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

+ **FAO(OS) 681/2015**

SHIV NARESH SPORTS PVT LTD Appellant
Represented by: **Mr.Harishikesh Baruah,**
with Mr.Parth Goswami, Advocate

versus

RAHUL MOHINDRA Respondent
Represented by: **Mr.Deepak Khadaria, Advocate**

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **21.03.2016**

1. Having heard learned counsel for the parties and having perused the record of the suit, we note that the contention advanced by learned counsel for the appellant is that assuming, if for purpose of computing limitation, Article 113 of the Limitation Act, 1963 was applicable, the suit filed by the respondent was still barred by limitation keeping in view the pleadings in the plaint.

2. To appreciate the argument the fact to be noted is that the appellant had a contract from PWD Government of NCT of Delhi, part work whereof was sub-contracted to the respondent on back to back basis. It was an item rate contract with bill of quantities, requiring quantities executed to be measured when the work was completed for payment due to be ascertained. Thus, unless extent of work executed was quantified the payment due could not be quantified and this is the reason why the learned Single Judge has held that Article 18 of the Limitation Act, 1963 was not applicable inasmuch as as per said Article limitation, of three years, would commence when work

was done required price of the work to be done to be quantified. As per the learned Single Judge, Article 113 would apply i.e. when the right to sue accrues.

3. Learned counsel for the respondent concedes that right to sue would accrue when the appellant refuted the liability to pay.

4. This takes us to the plaint wherein we find an absence of the plea as to when cause of action accrued to sue. The averment in paragraph 26 is concerning the cause of action. It reads as under:-

“That the cause of action has arisen in favour of the plaintiff and against the defendants on the following dates:-

i) On 27.08.09, when the BOQ (Brochure of Quantities) was referred by the defendant to the plaintiff.

ii) On 04.11.09, when the quantities and rates were sent by the plaintiff for execution of work.

iii) On 21.12.09 and 26.12.09, when the communications were exchanged between the parties regarding the WMM and Kerb stones for laying the track.

iv) On 04.01.10, when extra items were quoted to the defendant.

v) In March, 2010, when the entire base work was completed by the plaintiff at site.

vi) On 09.09.10, when the full and final bill was prepared by the plaintiff and sent to the defendant.

vii) On 25.11.10, when the plaintiff received the information under RTI Act, 2005 regarding the payment made to the defendant with respect to the various running bills.

viii) On 18.11.10, 13.12.10 and 30.12.10, when the information under the RTI Act, 2005 was obtained regarding the status of the defendant.

ix) On 02.02.11, when the defendant sent a notice to the plaintiff demanding a sum of Rs.5,00,000/- (Rupees Five Lacs only).

x) On 03.03.2011, when the reply was sent by the plaintiff demanding a sum of Rs.70,00,000/- (Rupees Seventy Lacs only)

xi) In February, 2013, when the defendant threatened the plaintiff with dire consequences.

The cause of action is continuing and is a subsisting one until the payment due to the plaintiff is tendered by the defendant. The suit for recovery filed by the plaintiff is thus, within the period of limitation.”

5. It is trite that a cause of action is different than a right to sue accruing. The former means such facts if traversed required to be proved to sustain the relief and the latter means the denial or threat to the right, and the time being the starting point of right accruing to sue.

6. In the plaint there is a statement in clear terms that the work was completed in March, 2010 and that on October 27, 2010 the Managing Director of the appellant, in no uncertain terms, denied any liability to make payment. Averments in the plaint that the respondent thereafter sought information under the Right to Information Act from the Public Works Department, GNCT Delhi would not postpone the point of time when the right to sue accrued.

7. The clear averment in paragraph 17 of the plaint would show that the appellant refuted any liability to pay the respondent on October 27, 2010. Thus, the suit instituted in January, 2014 seeking recovery of money for

work done was clearly barred by limitation.

8. The appeal is allowed. We set aside the impugned order dated October 05, 2015. IA No.15818/2014 filed by the appellant praying for rejection of the plaint on account of it being barred by limitation is allowed.

9. The suit filed by the respondent is held to be barred by limitation and the plaint is accordingly rejected.

10. No costs.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

MARCH 21, 2016

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