

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

+ **RSA No.361/2015**

% **25th July, 2016**

DELHI TRANSPORT CORPORATIONAppellant
Through: Ms. Avnish Ahlawat and Ms. Latika
Chaudhary, Advocates.

versus

SH. BAL KISHANRespondent

Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil procedure, 1908 (CPC) is filed by the plaintiff/appellant/Delhi Transport Corporation against the impugned Judgment of the First Appellate Court dated 3.6.2015 by which the first appellate court set aside the Judgment of the Trial Court dated 13.02.2013 which decreed the suit filed by the present appellant for recovery of Rs.1,35,759/-. Out of the amount of Rs.1,35,759/- the principal amount is the amount of Rs.59,019/-, and which amount the appellant/plaintiff claimed was paid in excess to the respondent/defendant/employee under an Award passed by the Industrial Tribunal.

2. The admitted facts are that the appellant herein succeeded in its writ petition against the defendant/employee vide Judgment dated 25.10.2005 passed in W.P.(C) No.7132/2004 whereby the Award of the Industrial Tribunal was set aside. Once the Award was set aside, the appellant/plaintiff became entitled to recover the excess amount paid unless there was stay of operation of the impugned Judgment dated 25.10.2005.

3. It is conceded that there was never any stay of operation of the Judgment dated 25.10.2005 in W.P.(C) No. 7132/2004 and the appellant/plaintiff has claimed extension of limitation only on the ground that the defendant/respondent/employee had filed an SLP in the Supreme Court which was said to be dismissed on 13.5.2010, and thereby the appellant/plaintiff claimed that the subject suit filed on 1.8.2011 for recovery is within limitation.

4. I cannot agree with the arguments urged on behalf of the appellant/plaintiff because the first appellate court has rightly held that the filing and dismissal of the SLP by the respondent/defendant on 13.5.2010 would have no impact on the running of limitation. As already stated above, once the Judgment dated 25.10.2005 comes into operation, the appellant/plaintiff had a right to recover the amount paid in excess under the Award and which had to be done within three years from the date of payment or the date of Judgment dated 25.10.2005

whichever was later. Since the Judgment passed on 25.10.2005 was later in point of time as the payment was made to the respondent/defendant on 11.5.2004, therefore, period of limitation of three years for recovery of amount paid in excess expired on 25.10.2008. Suit was filed much later on 1.8.2011 and hence was rightly dismissed as barred by limitation.

5. In view of the above, no substantial question of law arises under Section 100 CPC for this second appeal to be entertained. Dismissed.

JULY 25, 2016
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VALMIKI J. MEHTA, J