

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

+ CS(OS) 944/2014 & IA No.6058/2014

Decided on: 23.04.2015

IN THE MATTER OF:

INSTITUTE OF GENOMICS AND INTEGRATIVE BIOLOGY Plaintiff
Through : Mr. Tanuj Khurana, Advocate

versus

TATA POWER DELHI DISTRIBUTION LTD Defendant
Through : None.

**CORAM
HON'BLE MS.JUSTICE HIMA KOHLI**

HIMA KOHLI, J.(Oral)

1. The present suit has been instituted by the plaintiff against the defendant praying *inter alia* for recovery of a sum of Rs.38,98,721.32 paise, an amount stated to have been deposited towards the electricity bill for the month of March, 1994.

2. After perusing the averments made in the plaint, the learned Joint Registrar had observed on 29.05.2014 that the suit is barred by limitation and had directed that the case be placed before the Court for appropriate orders.

3. On the last date of hearing, counsel for the plaintiff had sought time to file written submissions along with the case law on the aspect of

limitation. Despite repeated opportunities sought by the counsel for the plaintiff and duly granted, the written submissions have not been filed till date.

4. Counsel for the plaintiff states that he cannot travel beyond the averments made in the plaint for addressing arguments on the aspect of limitation and the Court may proceed to decide the said issue on the basis of the pleadings contained in the plaint.

5. A perusal of para 37 of the plaint, which is cause of action para, reveals that as per the plaintiff, the cause of action to institute the suit had first arisen on 3.6.1993, when it had deposited some amount with the defendant for purposes of meter testing. The cause of action had further arisen on 26.4.1994, when the plaintiff had written to the predecessor-in-interest of the defendant (erstwhile DESU) about some additional amount having been charged by DESU. The cause of action next arisen on 19.7.1994, when the DESU officials had confirmed that the transformer installed in the plaintiff's building was a defective one. The cause of action had then arisen on 24.1.1995, when the plaintiff had requested the defendant in writing to reconstruct the electricity charges on the basis of actual sanctioned load. Thereafter, the cause of action had arisen on 6.9.1995, when the plaintiff claims that it had written to DESU that it had charged an excess amount to the tune of

₹38,98,721.32 paise and had sought refund of the said amount. Thereafter, para 37 goes on to record a number of dates on which cause of action had allegedly arisen in favour of the plaintiff, including 13.11.1995, 4.4.1996, 27.4.2001 and 13.12.2002, when some correspondence was exchanged between the parties on the alleged excess payment made by the plaintiff to the defendant/its predecessor.

6. As per the plaintiff, the cause of action had next arisen on 1.7.2011, when the Joint Secretary (Power), Govt. of NCT of Delhi had informed it that DESU cannot refund the excess amount allegedly paid by the plaintiff for administrative reasons. Further, the dates mentioned in the cause of action para are between 11.7.2012 to 12.12.2013, when the plaintiff had served legal notices to the defendant.

7. As has been observed by the learned Joint Registrar in the order dated 29.05.2014, the cause of action had arisen in favour of the plaintiff for the first time in March, 1994 when it had sought refund of the excess amount deposited by it towards the electricity bill from the predecessor-in-interest of the defendant, erstwhile DESU. Section 9 of the Limitation Act prescribes that once the time has begun to run, no subsequent disability or inability to institute a suit or make an application, stops it.

8. In the present case, as per the averments made in the plaint, the cause of action had arisen in favour of the plaintiff in March, 1994 and the prescribed period of three years if computed from the said date, would have expired in March, 1997. For seeking extension of the period of limitation, counsel for the plaintiff has relied on a letter dated 1.7.2011, written by the Department of Power, Govt. of NCT of Delhi to the plaintiff, which states *inter alia* that it was taking up the plaintiff's case with the NDPL for recovery of penalties on account of unconsumed power. As the letter dated 1.7.2011 written by the Govt. of NCT Delhi to the plaintiff does not acknowledge that any amount is refundable to the plaintiff, reliance placed by learned counsel on the aforesaid letter to claim that the defendant had acknowledged its liability to pay any amount to the plaintiff, is misplaced. The learned Joint Registrar has rightly noted in the order dated 29.5.2014, that Section 18 of the Limitation Act that deals with the effect of acknowledgement in writing, will not come into play for the reason that there has been no acknowledgement by the defendant for extending the limitation to institute the present suit.

9. The subsequent correspondence exchanged between the parties on the said issue, which the plaintiff has referred to extensively in the plaint and the cause of action para, will also not extend the limitation for

instituting the present suit. In this regard, the explanation appended to Section 18 of the Limitation Act would have a bearing. The said explanation prescribes that an acknowledgment is sufficient though there may be a refusal to pay the claimed amounts, if it is refused when the liability is subsisting. As per the facts of the present case, there is no acknowledgment of its liability by the defendant in the letter dated 1.7.2011, or for that matter, in the letter dated 25.9.2012 and therefore the said correspondence cannot assist the plaintiff in explaining the delay in instituting the present suit, nor can the said letter give rise to a fresh period of limitation for entitling the plaintiff to institute the present suit, after the end of March 1997. Quite apparently, the suit instituted by the plaintiff is hopelessly barred by limitation having been filed well after fourteen years, on the expiry of the prescribed period of three years, reckoned from March, 1994.

10. The suit is accordingly dismissed along with the pending application, being barred by limitation.

APRIL 23, 2015
sk/mk

(HIMA KOHLI)
JUDGE