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

+ **CS(COMM) 914/2016**

**DELHI DEVELOPMENT AUTHORITY** ..... Plaintiff  
Through: Ms. Mrinalini Sen, Advocate with  
Ms. Kritika Gupta, Advocate.

versus

**SAR AGENCIES** ..... Defendant  
Through: Mr. Neeraj Grover, Advocate with  
Ms. Kanika Bajaj and Mr. Mehak  
Nakra, Advocates.

% Date of Decision: 13<sup>th</sup> September, 2017

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN**

**J U D G M E N T**

**MANMOHAN, J (Oral):**

**I.A. 371/2017 in CS(COMM) 914/2016**

1. Present application has been filed under Order VII Rule 11 CPC for rejection of the plaint on the ground that the present suit is barred by limitation and the present plaint does not disclose any cause of action. However, during the course of arguments, the parties have confined their submissions to the issue of limitation alone.
2. The relevant facts of the present case are that on 10<sup>th</sup> August, 1992, plaintiff-DDA invited bids for construction of 135 MIG Flats at Sector-24,

Rohini, Delhi. On 28<sup>th</sup> November, 1992, the said tender was awarded to the defendant and the parties entered into an agreement. On 30<sup>th</sup> June, 1995, the construction was completed by the defendant.

3. It is alleged in the plaint that the plaintiff-DDA received letters from three occupants complaining about poor conditions of the flats on 28<sup>th</sup> October, 2005, 10<sup>th</sup> January, 2006, 24<sup>th</sup> January, 2006, 26<sup>th</sup> June, 2008, 17<sup>th</sup> June, 2009, 07<sup>th</sup> November, 2009, 16<sup>th</sup> October, 2010 and 28<sup>th</sup> December, 2010.

4. It is averred in the plaint that on 22<sup>nd</sup> September, 2006, one of the balconies of Flat No.50 collapsed. Thereafter, the plaintiff-DDA appointed M/s. Engineering Development Corporation to conduct an independent assessment.

5. After receiving input from various laboratories, M/s. Engineering Development Corporation submitted its final report dated 08<sup>th</sup> December, 2006. In the said report, M/s. Engineering Development Corporation concluded that there were problems with the construction due to the low strength of the concrete, no waterproofing, reverse slope, damage to several balconies, staircase slabs and terraces and golas being cracked at some places.

6. In 2011, in pursuance to the said report, the plaintiff-DDA invited tenders for repair of 270 MIG Flats.

7. It is stated in the plaint that on 26<sup>th</sup> June, 2012, plaintiff-DDA awarded a tender for Rs.1,37,36,059/- to M/s. B.D.S. Project India Pvt. Ltd. for repairing the defects in the construction carried out by the defendant.

8. It is averred in the plaint that on 18<sup>th</sup> September, 2013, the plaintiff-DDA issued a legal notice to the defendant and as there was no response to

the same, the present suit was instituted on 28<sup>th</sup> August, 2015.

9. Learned counsel for defendant states that, as per the averments in the plaint, the plaintiff came to know about the alleged deficiencies in construction at least in the year 2005 when it received the letter dated 28<sup>th</sup> October, 2005 from one of the occupants. He emphasises that the final report of M/s. Engineering Development Corporation was received on 08<sup>th</sup> December, 2006 according to which the construction of the entire 270 Flats was in breach of the specifications mentioned in agreement between the parties. He contends that as the present suit has been filed on 28<sup>th</sup> August, 2015, it is clearly barred by limitation as the same had not been filed within three years from the date the cause of action arose.

10. Per contra, learned counsel for plaintiff submits that while considering the application under Order VII Rule 11 CPC only the averments in the plaint have to be considered. She points out that in the plaint it has been averred that the cause of action for initiating the present proceeding arose on 18<sup>th</sup> September, 2013 when the plaintiff-DDA had issued a legal notice to the defendant company seeking payment of damages. She emphasises that it was only on 17<sup>th</sup> June, 2014 that the plaintiff-DDA paid the new contractor M/s. B.D.S. Project India Pvt. Ltd. Rs.1,21,76,271/- for damage incurred by the plaintiff due to breach of the specifications mentioned in agreement. In support of her submission, learned counsel for plaintiff-DDA relies upon a judgment of the Supreme Court in **Balasaria Construction (P) Ltd. Vs. Hanuman Seva Trust & Ors., (2006) 5 SCC 658** wherein it has been held as under:-

*“8. After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) CPC and the*

*judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time. The findings recorded by the High Court touching upon the merits of the dispute are set aside but the conclusion arrived at by the High Court is affirmed. We agree with the view taken by the trial court that a plaint cannot be rejected under Order 7 Rule 11(d) of the Code of Civil Procedure.”*

11. Having heard learned counsel for parties, this Court is of the opinion that limitation for a suit for compensation for breach of any contract is three years and the time from which the period begins to run is the date when the contract is broken or when the said breach comes to the notice of the plaintiff.

12. Article 55 of the Schedule to the Limitation Act, 1963 reads as under:-

|    |                                                                                                               |                    |                                                                                                                                                                                                   |
|----|---------------------------------------------------------------------------------------------------------------|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 55 | <i>For compensation for the breach of any contract, express or implied not herein specially provided for.</i> | <i>Three years</i> | <i>When the contract is broken or (where there was successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases.</i> |
|----|---------------------------------------------------------------------------------------------------------------|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

13. Since in the present case, the poor quality of construction and breach of specifications of the agreement between the parties was brought to the

notice of plaintiff-DDA by one of the residents/occupants on 28<sup>th</sup> October, 2005, this Court is of the view that cause of action for filing the present suit for the first time arose on the said date.

14. Even if DDA was not sure of the allegations made by the resident/occupant on 28<sup>th</sup> October, 2005, it at least became aware of the poor quality of construction and breach of specifications of the agreement executed between the parties on 22<sup>nd</sup> September, 2006 when one of the balconies of Flat No.50 collapsed and certainly on 08<sup>th</sup> December, 2006 when plaintiff-DDA received a report from M/s. Engineering Development Corporation, an expert body.

15. If the said dates are taken as the date of cause of action, then certainly the suit has not been filed within the period of limitation.

16. Even if the most liberal view is taken, then also on 26<sup>th</sup> June, 2012, when plaintiff-DDA awarded the repair tender to M/s. B.D.S. Project India Pvt. Ltd. for Rs.1,37,36,059/-, it became aware of the breach of agreement by the defendant and the quantum of damages/compensation that was to be recovered from the defendant. However, admittedly, the present suit has not been filed within three years even from 26<sup>th</sup> June, 2012.

17. This Court is further of the view that unilateral act of sending a legal notice or allegedly making payment to the contractor to carry out repairs would not constitute a cause of action for filing the present suit. The Kerala High Court in ***Delta Foundations & Constructions Vs. Kerala State Construction Corporation Ltd., MANU/KE/0026/2003*** has held as under:-

*“4.....The ascertainment of the amount of damages in the suit is quite distinct from the very occasion of ascertainment,*

*which in fact is the real cause of action. The article provides for the breach as the starting point. The amount now sought to be recovered is not compensation in its strict sense. The argument do not stand to merit in view of the specific averments in the plaint regarding the nature of claim. As per Article 55 of the Limitation Act time begins to run from the date contract is broken. So the present suit which is filed after three years from the date of accrual of cause of action is barred by limitation.....”*

(emphasis supplied)

18. The judgment in ***Balasaria Construction (P) Ltd.*** (Supra) is inapplicable to the facts of the present case as the issue of limitation in present matter is not a mixed question of fact and law. In the present case believing the averments in the plaint to be true and correct, then also the present suit is barred by limitation.

19. Before parting with the present case, this Court would like to express its deep anguish at the way the officials of plaintiff-DDA have dealt with the issue of alleged poor quality of construction by the contractor.

20. This Court has no doubt that the DDA officials could have easily detected the poor quality of construction when the construction was carried out by the defendant and/or at least before the bills of the defendant were paid and a no dues certificate was issued.

21. To file a suit for recovery more than twenty years after handing over of possession by the defendant-Contractor shows that the intent of the officials of the plaintiff-DDA was to ensure that those responsible for poor quality of construction are ‘never brought to book’. More often than not suits are deliberately filed belatedly “just to pass the buck” and to blame

the judicial system for non-recovery of the compensation amount.

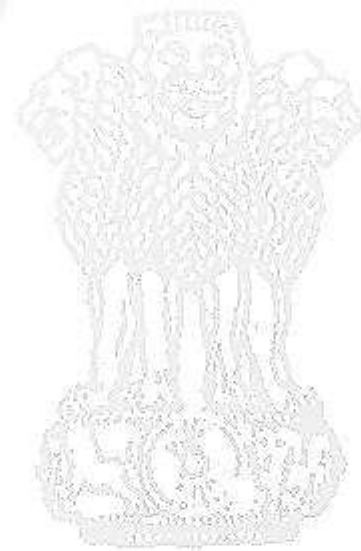
22. The senior officials of plaintiff-DDA are directed to examine this aspect and to take steps to put a robust mechanism in place so that the contractors who indulge in poor construction are booked at the earliest and certainly before any loss of human life and property occurs.

23. With the aforesaid observations and findings, present suit is dismissed as barred by limitation. However, dismissal of the present suit will not prevent the plaintiff-DDA from taking action against its own officials.

**MANMOHAN, J**

**SEPTEMBER 13, 2017**

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