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

+ RFA 1014/2016

DELHI DEVELOPMENT AUTHORITY Appellant
Through: Mr. Sanjeev Sagar, Advocate with
Ms. Jasvin Dhama, Advocate

versus

M/S MANOHAR SINGH SAHNY & CO. Respondent
Through: None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

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22.12.2016

1. The appellant/DDA is aggrieved by the judgment dated 9.9.2016, passed by the learned trial court dismissing a suit for recovery of Rs.27,46,075/- instituted by it against the respondent/contractor, who was awarded a contract vide Agreement dated 13.7.1981, on the ground of limitation.
2. Briefly stated, the facts of the case are that on 13.7.1981, the appellant/DDA had awarded a contract in favour of the respondent/defendant. Under the said contract, the work was to commence on 23.7.1981 and completed before 22.4.1982.
3. Some disputes arose between the parties with regard to the time period for completion of the work, amongst others, which were referred to arbitration on 13.1.1986. By an Award made on 25.4.2003, the learned Arbitrator rejected the claim of the appellant/DDA, on the ground that the claim for awarding compensation was not arbitrable, being an excepted

matter. The said award was made rule of court on 08.3.2004 and thereafter, the appellant/DDA released all the payments due to the respondent on 25.3.2004.

4. On 19.4.2004, the appellant/DDA proceeded to issue a Recovery Certificate against the respondent/contractor for recovery of Rs.21,98,499/-, as arrears of land revenue. The said Recovery Certificate was challenged by the respondent/contractor who filed a writ petition in the High Court, registered as CWP 6700/2005. Vide judgment dated 18.9.2006, the said writ petition was allowed and the impugned Recovery Certificate was quashed. Before parting with the said case, the learned Single Judge had observed that the appellant/DDA would be entitled to recover the amount claimed by/against the respondent/contractor, if payable in accordance with law.

5. On 28.1.2011, after a passage of about four years, four months and eleven days, reckoned from 18.9.2006, the appellant/defendant instituted a suit for recovery of Rs.27,46,075/- against the respondent/contractor before the High Court.

6. During the pendency of the said suit, on account of enhancement of the pecuniary jurisdiction of the High Court, the said suit was transferred to the District Court. The defendant/contractor did not enter appearance despite service through publication and vide order dated 23.11.2015, he was proceeded against *ex-parte*. The appellant/DDA led its *ex-parte* evidence.

7. Vide judgment dated 09.9.2016, the learned trial court held that the suit instituted by the appellant/DDA was beyond the period of limitation. On merits, it was observed that the appellant/DDA had failed to file or produce

the original documents and none of the photocopies or the carbon copies filed by it could be read into the evidence.

8. Aggrieved by the aforesaid decision, the appellant/DDA has filed the present appeal. The *leitmotif* of the arguments advanced on behalf of the appellant/DDA is that DDA is covered under the definition of 'Central Government' as it is performing functions of the Government and therefore, it is entitled to invoke Article 112 of Schedule I of the Limitation Act, 1963, whereunder, a period of 30 years is available to it to institute a suit against a private person.

9. To examine the issue of limitation, it is necessary to refer to the averments made by the appellant/DDA in the cause of action para of the plaint, which is to the following effect:-

"11. That the cause of action has arisen in favour of the plaintiff and against the defendant on the following dates on 22.4.1982, 29.5.1985 and further arose on 18.9.2006 when the Hon'ble Court granted time to file the recovery suit. And the cause of action is still continuing."

10. It is apparent from the averments made in the aforesaid para that even as per the appellant/DDA, the cause of action had first accrued on 22.4.1982, when the work under the Agreement awarded to the respondent/contractor, was to be completed. According to the appellant/DDA, it could institute a suit against the respondent/contractor within a period of 30 years, i.e., on or before 21.4.2012 and the present suit was instituted by it well in time, on 28.2.2011.

11. Article 112 of Schedule I of The Limitation Act, 1963 relied on by the appellant prescribes a limitation of 30 years to institute a suit against a private person in the following words:-

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>112. Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the Government of the State of Jammu and Kashmir</i>	<i>Thirty years</i>	<i>when the period of limitation would begin to run under this Act against a like suit by a private person.</i>

12. The claim of the appellant/DDA that for the purposes of calculating limitation, it is covered under Article 112 of The Limitation Act would hinge on whether it can be treated as ‘Central Government’, for getting the benefit of 30 years to institute a suit.

13. Learned counsel for the appellant/DDA has very fairly stated before the court that this issue is no longer *res integra*, having already been decided by a Single Judge in a Regular Second Appeal filed by the DDA. In the case of Delhi Development Authority vs. Madhur Krishna reported as **2016 SCC online Del 201**, a similar plea was raised by the DDA to the effect that it is a Statutory Body and equivalent to Central Government. Turning down the said plea as fallacious, the Single Judge had observed as follows:-

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.” (emphasis added)

14. In the captioned case, the court had observed that the DDA is a Statutory body created by an enactment, Delhi Development Authority Act, 1957 and being a distinct and independent entity, could not equate itself with Central Government. The only difference in the case in hand is that unlike the captioned case, the appellant/DDA had taken a plea in the suit that it is discharging the functions of the Central Government. However, that would not be of much assistance to the appellant for the reason that it has already been held in the aforesaid case that DDA cannot claim to be ‘Central

Government' as Article 112 of the Limitation Act does not extend to an agency or an instrumentality of the State.

15. In the present case, the appellant/DDA had instituted a suit for recovery against the respondent/contractor for breach of a contract. The period of limitation available for seeking compensation for breach of contract has therefore to be computed under Article 55 of Schedule I of the Limitation Act, which speaks of three years from the date when the contract is breached.

16. Furthermore, having regard to the fact that vide judgment dated 18.9.2006 in CWP 6700/2005, liberty was granted to the appellant/DDA to seek recovery of amounts allegedly payable by the respondent/contractor in accordance with law, for the appellant/DDA to claim the benefit of Section 14 of the Limitation Act for seeking exclusion of time spent by it in pursuing another proceedings, it ought to have acted with alacrity and filed a suit within a reasonable time from the date of passing of the order dated 18.9.2006. However, that was not done. The appellant/DDA had admittedly instituted a suit for recovery against the respondent/contractor only on 28.1.2011, which was after expiry of four year four months and eleven days and far beyond the period of three years prescribed under Article 55 of The Limitation Act. Thus the benefits of Section 14 of the Limitation Act cannot be extended to the appellant/DDA

17. In view of the decision rendered in the case of Madhur Krishna (supra), the appellant/DDA is not entitled to invoke Article 112 in Schedule I of The Limitation Act and claim that a period of 30 years was available to it to institute a suit for recovery against the respondent/contractor. This court

is of the opinion that the impugned judgment does not suffer from any infirmity or perversity and that ought to be sustained. The present appeal is accordingly dismissed in *limine* as being devoid of merits.

DECEMBER 22, 2016

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HIMA KOHLI, J

