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

+ W.P.(C) 1087/2014

AMIT KUMAR

..... Petitioner

Through Mr. Amit K Thakur, Advocate

versus

NORTH DELHI MUNICIPAL CORPORATION & ANR.

..... Respondents

Through Mr. Sunil Goel, Std. Counsel for R-1

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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23.05.2016

The petitioner has filed present writ petition under Article 226 of the Constitution of India praying therein that respondents be directed to pass the bills of petitioner and release the payments withheld by them, in respect of the work order no.740 dated 31.03.2006 and work order no. 3308 dated 15.12.2006. It is stated that after the award of the works, the petitioner entered into agreement with the respondents and executed the work orders in the year 2006; and thereafter final bills, with respect to the work orders, were prepared and entered into the measurement book.

Stand taken by the respondent is that as per petitioner's own version, the bills were prepared on 23.04.2008 and the measurement book was closed on 03.05.2010 while the present writ petition has been filed in the year 2014, therefore, claim is time barred. It is also the contention of the respondent that a writ petition under Article 226 of the Constitution of India is not maintainable for recovery of contractual, thus, which otherwise have become time barred. The

claim which is time barred for a suit cannot be revived in the writ petition.

Learned counsel has placed reliance on “Govt. of NCT of Delhi & Ors. vs. New Variety Tent House & Anr. 189 (2012) DLTD 65 (DB) and “Rosa Power Supply Co. Ltd. vs. Union of India” 2014 (307) ELT 638 (Del.)

In New Variety (supra), supply was effected during the year 1999-2000 and bills totalling an amount of ₹67,57,072/- were raised by the respondent whereas the writ petition was filed in the year 2003. In these facts it was held by the Division Bench of this court that the writ petition to enforce contractual claim was not maintainable, more particularly when the claim was time barred.

Reliance has also been placed on “Trilokchand Motichand vs. H B Munshi, (1969) 1 CC 110 wherein it was held that the extraordinary remedies under the Constitution are not intended to enable the claimant to recover money, the recovery of which by suit is barred by limitation. It was further held that were the writ remedy under Article 226 corresponds to a remedy in an ordinary suit and the latter remedy is subject to the bar of a statute of limitation, the court in its writ jurisdiction acts by analogy to the statute, adopts the statute as its own rule of procedure and in the absence of special circumstances imposes the same limitation on the summary remedy in writ jurisdiction.

In Rosa power supply (supra) a Division Bench of this court held as under:-

That money claim, suit for which has become barred by

time/limitation, cannot be allowed in writ jurisdiction. Reliance was placed on State of Madhya Pradesh Vs. Bhailal Bhai, AIR 1964 SC 1006 laying down that though the provisions of Limitation Act do not apply to the grant of relief under Article 226 of the Constitution of India however the maximum period fixed by the Legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 of the Constitution of India can be measured and in Tilokchand Motichand (supra) laying down that the extraordinary remedies under the Constitution are not intended to enable the claimant to recover monies, the recovery of which by suit is barred by limitation and that where the writ remedy under Article 226 corresponds to a remedy in an ordinary suit and the latter remedy is subject to the bar of a statute of limitation, the Court in its writ jurisdiction acts by analogy to the statute, adopts the statute as its own rule of procedure and in the absence of special circumstances imposes the same limitation on the summary remedy in writ jurisdiction.

This writ petition is dismissed.

A.K. PATHAK, J

MAY 23, 2016/sm