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HIGH COURT OF DELHI AT NEW DELHI

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RSA 221/2014 & CM APPL.13917/2014

Decided on: 12th January, 2016

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Mr. Pawan Mathur, Standing
Counsel for the DDA.

versus

MADHUR KRISHNA Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a regular second appeal filed by the appellant/Delhi Development Authority (DDA) against the judgment and decree dated 11.02.2014 passed in RCA No.49/13/11 titled *Delhi Development Authority v. Mr. Mahur Krishan* by virtue of which the judgment and decree dated 30.10.2010 passed by the learned Civil Judge, West Delhi dismissing the suit of the appellant as being barred by limitation has been upheld.
2. Briefly stated that facts of the case are that the appellant/DDA filed a suit against the respondent for recovery of Rs.3,25,264.19P on account of having awarded a work of laying water line vide

Agreement dated 18.11.1983. It was alleged that the work was to be completed by 27.08.1984, however, the respondent abandoned the work without completing the same as a consequence of which the appellant had to get the work completed through M/s. R.K. Mohan Construction Company. In terms of Clause 7 of the agreement, the respondent never submitted the final bill and the work was ultimately not completed by the respondent on 27.08.1984. This resulted in filing of the suit for recovery of the aforesaid amount.

3. The respondent filed his written statement and contested the suit by raising the plea of the same being barred by limitation as it was filed after expiry of 13 years from the date when the work was scheduled to be completed i.e. 27.08.1984. The reason for non-completion of the work given by the respondent was non-availability of the drawing details, specifications and the stipulated material, etc. apart from rainy season and the obstruction created by the residents of the area. This was refuted by the appellant in the replication. On the pleadings of the parties, following three issues were framed:-

“(i) Whether the suit of the plaintiff is barred by limitation as stated in preliminary objection? OPD.

(ii) Whether the plaintiff is entitled to recovery Rs.3,25,264.19 as claimed? OPP.

(iii) Relief.”

4. So far as issue No.1 is concerned, the learned Civil Judge after recording of evidence came to the conclusion that as the suit was filed after expiry of 13 years, therefore, the suit was barred by limitation.
5. The appellant feeling aggrieved against the judgment and decree of the dismissal preferred the appeal before the Court of Additional District Judge-V, West District, Tis Hazari Court, Delhi contesting the judgment and decree passed by the learned Civil Judge.
6. The first Appellate Court agreed with the finding returned by the learned Civil Judge that the suit was barred by limitation as the appellant got the work completed on 12.05.1986 which was scheduled to be completed on 27.08.1984 but the suit for recovery was filed on 04.12.2001 and if the period of limitation is reckoned from either of the two dates it is beyond 13/15 years and therefore, the suit is barred by limitation. The factum of suit having been filed

after 13 years is stated to have been admitted by Mr. S.C. Gupta, Executive Engineer, WD-II, DDA who had appeared as PW-1.

7. Still not feeling satisfied, the present second appeal has been filed by the appellant/DDA.
8. Mr. Mathur, the learned counsel for the appellant for the first time without raising the aforesaid submission before the trial Court or the first Appellate Court has taken a plea that the DDA being part of the Central Government, therefore, in terms of Article 112 of the Constitution of India, a suit for recovery could have been filed within 30 years. It is this point which has been urged by the learned counsel that is stated to be raising a substantial question of law. For the purpose of canvassing his argument that DDA is a part of the Central Government, it has placed reliance on *The Government of India (Allocation of Business) Rules*.
9. I have heard the learned counsel for the appellant and gone through the record.
10. I do not agree with the contention of the learned counsel for the appellant that the submission made by the learned counsel for the

appellant raises any substantial question of law. This is on account of the two reasons.

11. Firstly, that the plea which is sought to be taken by the appellant now with regard to limitation period being 30 years has neither been pleaded in the plaint nor taken during the course of arguments either before the learned Civil Judge or the first appellant Court. Therefore, this plea, in my view cannot be taken by the appellant at the stage of second appeal. There has to be a foundation in the pleading before any substantial question of law is said to be arising from the appeal. This is a last straw which the appellant is clinging only to continue the suit unnecessarily. It is pertinent here to mention what has been averred by the appellant in the plaint with regard to cause of action as under:-

“14. That the cause of action arose in favour of the Plaintiff and against the Defendant for the purpose of the aforesaid suit arose firstly on 9.10.1998 and on 29.01.1999 when the Plaintiff wrote to the Defendant and acquaint him about the amount to be payable by him. It further arose on 24.06.1999 when the Defendant personally visited the office of the Plaintiff and had written a letter to the Executive Engineer. It further arose on 10.05.2000, 26.05.2000 and 02.08.2000 when the Plaintiff got served the reminders on the Defendant. In spite of that neither the

Defendant has any reply to the aforesaid letters/reminders nor make the payment of the said amount intentionally. The cause of action continue to arisen as the payment has not been made till date.”

12. Apart from this, the cause of action clause the appellant has no where pleaded in the plaint that the DDA is a Central Government agency therefore the period of limitation is 30 years as per Article 112 of the Limitation Act, 1963 or that the suit is filed by them within limitation. It is observed that before such a plea is taken, there must be some basic foundation with regard to same in the pleadings which is being sought to be raised.
13. The contention of the learned counsel for the appellant is that *the Government of India (Allocation of Business) Rules* which have been drawn in exercise of the powers of Clause (3) of Article 77 of the Constitution of India laid down that the Central Government will function from the various departments and at serial number of the First Schedule there is a department of Urban Development, *Shahari Vikas Mantralya* mentioned which is functioning through various departments of its own including the DDA which is essentially a statutory body for the purpose of acquisition and

distribution of nazul land and creation of Master and Zonal Plan, therefore, it is equivalent to Central Government. I do not agree with said contention of the learned counsel for the appellant. Firstly, the plea that Article 112 of Limitation Act, 1963 would be applicable was not taken by DDA in trial Court or the first Appellate Court. Secondly, it was also not pleaded that DDA is suing the respondent on behalf of Central Govt. This view can be fortified by a recent judgment of the Supreme Court in *Bharat Sanchar Nigam Ltd. v. Pawan Kumar Gupta*, 2015 (10) SCALE 337. In the said case it was held that period of limitation is not 30 years as the appellant Company (BSNL) cannot be equated with Central Govt. since it is a distinctly independent and separate entity. It was further observed that Article 112 of Limitation Act does not incorporate agency or instrumentality of Govt. The facts of the aforesaid squarely fit to the present case.

14. The judgments which have been relied upon by Mr. Mathur in support of his contention that the period of limitation is 30 years are distinguishable. In the case of *Accountant General (A&E) & Anr. v. V. Sethumadhavan Nair*, (2004) 13 SCC 14, the facts of the

case were that the recovery was tried to be effected by the State Govt. from one of its employees who had illegally drawn the house rent allowance. It was in this context that the Hon'ble Apex Court observed that the period of limitation is 30 years under Article 112.

15. *Accountant General (A&E)* is essentially a part of Govt. of India and being a part of the Government, it cannot be equated with the present appellant which is admittedly a statutory body created by an Act, i.e. Delhi Development Authority Act, 1957. Therefore, this judgment of *Accountant General (A&E)* is of no help to the appellant.
16. The second judgment which has been relied upon by the appellant is a judgment of the Division bench of this Court in *G.R. Gupta v. Lok Sabha Secretariat*, 204 (2013) DLT 694 (DB), where the Division Bench has observed that the period of limitation for filing an eviction petition against unauthorized occupation of the official accommodation and recovery of damages under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 is 30 years. As regards the abovementioned judgment, there is no dispute about the fact that eviction of an unauthorized occupant will be

governed by Article 112 of Schedule I of the Limitation Act and moreover, in the case of unauthorized occupation gives rise to continuous cause of action till the time the unauthorized occupant is evicted and thrown out from the premises in question.

17. But in the instant case a suit for recovery has been filed and in case of a suit for recovery the money pursuant to breach of a contract the period of limitation has been prescribed as 3 years under Article 55 of Schedule I. Unless and until this period of three years is enlarged in terms of Section 18/19 of the Limitation Act, the Court will not be within its power to entertain a suit for recovery after expiry of three years. Therefore, I feel that the suit which has been filed by the appellant was highly barred by time and it does not raise any substantial question of law.
18. The appeal of the appellant is accordingly dismissed by observing that it does not raise any substantial question of law.
19. Pending application also stands disposed of.

V.K. SHALI, J.

JANUARY 12, 2016

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