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

+ <u>CS(OS) 3804/2014 & IA No.24849/2014</u>

Decided on : <u>17.03.2015</u>

<u>IN THE MATTER OF</u>:

M/S RAM KRIPAL SINGH CONSTRUCTION PVT. LTD. Plaintiff
Through : Mr. Rajesh Kumar, Advocate

versus

DAV COLLEGE MANAGING COMMITTEE & ORS. ..... Defendants
Through :

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

<u>HIMA KOHLI, J</u>.(Oral)

1. The plaintiff has instituted the present suit against the defendants/DAV College Managing Committee praying *inter alia* for recovery of a sum of ₹41,75,625/- towards damages along with interest.

2. The case has been placed before the court by the learned Joint Registrar who had recorded in the order dated 10.12.2014 that the suit appears to be barred by limitation.

3. As per the averments made in the plaint, the plaintiff is in the business of undertaking construction work for government departments and other bodies and had participated in a pre-qualification tender for construction of a building at Pehowa, Kurukshetra, Haryana, in terms of an advertisement dated 13.1.2010 issued by the defendant No.1,

inviting bids. Upon the tender process being finalized, the work was awarded in favour of the plaintiff on 16.6.2010. On 5.8.2010, an agreement was executed between the plaintiff and the defendants. As per the conditions stipulated in said agreement, the work was to be completed by the plaintiff by 15.3.2011. The plaintiff has averred that though they had arranged the entire resources at the construction site for executing the work, the defendants had failed to make the drawings available to its officers. The plaintiff claims that having failed to take necessary steps in furtherance to the contract, the defendants had breached their obligations under the said contract.

4. As per the plaintiff, though the first phase of the work at the site was to be completed in less than one year, reckoned from 5.8.2010, the date when the agreement was executed, the defendant No.2 had failed to respond to the repeated requests made by it for being provided the drawings of the construction required to be undertaken at the site. The plaintiff has averred in the plaint that it had written a letter dated 28.9.2010 to the defendant No.2 for supplying the drawings, followed by a letter dated 19.2.2011, asking for release of the mobilization expenses incurred by it, but the defendants had not responded and finally, the plaintiff was compelled to institute the present suit, for claiming recovery of a sum of ₹41,75,625/-, on account of mobilization and de-mobilization

of resources, idle labour, bank charges and earnest money etc. deposited with the defendants, as detailed in para 17 of the plaint.

5. It has been stated in para 20 of the plaint that the plaintiff had waited for one and a half years in anticipation of payments to be made by the defendants in terms of the invoice raised by it on 19.2.2011, but since the defendants remained impervious, it had to issue a legal notice dated 5.1.2013. The defendants did reply to the aforesaid legal notice on 22.8.2013, but they had denied their liability to pay any amount to the plaintiff.

6. The records reveal that the present suit was instituted by the plaintiff on 13.11.2014 whereas it had raised an invoice on the defendants for expenses allegedly incurred by it under the contract, on 19.2.2011. In other words, by the time the present suit was instituted, the period of three years prescribed under the Limitation Act had already expired. In fact, the prescribed period of limitation would have expired on 19.2.2014, whereas the suit has been instituted nine months thereafter.

7. Counsel for the plaintiff insists that the suit is not barred by limitation and seeks to refer to the reply dated 22.08.2013 sent by the defendants to the plaintiff's legal notice and states that they had admitted therein that the agreement in question had never been acted

upon. He submits that the date of the said admission should be taken into consideration for calculating the limitation for purposes of instituting the present suit.

8. The Limitation Act, 1963 prescribes a limitation of three years for instituting a suit for compensation on account of breach of a contract under Article 55 of the Schedule attached thereto and the said period of three years has to be reckoned from the date when the contract was broken or where there are successive breaches, when the breach in respect of which the suit is instituted, occurs or where the breach is continuing, when it ceases.

9. As per the averments made by the plaintiff in the cause of action para, the cause of action had arisen in its favour and against the defendants for the first time on 16.6.2010, when the plaintiff had qualified for the work; it again arose on 5.8.2010, when the agreement was executed between the plaintiff and the defendant No.1. The next relevant date has been mentioned as 11.8.2010, when the plaintiff states that it had written a letter to the defendants demanding various documents from it and again on 28.9.2010, when the plaintiff had demanded the drawings of the site plan from the defendant No.3.

10. It has been further stated by the plaintiff that the cause of action once again arose in its favour on 18.2.2011, when it had raised an

invoice for a sum of Rs.41,75,625/- on the defendants in respect of the expenses incurred on account of mobilization/demobilization of the resources. The next relevant date mentioned is of 17.09.2011, when the plaintiff had demanded payments from the defendants under the contract and then on 05.01.2013, when the plaintiff had served a legal notice upon the defendants demanding amounts which the defendants had refused to pay vide their reply dated 22.8.2013.

11. It is apparent from a perusal of the cause of action para of the plaint that in its letter dated 19.2.2011, the plaintiff had mentioned having raised a final invoice of ₹41,75,625/- allegedly incurred by it under the contract and it had called upon the defendants to pay the said amount within ten days. On application of Article 55 of the Schedule under the Limitation Act, the cause of action had clearly arisen in favour of the plaintiff on 19.2.2011, when the final amount due and payable by the defendants was quantified by it and the period of three years for instituting the suit shall have to be computed from the said date. When calculated in such a manner, the period of three years available in the statute for instituting a suit for compensation on account of breach of contract would have expired on 19.2.2014, whereas the present suit came to be instituted by the plaintiff after almost nine months, on 13.11.2014.

12. Section 9 of the Limitation Act further prescribes that where once time has begun to run, it continuous running and no subsequent disability or inability to institute a suit or make an application, stops it. In the present case, the cause of action had indisputably arisen on 19.2.2011, the date when the plaintiff had raised an invoice for the disputed amount on the defendants and the period of three years for instituting a suit for recovery, if reckoned from the said date, would have continued running till it would have expired in due course, on 19.2.2014. Merely because the plaintiff has chosen not to initiate legal action for a period of one year thereafter and served a legal notice on the defendants on 5.1.2013, would not be a ground to extend the period of limitation for purposes of invoking its civil remedies against the defendants.

13. As for the contention of the learned counsel for the plaintiff that in their reply dated 22.8.2013, the defendants had acknowledged their liability to make payments to the plaintiff, it may be noted that the said submission is contrary to the plaintiff's own averments in the cause of action para and are not even borne out from a perusal of the reply sent by the defendants to the plaintiff's legal notice. There is nothing at all that has been stated by the defendants in their reply that can be construed as an admission on their part of their liability to pay any

amounts to the plaintiff on the basis of the invoice raised by it under cover of letter dated 19.2.2011. Resultantly, a fresh period of limitation cannot begin to run on the basis of the defendants' reply to the plaintiff's legal notice. The statutory period of three years have to be computed from 19.2.2011 and the said period would have expired on 19.2.2014, whereas the present suit was instituted by the plaintiff on 13.11.2014, which is far beyond the permissible period of three years.

14. As a result, the present suit is held to be barred by limitation and is accordingly dismissed, along with the pending application.

(HIMA KOHLI)
JUDGE

MARCH 17, 2015
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