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

+ CS(OS) 2659/2011

% ***Judgment dated 11.09.2014***

RUDRAKSHA CONSTRUCTIONS Plaintiff
Through: Mr.Sushil Kumar, Advocate

versus

TELE COMMUNICATIONS CONSULTANTS
INDIA LTD & ANR Defendant
Through: Mr.P.K. Bansal, Advocate for
the defendant no.1

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

I.A. 2695/2013 & I.A. 16697/2012

1. I.A. 2695/2013 has been filed by the defendant no.2 under Order 7 Rule 11 read with 151 CPC for dismissal of the suit on the ground that the present suit is barred by limitation and for want of cause of action.
2. I.A. 16697/2012 has been filed by the defendant no.1 under Order 7 Rule 11 read with 151 CPC for rejection of plaint and for dismissal of the suit.
3. Counsel for the defendants submit that the suit filed by the plaintiff is hopelessly barred by limitation; and a bare reading of the plaint would show that the payments sought are with respect to the bills which pertain to the year 2002, whereas the suit was instituted on 15.9.2011 i.e. after a period of almost 10 years.
4. Counsel for the plaintiff on the other hand submits that the suit has been filed within the period of limitation as various communications were addressed from the year 2003 onwards to the defendants and the last

communication being of 17.7.2006. A legal notice was also issued on 27.8.2008, which was replied to by the defendant on 16.9.2008.

- 5. Mr.Kumar submits that the stand of the defendant has all along been that the defendants were not in possession of bills raised by the plaintiff and thus the suit filed by the plaintiff is within the period of limitation.
- 6. While dealing with an application under Order 7 Rule 11 CPC, the plaint is to be read as a whole and a meaningful reading of the plaint should show as to whether the present suit has been instituted within the period of limitation, which is admittedly three years.
- 7. In paragraph 14 of the plaint, it has been averred that the plaintiff completed the awarded work under the original project by 31.1.2002. The plaintiff lodged six final bills on 28.2.2002 details of the bills are reproduced under:

Sl.No.	Bill No.	Date	Amount (Rs.)
1.	TCIL/JSM/C-05/99/14	20.02.2002	74,747.70
2.	TCIL/JSM/C-04/99/08	20.02.2002	5,24,005.70
3.	TCIL/JSM/C-05/99/15	20.02.2002	3,10,719.00
4.	TCIL/JSM/C-06/99/12	20.02.2002	2,61,372.00
5.	TCIL/JSM/C-05/99/08	20.02.2002	1,43,266.00
6.	TCIL/JSM/C-06/99/16	20.02.2002	14,266.69
		Total	13,28,602.00

- 8. As per para 15 of the plaint, an averment has been made that along with six final bills, the plaintiff had submitted conciliation sheet along with sinkage 1% duly signed by the officials of the defendants and the plaintiff. As per the final reconciliation sheet, shortage of stores was calculated at Rs.1,99,561/-.

9. In paragraph 16, the plaintiff goes on to state that it is a matter of record that the plaintiff completed the work, which involved 150 k.m. of cable laying, more than 1000 DPS, more than 1000 joints and 25 pillars in and rocky area spread over 10 kms. It would be useful to reproduce paragraphs 21 and 22 of the plaint, which read as under:

“21. That plaintiff sent a number of communications oral as well as written to the defendants and demanded the money due from them. These included letters dated 27.04.2003, 17.11.2003, 19.01.2004, 09.05.2004, 20.04.2004, 05.10.2004, 27.03.2005, 30.05.2005, 30.07.2005, 27.09.2005, 05.01.2006, 23.05.2006, 20.05.2006, 12.06.2006 and 17.07.2006.

22. That the respondent did not pay any heed to the request for the plaintiff pertaining to release of payment which was already over due long time back and refused to pay the plaintiff his dues on some or the other pretext including no receipt of the bills and thus, deprived the plaintiff of its rightful money.”

10. The amount sought to be recovered has been detailed in paragraph 28 of the plaint, which is reproduced below:

“28. That amount due from TCIL to the plaintiff is as under:-

(i)	Retained against 10% bank guarantee and 15% against running bills prior to 2002.	Rs.7,50,000/-
(ii)	Against six final bills submitted by TCIL to BSNL on 28.02.2002 towards labour charges.	Rs.11,73,618/-
(iii)	Amount withheld by BSNL from plaintiff from different bills.	Rs.3,30,756/-

(iv)	Withheld illegally against security deposit.	Rs.45,574/-
	Total	Rs.22,99,948/-
	Recovery from Stores (-)	Rs.1,99,561/-
	Audit Recovery (-)	Rs.41,358/-
	Outstanding Balance	Rs.20,59,029/-
	Interest @ 12% till date	Rs.16,06,020/-
	Net payable	Rs.36,65,020/-

(Rupees thirty six lacs sixty five thousand and twenty only)”

11. As per paragraph 29 cause of action for filing the present suit arose when the plaintiff completed the work awarded under the original project by 31.1.2002 and lodged six final bills on 28.2.2002 aggregating to Rs.13,28,602/-. It would also be useful to reproduce paragraph 29 of the plaint:

“29. That the cause of action for filing the present suit arose when upon the Plaintiff completing the work awarded under the original project and both the said incomplete projects, by 31.01.2002 as per the terms of contract with the Defendant No.1 and lodged the six final bills on 28.02.2002 aggregating Rs.13,28,602.00.

The cause of action arose thereafter when the Plaintiff sent repeated communications and reminders to the Defendant No.1 to clear the said bills and release the monies due thereunder. The cause of action further arose when the respondent did not pay any heed to the request for the plaintiff pertaining to release of payment which was already over due long time back.

The cause of action further arose when the plaintiff sent a legal notice through his counsel dated 27.08.2008 to the defendants and communicated to them that in case the plaintiff did not receive its dues in time the recourse to legal proceedings could be initiated

and which letter was replied to by the Defendant No.1 vide letter dated 16.09.2008.

The cause of action thereafter arose when till the year 2011 the concerned officials of the Defendant No.1 made the same pretext of non availability of bills with them refused to make the said payment due under the said bills to the Plaintiff.

The cause of action further arose when the Plaintiff obtained relevant papers from the Defendant No.2 in different batches upto July 2011 and which papers revealed that the bills were always available with the Defendant No.2 and the Defendant No.2 had made illegal recoveries of Rs.18,16,420.00 from the amounts due, owing and payable to the Plaintiff.

The cause of action is a continuing and a subsisting one as the Defendant No.1 continues to deny to the Plaintiff the amounts due, owing and payable to the Plaintiff under the said bills alongwith interest thereon.”

12. Counsel for the plaintiff submits that since the defendants were not responding to various communications addressed to them, the plaintiff had to take recourse under the Right to Information Act and after relevant documents were received in July, 2011, the present suit was filed on 15.9.2011.
13. A bare reading of the plaint shows that the plaintiff completed the project on 31.1.2002 (as per paragraph 14 of the plaint). Plaintiff submitted six bills on 28.2.2002 as also detailed in the same paragraph. As per paragraph 21 of the plaint, letters were addressed by the plaintiff to the defendant between the period 27.4.2003 to 17.7.2006. Admittedly, the defendant did not acknowledge the liability at any stage much less during the period of limitation.
14. The key question which comes up for consideration before this Court as has been argued by counsel for the plaintiff, is as to whether the period of

limitation would commence when the bills were submitted on 28.2.2002 or when the plaintiff addressed various communications to the defendant including letters dated 27.04.2003, 17.11.2003, 19.01.2004, 09.05.2004, 20.04.2004, 05.10.2004, 27.03.2005, 30.05.2005, 30.07.2005, 27.09.2005, 05.01.2006, 23.05.2006, 20.05.2006, 12.06.2006 and 17.07.2006 and when the legal notice was issued i.e. on 27.8.2008. Would the period of limitation stand extended by the reply received by the plaintiff from the defendant dated 16.9.2008 or would the period of limitation commence from the year 2011 when the plaintiff received various documents from the defendants under the Right to Information Act, as submitted by counsel for the plaintiff.

15. The admitted case of the plaintiff is that the bills pertain to the work carried out by the plaintiff, which stood concluded on 13.1.2002. As per paragraph 14 bills became due and payable and final bills were raised on 28.2.2002. In my view the period of limitation would commence on 28.2.2002 when six bills were raised by the plaintiff upon the defendants. The communications which have been relied upon during the course of hearing are letters dated 31.8.2006, 23.3.2007 and 11.4.2007. Reliance is also placed on the reply dated 16.9.2008 to the legal notice sent by the plaintiff, which reads as under:

“16.09.2008
Shri Pramod Mishra
Advocate
Siddhivinayak Committee (Opp. Hema Industrial Estate)
Meghwadi
Jogeshwari(E)
Mumbai-400060.

Sub: Your Notice to TCIL dated 27.08.08 on behalf of your client M/s Rudraksha Construction for work in Jaisalmer (Regd.)

Project No.JSM/C-04/99, JSM/C-05/99 and JSM/C-06/99

Dear Sir,

This is in reference to your above letter dated 27.08.08 sent on behalf of your client M/s Rudraksha Construction.

In this regard, it is submitted that all your claims and allegations are false, wrong and therefore denied. We would like to inform you that letter dated 31.08.06, 22.08.06, 04.08.06 and 07.07.06 have been sent to your client M/s Rudraksha Construction for furnishing details of work done supported by authenticated signed copy of MB, Store reconciliation statement signed by BSNL, AT Sheets, As Built drawings, etc.

The above documents have still not been furnished by your client M/s Rudraksha Construction till date which shows that it has no case. Furthermore, it is stated that all claims raised by your client are hopelessly time-barred.

This letter is without prejudice to rights and contentions of TCIL that may be available to TCIL under facts of law.

Thanking You,

Yours faithfully,
For Telecommunications Consultants India Limited

Sd/-
(N.N. Ray)
Group General Manager (CN).”

16. Reading of the letter dated 16.9.2008, which is a reply to the legal notice would show that the defendant has nowhere accepted its liability. In fact the defendant has not only refuted the demand but has also informed the plaintiff that the claim is time barred.
17. Section 18 of the Limitation Act, reads as under:

“18. Effect of acknowledgment in writing.— (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation. – For the purposes of this section, -

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”

18. As per Section 18 of the Limitation Act, the acknowledgment, if any, is to be made before the expiration of the period of limitation, the letters sought to be relied upon by counsel for the plaintiff nowhere acknowledge the amounts payable by the defendants to the plaintiff. Moreover as per the own showing of the plaintiff, all the letters sought to be relied upon

have been issued beyond the period of three years from 28.2.2002.

19. Reading of the plaint leaves no room for doubt that the suit is hopelessly barred by the period of limitation. Accordingly, the present applications are allowed. Consequently, the suit [CS(OS) 2659/2011] suit is dismissed, as being barred by limitation.

G.S.SISTANI, J

SEPTEMBER 11, 2014

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