

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SA No. 454 of 2010
Municipal Council v. Subhash

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr D.M. Kale, Advocate for appellant
Mr A. S. Mehadia, Adv for respondent

CORAM : A.V. NIRGUDE, J

DATED : 7th May 2015

1. Learned counsel for the appellant fairly conceded that the only point he would raise in this appeal is about limitation. He asserted that the respondent had not filed suit within limitation. This aspect of the case was one of the defences of the appellant/defendant. The Courts below framed issue of limitation and answered it in favour of respondent/plaintiff. The issue of limitation at least in this case is purely a question of facts. With the help of learned counsel for the parties, I went through the facts and noted following events.

2. The contract for construction of swimming pool was given to the plaintiff. The work started sometime prior to 1992. The outer limit for completing the work was 21st March 1992. During the work order, the respondent/plaintiff raised bills from time to time and bills were passed. Last of such bills was raised on 9th October 1991. Through this bill,

respondent/plaintiff demanded Rs. 2 lakhs, but the appellant/defendant disbursed only Rs. 1,32,000/- on 31st October 1991. Appellant/defendant found the work substandard and thereafter the parties entered into correspondence. In February 1992, the appellant/defendant passed a resolution whereby they permitted continuance of work to respondent/plaintiff. He could not undertake the work because the premises was unauthorizedly locked by one of the municipal councillors. The respondent/ plaintiff could neither complete the work nor he could retrieve his valuable equipments from the swimming pool premises. On 22nd December 1992 at his request, the Chief Officer of appellant Municipal Council visited the swimming pool premises to find that there indeed was lock put on the premises whereby the respondent/plaintiff was kept out of the premises. Despite of this, no corrective steps were taken and ultimately on 12th January 1994, respondent/plaintiff gave notice demanding return of his equipments and balance payment. The suit was filed on 21st January 1996.

3. The question in such situation is, whether the suit is filed within limitation. In order to answer this question, one must find out as to when exactly the cause of action arose. In my view, the cause of action for this suit arose after 22nd December 1993. Respondent/plaintiff made complaints to the Chief Officer about locking of the premises unauthorizedly by one of the municipal councillors. It was his case

then that the Municipal Councillor had no authority to put lock on the premises and it was for the Municipal Council to open the lock and permit continuance of work. On his complaint, the Chief Officer visited the swimming pool premises on 22nd December 1993, but instead of unlocking the door of the premises and permitting the respondent/plaintiff to continue with his work, the Chief officer did nothing. This really gave respondent/plaintiff the cause of action to initiate this lis. From that day the action ought to have been taken within three years and since the suit is filed within three years, the suit cannot be said to be barred by limitation. The appeal should, therefore, fail.

4. In the result, second appeal is dismissed. The amount which is deposited in this Court by the appellant Municipal Council shall be paid to the respondent/plaintiff along with interest, if any, accrued thereon.

JUDGE

joshi