of **₹96.00 lakhs** remained outstanding thereby prompting the appellant to file writ petition-**OWP No. 1516/2013-M/s HSL Enterprises vs. State of J&K & Ors.**



12. Although the Writ Court initially allowed the appellant's writ petition on **31.10.2013** but then said order was challenged by the respondent No. 1 in **LPA No. 06/2014**.
13. On **02.02.2015**, the Division Bench of this Court set aside the initial order and remitted the matter for a fresh decision on merits.
14. After a period of pendency, including dismissal on 27.10.2021 and subsequent restoration on 13.04.2022, the Writ Court finally permitted the withdrawal of the writ petition on 30.05.2022, observing as follows:

“Learned counsel for the petitioner seeks withdrawal of this writ petition on account of the submission that in the face of objections raised by respondent Nos. 2 and 3 the adjudication of the claim of the petitioner in the writ petition may not be an appropriate remedy and for that present writ petition is an exercise in futility. Learned counsel for the petitioner seeks to avail other appropriate legal remedy for the redressal of the claim of the petitioner. The petitioner is at liberty, dependent upon the legal advice, to avail the legal remedy, if any available against the respondents for the alleged money recovery claim.

In view of the above, the instant petition is dismissed as withdrawn.”

15. Thereafter, the appellant ventured to lay the suit on **09.07.2022** along with an application seeking condonation of delay in terms of Section 14 of the Limitation Act, 1963 which came to be dismissed vide impugned order dated **19.08.2025**.



16. The trial court's finding of as to 'lack of diligence' is based not on correct and aligned reading and appreciation of the facts. The trial court has undeservingly penalized the appellant for 2021's dismissal of its writ petition for non-prosecution, despite its subsequent restoration. Moreover, the appellant could not be faulted for continuing the writ proceedings after with effect from 2016 and pursuing a remedy until a definitive judicial determination or until seeking liberty to withdraw same in legitimate exercise of legal recourse. Thus, said course of action on the part of the appellant does not count 'lack of *bona fides*' under Section 14 of the Limitation Act, 1963.
17. Furthermore, the trial court failed to consider a very vital aspect that the appellant's writ petition had, in fact, initially been allowed before being remitted by the Division Bench. Subsequent dismissal for non-prosecution in 2021 was a procedural hiatus that was formally cured by the Writ Court's restoration order dated **13.04.2022**. Legally, once a matter is restored, the trial court cannot 'go behind' that order to comment on prior non-prosecution as evidence of lack of diligence.
18. The appellant cannot be penalized for nine-year's pendency of writ petition, as pace and pendency of adjudication is beyond a litigant's domain and control. Had the respondent No. 1's



2016 raised maintainability objection been decided expeditiously by the writ Court, the appellant would have sought and availed available/alternative remedy at that very stage. To deny benefit of Section 14 of the Limitation Act, 1963 in given set of circumstances now would be to punish the appellant for this Court's own docket load in deciding case even on preliminary objection of maintainability.

19. Hon'ble Supreme Court of India in a case titled, '**Madhavrao Narayanrao Patwardhan vs. Ramakrishna Govind Bhanu and ors.**' in **1959 SCR 564** has laid down the following conditions, to be satisfied for invoking Section 14 of the Limitation Act, 1963:-

*“(i) Both prior and subsequent proceedings were civil proceedings prosecuted by same party.
(ii) Prior proceedings had been prosecuted with due diligence and in good faith.
(iii) The failure of prior proceeding was due to defect of jurisdiction or other causes of like nature.
(iv) Prior proceeding and subsequent proceedings must relate to same matter in issue.
(v) Both proceedings were in a court.”*

20. In '**Roshanlal Kuthalia v. R.B. Mohan Singh Oberoi**', **(1975) 4 SCC 628**, the Hon'ble Apex Court has observed as under:

“27. Certainly, Section 14 is wide enough to cover periods covered by execution proceedings. After all Section 47 itself contemplates transmigration of souls as it were of execution petitions and suits. **The substantial identity of the subject-matter of the lis is a pragmatic test. Moreover, the defects that will**



attract the provision are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any circumstance legal or factual, which inhibits entertainment or consideration by the Court of the dispute on the merits, comes within the scope of the section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has a right [See *India Electric Works Ltd. v. James Mantosh*, AIR 1971 SC 2313,]. In the *Associated Hotels* case (i. e. the very lis in its earlier round on the execution side) this Court pointed out [*Associated Hotels of India Ltd. v. R.B. Jodhu Mal Kuthalia*, AIR 1961 SC 156, 163] that the question was one of initial jurisdiction of the Court to entertain the proceedings. Thus in this very matter, the obstacle was jurisdictional and the exclusionary operation of Section 14 of the Limitation Act was attracted.

(emphasis added)

21. In view of the settled legal position, we find that the appellant is held to have satisfied the requirements of section 14 of the Limitation Act, 1963. The expression 'other cause of a like nature' is wide enough to cover the appellant's bona fide, even though ultimately related to a misdirected litigation before the writ court. Given that the appellant acted with due diligence and without any bad faith, the period consumed in writ proceedings ought to have and must be excluded, and the trial court's contrary finding cannot be sustained.
22. In '***Purni Devi & Anr. Vs. Babu Ram & Anr.***', 2024 INSC 259, the Hon'ble Supreme Court of India has held as under:



“38. We do not find the reasoning given by the learned High Court in paragraph 9 while rejecting the plea for exclusion of time to be sustainable. On a perusal of the record, it is apparent that the Plaintiff has pursued the matter bonafidely and diligently and in good faith before what it believed to be the appropriate forum and, therefore, such time period is bound to be excluded when computing limitation before the Court having competent jurisdiction. All conditions stipulated for invocation of Section 14 of the Limitation Act are fulfilled.”

23. Upon a careful examination of the impugned order, we find that the trial court has paddled a hyper-technical approach failing to appreciate the matter in its true perspective and, thus, missing the woods for trees. Such a constructive understanding and interpretation of Section 14 of the Limitation Act, 1963 frustrates and fails ends of justice.
24. Consequently, the impugned order is found to be legally unsustainable and is hereby set aside. The appeal is allowed. The matter is remitted to the trial court for disposal of suit on its merits in accordance with the observations made hereinabove and the settled principles of law. The parties to appear before the learned trial court on 24.04.2026.
25. **Disposed of.**
26. Record, if received in original, be sent back forthwith.

(RAHUL BHARTI)
JUDGE

(RAJNESH OSWAL)
JUDGE

Jammu
10.04.2026
Neha-II

Whether the order is speaking:	Yes.
Whether the order is reportable:	Yes