



2026:DHC:1996



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

% **Reserved on: 13th January, 2026**

Pronounced on: 10th March, 2026

+ **RFA 1163/2025, CM APPL. 80707/2025**

EX-SURGEON COMMANDER BHASKAR ROY

S/o Late Col. Nirmal Chandra Roy,
162/94-A, Lake Gardens,
Kolkata-700045 (West Bengal).

..... Appellant

Through: Mr. Sanjeev Gupta and Mr. Mrinal
Kishor, Advocates.

versus

SHRI DEVENDER SINGH

Advocate, Supreme Court
New Lawyers' Chambers No.430,
Supreme Court of India, New Delhi.

..... Respondent

Through: Appearance not given.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

CM APPL. 80707/2025 (For condonation of delay of 30 days):

1. This is an application filed by the Appellant seeking condonation of delay of 30 days in re-filing the Appeal.
2. For the reasons stated in the application, the delay of 30 days in re-filing the appeal is condoned.
3. The application stands disposed of.

RFA 1163/2025:

4. Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908(hereinafter referred to as "CPC") has been preferred by the Appellant



assailing the Impugned Judgment and Order dated 10.07.2025, passed by the learned District Judge-02 & Waqf Tribunal, Patiala House Courts, New Delhi whereby the Suit filed by the Appellant seeking recovery of damages on account of alleged professional negligence, was dismissed.

5. The Plaintiff/ Appellant filed Suit bearing CS No. 56129/2016 for recovery of damages on account of alleged professional negligence. **Briefly stated**, the Appellant, a former officer of the Indian Navy, was serving as a Medical Officer and was subjected to trial in *Court Martial Proceedings* under Section 354 of the Indian Penal Code, 1860(*hereinafter referred to as "IPC"*) and under Section 68, 74 and 77(2) of *The Navy Act, 1957*, which culminated in Appellant being sentenced **to undergo Rigorous Imprisonment for 24 months**, *vide* Order dated 29.11.1995. Pursuant to the Order of Court Martial, Appellant was sent to Jail and was also dismissed from the Naval Service with disgrace, *vide* Order of Court Martial dated 29.11.1995.

6. The Order of Dismissal was thereafter, challenged by the Appellant in *W.P. No.1334/1995 before High Court of Judicature at Bombay*. The Bombay High Court disposed of the Writ Petition *vide* Order dated 18.12.1995, with direction to the *Reviewing Authority* to dispose of Appellant's Representation, within four weeks. Accordingly, the Appellant's representation was disposed of by the Reviewing Authority *vide* Order dated 29.03.1996, *which reduced the sentence from Rigorous Imprisonment for 2 years, to Rigorous Imprisonment for 1 year, while maintaining the penalty of dismissal with disgrace*.

7. The Appellant was released from Yerwada prison on 29.09.1996, after undergoing the sentence. After being released from jail, Appellant again



filed **W.P.(Crl) No. 491/1996** in High Court of Bombay, to challenge the Order of Court Martial along with the Order of the Reviewing Authority.

8. The Bombay High Court *vide* Order dated 17.10.1997 refused to go into sufficiency of evidence in view of the bar under Article 33 of the Constitution, but modified the punishment of *'Dismissal from Service with Disgrace'* with *"Simple Dismissal from Service"*.

9. The Appellant has claimed that he engaged Mr. JML, Advocate to file filing a Special Leave Petition in Supreme Court, to challenge the aforesaid Judgment, who then handed over the file to Mr. Devender Singh (*hereinafter referred to as "Respondent"*). A sum of Rs. 7,000/- was paid to Mr. JML by way of demand draft bearing No.284/4544 dated 21.01.1998 issued by Union Bank of India, Mumbai. Having thus, handed over all the papers and the said amount for filing the SLP, the Appellant left India for Dubai on 22.01.1998, in search of employment.

10. Upon making enquiries regarding the status of his SLP, Mr. JML told the Appellant that he was a Senior Advocate and that the case had to be filed by an Advocate-on-Record in the Supreme Court and for this reason the filing of SLP was entrusted to Respondent. In May 1998, when the Appellant enquired about the status of his SLP from Mr. JML, he was asked to send an additional amount of Rs.5,000/-. The Appellant remitted the said amount by way of demand draft issued by ALROZOOKU INTERNATIONAL EXCHANGE CO. (LLC) P.O. 12583, KARAM~DUBAI in favour of Mr. JML, and this Draft was delivered to him at his residence at A-891, Vasant Kunj, New Delhi.

11. The Appellant alleges that thereafter, he began inquiring about the status of his SLP from the Respondent, who told him that the SLP had



already been filed and it takes 2-3years to be listed for hearing. However, despite repeated enquiries, no case number or filing particulars of the SLP, were furnished for almost two years.

12. At that stage, Appellant became suspicious and requested Lt. Cmdr.(Retd.) Sarwan Singh, who had defended the Appellant in the previous Court Martial proceedings, to visit Delhi personally and verify the status of the SLP for which an amount of Rs. 10,000/- was paid to Mr. Sarwan Singh as his expenses for the travel and other arrangements. Lt. Cmdr.(Retd.) Sarwan Singh upon inquiring about the status, came to know that no such SLP had been filed on behalf of the Appellant till March, 2001.

13. After receiving the shocking news of non-filing of the SLP even after handing over the documents and money for the said purpose to the Respondent, the Appellant came to India on 13.03.2001. He thereafter, engaged Col. Raj Kumar, Defendant No.2, **(Died later on and deleted from the array of Parties from the case)**, to arrange for filing a SLP. The Appellant paid Rs.15,000/- to him for the said purpose.

14. Thereafter, Defendant No.2 approached the Respondent and collected all the necessary papers and succeeded in securing a fund of Rs.8,000/- by way of cheque dated 20.4.2001, from the Respondent due to intervention of Mrs. JML. Defendant No.2 Col. Raj Kumar, then further delayed the matter for six months without doing anything and returned the case file to the Appellant in September, 2001 with the legal opinion that since three years' time period had elapsed, SLP was not maintainable and should not be filed.

15. Subsequently, the Appellant approached Mr. P.S. Narasimha, Defendant No.3 **(Appellant later waived his claim against him, and he was deleted from the array of parties)**, and paid a total sum of Rs.35,000/-



in September, 2001 for the purpose of filing an SLP. Defendant No. 3 further took nearly three months to file the SLP, and ultimately S.L.P. (Crl.) No. CC 6771/2002 came to be filed with a long delay of 1470 days, beyond the prescribed period of limitation. An additional delay of 146 days occurred in re-filing the SLP, after removal of defects.

16. The SLP got dismissed by the Supreme Court on the ground of limitation, stating that there was a delay of 1616 days, in filing the SLP, vide Order dated 23.08.2002.

17. Subsequently, the Appellant decided to file a *Review Petition* and he sent the same by way of post from Dubai where he was working, but the Registry of Supreme Court refused to accept it on the ground that Review Petition could not be entertained by post. Eventually, Appellant flew to India and filed the *Review Petition* (Crl.) No. 1470/2002, but in the process, it became time barred by 55 days and was dismissed vide Order dated 28.01.2003.

18. Aggrieved by the Order of the Review Petition, Appellant filed a *Curative Petition* (Crl.) No. 20/2004 which was also dismissed by the Supreme Court without going into the merits, vide its Order dated 17.11.2004.

19. The Appellant thereafter, filed a ***Consumer Complaint being CC No.218/2006 before the National Consumer Disputes Redressal Commission (hereinafter referred to as "NCDRC") for seeking compensation from Respondent***, for gross negligence and deficiency in service. This was also dismissed vide Order dated 11.12.2006 on the ground that the Complaint was *prima facie* time-barred and even otherwise, the claim was totally unjustifiable.



20. Being aggrieved by the Order passed by the NCDRC, the Appellant preferred ***Civil Appeal being C.A No.658/2007 before Hon'ble Supreme Court of India***, but it was also dismissed vide Order dated 23.02.2007.

21. Subsequently, a ***Suit for Recovery of damages bearing CS No. 56129/2016*** in the sum of ₹1,63,30,000/- on account of the Respondent's negligence and failure to render professional services, was filed on 29.05.2007. The Appellant claimed that as a consequence of the Respondent's omissions, he suffered substantial loss of career prospects, financial loss, and severe mental agony.

22. The learned Trial Court, in the Impugned Judgment dated 10.07.2025, held *inter alia* that the cause of action accrued to the Appellant in March, 2001, when he first became aware that no SLP had been filed on his behalf. There was a *delay of six years and one month* from the date on which the Appellant acquired knowledge of the alleged negligent act of the Respondent. The learned Trial Court further observed that even if the date of accrual of the cause of action was to be reckoned from the date of dismissal of the SLP i.e. 23.08.2002, *there would still be a delay of five years in instituting the Suit*. Consequently, the Suit filed on 29.05.2007 was held barred by limitation under Section 9 read with Article 113 of the Limitation Act, 1963. Further, the learned Trial Court observed that the Appellant is not entitled to claim damages on account of the following reasons:

“32. This issue is decided against the plaintiff and in favour of the defendant. This court is of the considered opinion that plaintiff is not entitled to claim damages from the defendants on account of his speculative claims, alternative employment, failure to establish any contractual relationship with the defendant as well as favourable orders from Hon'ble Bombay High Court qua the subsequent service benefits.”



23. ***The Suit of the petitioner was accordingly, dismissed.***

24. Defendant No. 2 and Defendant No. 3 were also impleaded in the Suit. However, during the pendency of the proceedings, Defendant No. 2 expired and was accordingly, deleted from the array of parties. Further, the Appellant waived his claim against Defendant No. 3, who was likewise, deleted. The proceedings ultimately survived only against the Respondent.

Grounds of challenge:

25. The Appellant **assails the impugned judgment primarily on the ground** that the learned Trial Court erred in holding that the Suit was barred by the principle of *res judicata* under Section 11 of the CPC. It is contended that the earlier proceedings before the NCDRC were under the Consumer Protection Act, 1986, which is a special Statute providing summary redressal of consumer disputes, and therefore such proceedings cannot operate as a bar to a regular Civil Suit for Damages in tort, under CPC. NCDRC is not a “Court” within the meaning of Section 11 CPC and that dismissal of the Complaint, does not amount to a conclusive adjudication on merits so as to attract the bar of *res judicata*.

26. The Appellant further contends that the dismissal of the Consumer Complaint was primarily on the *ground of limitation* and that any observations touching upon merits, were merely *obiter dicta*. It is urged that the essential ingredients of *res judicata*, namely *identification of cause of action, identification of issues* and a final adjudication by a Competent Court, are not satisfied in the present case.

27. Further reliance is also placed on the liberty granted by the NCDRC to approach an appropriate forum, which, according to the Appellant,



indicates that the dismissal was not intended to preclude the institution of a Civil Suit.

28. The second ground is on the limitation; the Appellant submits that the learned Trial Court erred in reckoning March, 2001 as the date of knowledge for the purpose of computing the date when the cause of action arose, for the limitation. It is urged that the Court failed to exclude the period spent in pursuing other remedies, including the filing of the SLP, Review Petition, Curative Petition, and thereafter, the Consumer Complaint before the NCDRC and proceedings arising therefrom.

29. According to the Appellant, limitation would start running from 11.12.2006 when he exhausted other legal remedies suggested to him, or alternatively, limitation ought to be computed from the final dismissal of the Curative Petition on 17.11.2004, subject to exclusion for time spent in NCDRC proceedings under Section 14 of The Limitation Act 1963(*hereinafter referred to as "LPA"*). He states that the provisions of Section 14 of the Limitation Act, was not properly appreciated by the learned Trial Court. Moreover, the alleged negligence was characterized as a continuing wrong, so as to save the claim from the bar of limitation.

30. Lastly, on merits and damages, the Appellant assails the impugned judgment on the ground that the learned Trial Court erred in holding that negligence on the part of the defendants, was not established and that the Appellant was not entitled to damages.

31. He states that the evidence on record, including affidavits, payments made e.g., Rs. 7,000/- to Mr. JML, Rs. 5,000/- further, Rs. 15,000/- to Defendant No. 2, Rs. 35,000/- to Defendant No. 3, admissions of delays e.g., Defendant No. 2's affidavit admitting delay, and the admitted delay in filing



the SLP, *clearly demonstrate breach of professional duty*. The Appellant submits that the dismissal of the SLP on account of inordinate delay of 1616 days, itself constitutes sufficient proof of negligence.

32. Additionally, he states that the negligence on part of Defendant No.1 falls in the category of “*res ipsa loquitur*” as he was guilty of holding the file for three years and kept on assuring the petitioner falsely, that SLP was filed, whereas in reality, it was not filed.

33. It is further contended that the learned Trial Court erred in treating the claim as speculative on the ground that the success of the SLP, was uncertain. The Appellant submits that the question whether the SLP would have ultimately succeeded, is immaterial to the issue of negligence. The gravamen of the allegation is the failure to file the Petition within time, which resulted in its dismissal on the ground of delay. It is argued that the Trial Court wrongly intertwined the issue of professional negligence with the possible outcome of the appellate proceedings.

34. The Appellant submits that as a consequence of the alleged negligence, he suffered substantial and quantifiable damages, including loss of his naval career, financial loss, reputational harm and mental agony.

35. He states that the impugned Judgment mis-appreciated the evidence by not considering his clean service record, the conspiratorial nature of the Court-Martial charges, and the direct causation between the Defendant’s delays and the loss of the Appellant’s appellate remedies.

Submissions heard and record perused.

36. Essentially, the dispute at hand, raises the following questions:

- (i) Whether the suit was barred by **limitation**, the cause of action having arisen in 2001 upon the Appellant’s knowledge of non-



filing of the SLP?

- (ii) Whether the Appellant is entitled to exclusion of time under Section 14 of the Limitation Act, 1963 for the period spent in prosecuting proceedings before the NCDRC?
- (iii) Whether the learned Trial Court erred in holding that professional negligence and legally recoverable damages, were not proved?
- (iv) Whether the Suit was barred by the principle of *res judicata* under Section 11 of the CPC?

Limitation:

37. The first issue for consideration is the issue of limitation.

38. In the present case, the alleged act of negligence on the part of Respondent is that he, being an AOR, was engaged in May 1998, through Mr. JML, Senior Advocate, to file an SLP for Appellant. The said SLP was not filed by him and, eventually, the Appellant engaged another senior counsel and the SLP came to be filed eventually on 25.07.2002, but was dismissed on account of delay of **1616 days**. The cause of action on account of negligence of the Respondent, arose on the day the Appellant acquired knowledge of such non-filing of SLP by the defendant, which, according to his own case, was in March, 2001.

39. It is a settled principle that limitation begins to run from the date when the right to sue first accrues. Section 9 of the Limitation Act, 1963, embodies this statutory mandate and reads as under:

“9. Continuous running of time.—Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it: Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover



the debt shall be suspended while the administration continues.”

40. The Appellant has claimed that the cause of action was a continuing one. The pendency of proceedings, pursuit of alternate remedies, or subsequent judicial orders do not arrest the running of time. The justification of the cause of action being a “*continuing wrong*” is therefore, wholly misconceived.

41. The statutory mandate of Section 9 of the Limitation Act, is clear that once limitation commences, it continues to run uninterrupted, except where the Act itself expressly provides otherwise. Once time has begun to run, it cannot be halted or extended except in circumstances expressly recognised by statute.

42. The Appellant may have chosen to pursue his remedy against the dismissal of the SLP, by way of *Review Petition* followed by a *Curative Petition*, which also got dismissed on 17.11.2004, but these were his remedy against the Original grievance of dismissal from Service and not with respect to the alleged negligence of the Advocate. Therefore, the time spent in pursuing his original cause, is not liable to be excluded, while calculating the limitation, *vis-à-vis* the Respondent.

43. The Appellant has further claimed that he filed the present Suit on 29.05.2007. It is his case that, in terms of Section 14 of the Limitation Act, 1963, the time taken in pursuing the remedy by way of Complaint before the National Consumer Disputes Redressal Commission (NCDRC), from November, 2006 till 11.12.2006, is liable to be excluded while computing limitation.



44. Section 14 of the Limitation Act provides for exclusion of time spent in prosecuting, *with due diligence and in good faith*, in another civil proceeding against the same party in respect of the same matter in issue, *provided such proceeding failed on account of defect of jurisdiction or other cause of a like nature*.

45. The essential pre-condition for applicability of Section 14 is that the earlier proceeding must have failed because the forum was incapable of entertaining it *due to a jurisdictional defect or a cause analogous, thereto*. The provision does not extend to cases where the proceeding was dismissed on the ground of limitation or on merits.

46. The Order passed by the National Consumer Disputes Redressal Commission reads as under:

*“Heard the learned counsel for the complainant. **Prima facie, this complaint appears to be barred by limitation. Further, in our view, the claim is totally unjustifiable.** Hence, this complaint is not entertained and is dismissed accordingly. **It would be open to the complainant to seek relief from any other alternative Court or Forum.**”*

47. In the present case, the NCDRC did not decline jurisdiction. The Complaint was dismissed on the *prima facie* view *that it was barred by limitation and that the claim was unjustifiable*. A dismissal on limitation, is not a defect of jurisdiction, within the meaning of Section 14. The provision does not revive a cause of action already barred, it merely excludes time spent before a forum unable to entertain the matter, for want of jurisdiction. The Appellant is, therefore, not entitled to the benefit of Section 14.

48. The cause of action arose in March, 2001 and the Suit could have been instituted till March, 2004. However, the Suit was instituted only on 29.05.2007, after a long delay of *six years and one month*, as noted by the



Ld. District Judge. The Complaint before the NCDRC was filed in November, 2006 at a stage when the claim itself was already patently barred by limitation. On this account as well, the Appellant cannot claim exclusion of the period spent in proceedings before the NCDRC. Even assuming that the Appellant is entitled to the exclusion of the entire period during which the proceedings remained pending before the NCDRC, i.e. from November 2006 to 11.12.2006, then too, the Suit would still fall beyond the statutory period of three years, as envisaged under Article 113 of the Limitation Act, 1963.

49. The Suit is thus, *ex facie* time-barred, as has been rightly concluded by the Ld. District Judge.

50. In view of the above findings, the consideration of the other issues would be purely academic and does not warrant any interference.

51. The second issue related to liability and damages. The Appellant has failed to establish the foundational requirement of a legally enforceable obligation. There is no material on record to demonstrate the existence of a concluded contract or a subsisting lawyer–client relationship between the parties. In the absence of a duly executed vakalatnama, letter of engagement, or any other cogent evidence evidencing professional engagement, no contractual or fiduciary obligation can be said to have arisen. The dismissal of the SLP by the Hon’ble Supreme Court on the ground of delay, though unfortunate, does not *ipso facto* establish actionable negligence, in the absence of proof of responsibility on the part of the Respondent.

52. The Appellant’s reliance on the doctrine of *res ipsa loquitur*, is misconceived. The learned District judge rightly held that no contractual relationship or professional engagement between the Plaintiff and Defendant



No. 1 was established. The Plaintiff admittedly never met Defendant No. 1, paid no professional fees to him, executed no vakalatnama in his favour, and failed to implead Mr. JML, with whom the alleged transaction had taken place. In the absence of such foundational facts, the question of invoking the doctrine of *res ipsa loquitur* does not arise.

53. Even otherwise, the learned Trial Court has rightly noted several circumstances which negate the claim for damages. The Appellant admittedly secured alternative employment with the Government of Qatar, thereby undermining the plea of *complete loss of career prospects*. The record reveals inconsistent and contradictory stands taken by the Appellant, at different stages of the proceedings, which diminish his credibility.

54. It is also undisputed that pursuant to the Order of the Bombay High Court in W.P.(Crl) No. 491/1996, the Appellant's dismissal from service with disgrace was altered to a simple dismissal and he was granted consequential service benefits. In view of such modification, the plea of pensionary deprivation or continuing financial loss, does not stand substantiated.

55. The learned Trial Court was, therefore, fully justified in dismissing the claim, and its findings call for no interference.

56. Lastly, **on the Issue No. 4. of *res judicata***, upon consideration of the record, this Court finds no infirmity in the finding returned by the learned Trial Court on this issue. Admittedly, the appellant had earlier approached the NCDRC in respect of the same allegations and against the same parties, which had the jurisdiction, at the relevant time. The Complaint was dismissed as being barred by Limitation and even otherwise, the Claim was totally unjustifiable.



57. The said Order was carried in Appeal before the Hon'ble Supreme Court, which also came to be dismissed. In such circumstances, the matter attained finality. The ingredients of Section 11 of the CPC, namely identity of parties, identity of issues, competence of the forum, and a decision that has attained finality, stand satisfied. Therefore, the Ld. District Judge was justified in holding that the present suit is barred by the principle of *res judicata*.

58. Even otherwise, this aspect is otiose, as the Suit was barred by Limitation.

Conclusion:

59. The Appeal is accordingly, dismissed. The pending Applications are disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

MARCH 10, 2026/R