

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NOS.12 to 16 of 2018****FIRST APPEAL NOS.12 and 13 of 2018**

Mr. Felix Antonio Fernandes
s/o Antonio Fernandes
aged 40 years
r/o. H. No.1151, Dabamol
Curchorem, Goa. .. Appellant

V/s

1. The Chief Secretary
Government of Goa,
State Secretariat, Porvorim,
Goa
2. The Principal Chief Engineer
PWD Altinho, Panjim, Goa.
3. The Executive Engineer
Work Div. XXV (road) Section
Fatorda, Margao, Goa.
4. The Assistant Engineer
Sub Div II, Division XXV (roads)
PWD, Quepem, Goa.
5. The Minister of PWD
With office at Secretariat
Porvorim, Goa.
6. The PWD Secretary
Government of Goa State
Secretariat, Porvorim. .. Respondents

Mr. C. A. Coutinho, Advocate for the appellant.

Mr. Aamir Jamadar, Additional Government Advocate for the respondents in F.A. No.12/2018.

Ms. P. Kalangutkar, Additional Government Advocate for the respondents in F.A. No.13/2018.

WITH
FIRST APPEAL NO.14 of 2018

M/s Bless Builders
A partnership firm
Rep. by its Partner
Mr. Alex Fernandes,
s/o Aleixo Carvalho, aged
47 years a civil contractor
and land developer
rep. by power of attorney
holder Mrs. Reena Carvalho
w/o. Mr. Anthony Carvalho
aged 35 years
both r/o. H.No.188
Maliantoioi, Nr. Holy Cross
Panchawadi, Ponda, Goa. .. Appellant

V/s

1. The Chief Secretary
Government of Goa,
State Secretariat, Porvorim,
Goa
2. The Principal Chief Engineer
PWD Altinho, Panjim, Goa.
3. The Executive Engineer
Work Div. XXV (road) Section
Fatorda, Margao, Goa.
4. The Assistant Engineer
Sub Div II, Division XXV (roads)
PWD, Quepem, Goa.
5. The Minister of PWD
With office at Secretariat
Porvorim, Goa.
6. The PWD Secretary
Government of Goa State
Secretariat, Porvorim. .. Respondents

Mr. C. A. Coutinho, Advocate for the appellant.

Ms. P. Kamat, Additional Government Advocate for the respondents.

WITH
FIRST APPEAL NO.15 of 2018

M/s Bless Builders
A partnership firm
Rep. by its Partner
Mr. Anthony Carvalho
s/o Aleixo Carvalho, aged
47 years a civil contractor
and land developer
rep. by power of attorney
holder Mrs. Reena Carvalho
w/o. Mr. Anthony Carvalho
aged 35 years
both r/o. H.No.188
Maliantoioi, Nr. Holy Cross
Panchawadi, Ponda, Goa. .. Appellant

V/s

1. The Chief Secretary
Government of Goa,
State Secretariat, Porvorim,
Goa
2. The Principal Chief Engineer
PWD Altinho, Panjim, Goa.
3. The Executive Engineer
Work Div. XXV (road) Section
Fatorda, Margao, Goa.
4. The Assistant Engineer
Sub Div II, Division XXV (roads)
PWD, Quepem, Goa.
5. The Minister of PWD
With office at Secretariat
Porvorim, Goa.
6. The PWD Secretary

Government of Goa State
Secretariat, Porvorim. .. Respondents

Mr. C. A. Coutinho, Advocate for the appellant.

Ms. Neha Kholkar, Additional Government Advocate for the respondents.

WITH
FIRST APPEAL NO.16 of 2018

Shri Prassana S. Samant
s/o Sudhakar Vithobha Samant
aged 47 years
a civil contractor and land
developer, r/o. H.No.38
Bhindem, Malkarnem
Sanguem, Goa .. Appellant

V/s

1. The Chief Secretary
Government of Goa,
State Secretariat, Porvorim,
Goa
2. The Principal Chief Engineer
PWD Altinho, Panjim, Goa.
3. The Executive Engineer
Work Div. XXV (road) Section
Fatorda, Margao, Goa.
4. The Assistant Engineer
Sub Div II, Division XXV (roads)
PWD, Quepem, Goa.
5. The Minister of PWD
With office at Secretariat
Porvorim, Goa.
6. The PWD Secretary
Government of Goa State
Secretariat, Porvorim. .. Respondents

Mr. C. A. Coutinho, Advocate for the appellant.

Mr. Rajesh Shivolkar, Additional Government Advocate for the respondents.

CORAM :- C. V. BHADANG, J.

DATE : 12th February, 2018

ORAL JUDGMENT :

Admit. The respective Additional Government Advocates waive service. Heard finally by consent of the parties.

2. All these appeals involve a common and connected issue as to the legality of the order, rejecting the plaint under Order VII, Rule 11(d) of Civil Procedure Code (CPC). As such, all these appeals are being disposed of finally by consent of parties, by this common judgment.

3. The brief facts are that the appellants were awarded various civil contracts for execution of certain civil works in the year 2010. The work was completed somewhere in the year 2010-2011. The respective appellants have filed five separate suits for recovery of the security deposit along with interest on the ground that the same has not been returned in spite of a notice being sent and matter being pursued. In the suits, applications came to be

filed on behalf of the respondent/ State, for rejection of plaint under Order VII, Rule 11(a) and (d) of CPC.

4. It was contended that the plaint does not disclose cause of action and is otherwise barred by limitation in as much as the work was completed in 2010-2011 and suits came to be filed in February, 2016.

5. The learned District Judge found that the suits would be governed by Article 18 of Schedule II of the Limitation Act, where the limitation period of three years is provided, from the date when 'the work is done'. The learned District Judge has, thus, found that the work having been completed in the year 2010-11, the suits filed in the year 2016 are barred by limitation. The plaints thus came to be rejected under Order VII Rule 11 (d) of CPC.

6. I have heard Shri Coutinho, the learned Counsel for the appellant and the learned Additional Government Advocate for the respondents.

7. It is submitted by Shri Coutinho, the learned Counsel for the appellant/s that the issue of limitation is a mixed question

of law and fact and ideally, it ought to have been decided at the trial. It is submitted that in a given case, the Trial Court can take up the issue as preliminary issue, where the parties may have benefit of leading oral and documentary evidence and then the Court can decide the matter. It is submitted that in a case of present nature, the plaint cannot be rejected at the threshold on the ground that it is barred by limitation. The learned Counsel has taken exception to the finding recorded by the learned District Judge that the suit would be governed by Article 18 of the Limitation Act. It is submitted that the suit is not for recovery of the price of the work done by the appellant/s as the respondents have already passed the final bill and the said amount is paid to the appellant/s. It is thus, submitted that the learned District Judge was in error in holding that the suit would be governed by Article 18 of the Limitation Act. The learned Counsel submits that the suits were squarely governed by the residuary Article namely Article 113 of the Limitation Act, where the period of three years would commence from the date when the 'right to sue accrues'. It is submitted that in the present case, admittedly, the matter was referred to Vigilance Department and the Vigilance Department, after necessary enquiry, had returned the file on 13/11/2013. It is submitted that thereafter, the appellant issued a notice under Section 80 of CPC on 15/09/2015. It is submitted that the

respondents did not reply to any of the notices and as such, the suits filed in February, 2016 would be well within limitation.

8. The learned Additional Government Advocate has supported the impugned order. It is submitted that the suits would be governed by Article 18 of the Limitation Act and even otherwise, the suits would be barred in as much as they are not filed within three years from the accrual of cause of action as contemplated under Article 113 of the Limitation Act. She submits that the work was completed in the year 2010-11 and the appellant did not file the suits within three years thereafter.

9. I have carefully considered the rival circumstances and the submissions made.

10. At the outset, it is necessary to mention that the suits filed by the appellant/s are not for recovery of the price of the work done as contemplated in Article 18 of the Limitation Act. It is undisputed that the final bill has been settled and the amount has been paid to the appellant/s somewhere after 13/11/2013 i.e. after Vigilance Department cleared the files. If that be so, certainly, it cannot be accepted that Article 18 of the Limitation Act would apply as has been held by the learned District Judge. The suits are essentially for recovery of the security deposit. Thus, the question

would be when such security deposit was repayable. Normally, in the contracts of the present nature, the security deposit has to be refunded and/ or adjusted at the time when the final bills are settled. It would be thus, necessary for the learned Trial Court to examine the issue as to accrual of cause of action, as contemplated under Article 113 of the Limitation Act, which can be done at the trial. In my considered view, the learned Counsel for the appellant/s is right in contending that the issue of limitation in the present case would be a mixed question of law and fact, which can be appropriately gone into at the stage of trial of the suit and plaint could not have been rejected at the threshold as being barred by limitation. In such circumstances, the First Appeals are partly allowed. The impugned orders dated 27/10/2016 are hereby set aside. Civil Suit Nos.10 to 14 of 2016 are restored back to the file of the learned Ad hoc District Judge at Margao for disposal according to law. The learned Trial Court shall frame appropriate issue of limitation, which in the discretion of the Trial Court, can be tried as a preliminary issue, if so ordered.

11. Parties to appear before the Trial Court on 26/02/2018.
In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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