

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No.11782 of 2020

**Rajpath Contractors & Engineers Ltd.
Vs.
State of West Bengal and others**

For the petitioner	:	Mr. Priyankar Saha, Mr. Amritam Mandal, Mr. Aditya Mondal
For the respondent-authorities	:	Mr. Susovan Sengupta, Mr. Srikanta Paul
Hearing concluded on	:	18.01.2021
Judgment on	:	28.01.2021

Sabyasachi Bhattacharyya, J:-

1. The petitioner is a private limited company engaged in the work of civil construction. Pursuant to a tender issued by the respondents for widening and strengthening of the Calcutta – Basanti Road, the petitioner executed some work. Subsequently, the petitioner raised an escalation bill for an amount of Rs.52,57,672.47 p, out of which Rs.18,16,484/- was paid by the respondents. However, by a letter dated May 17, 2004, the respondents demanded refund of such payment, since, according to the respondents, no escalation charge was payable. The petitioner refused to refund such amount. The sum was deducted

from the bills relating to other contracts between the same parties and the amount of Rs.18,16,484/- was realized from the respondents with regard to the work of a bridge over the river 'Hogol' at Sonakhali, also performed by the petitioner.

2. Being thus aggrieved, the petitioner preferred a writ petition bearing W.P. No. 212 of 2008 in the Original Side of this court and, vide Order dated March 17, 2009, a co-ordinate Bench of this court disposed of the same, setting aside the demand contained in the respondents' letter dated May 17, 2004 and directing the State to pay the entire amount of the escalation bill to the petitioner, save to the extent that the State could contest the veracity of. The learned Single Judge further directed that the payment should be released by the State to the petitioner with interest at the rate of six per cent per annum from May 17, 2004 till payment.
3. Learned counsel for the petitioner submits that, although the principal amount as directed was paid by the respondents, no interest was paid on the same, in violation of the order of the co-ordinate Bench. Several communications were made in that regard, but to no effect.
4. Learned counsel refers, in such context, to the notices issued by the petitioner on January 17, 2011, August 14, 2013 and June 24, 2014, all annexed to the writ petition.
5. Learned counsel argues that the present writ petition is in the nature of an application for execution of the order dated March 17, 2009 passed in

W.P. No. 212 of 2008. By referring to Article 136 of the Limitation Act, it is argued that the limitation period for levying execution in respect of a money decree is 12 years. As such, the present claim is not time-barred.

6. Learned counsel for the petitioner cites *Moon Mills Ltd. vs. M.R. Meher, President, Industrial Court, Bombay and others*, reported at AIR 1967 SC 1450, wherein the Supreme Court laid down the principle that the doctrine of laches in courts of equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, it was held, if an argument against relief, which otherwise would be just, is founded upon mere delay, the delay of course not amounting to a bar by any statute of limitations, the validity of the defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.

7. Learned counsel submits that, in the present case, no adverse effect can be suffered by the respondents, since the right of the petitioner to get interest was already crystallized by the Order dated March 17, 2009 passed in W.P. No. 212 of 2008. The petitioner never waived the right; on the contrary, wrote several letters to the respondents seeking enforcement of the said order. Thus, it is argued, the present case is a fit one for grant of the remedy sought for, more so since the limitation for filing an execution proceeding of a money decree/order is yet to be over.
8. Learned counsel for the petitioner next relies on *W.B. Essential Commodities Supply Corpn. vs. Swadesh Agro Farming & Storage Pvt. Ltd. and another*, reported at (1999) 8 SCC 315, in support of the proposition that, for execution of any decree (other than a decree granting a mandatory injunction) or order of a civil court, a limitation period of 12 years is prescribed. The said case also pertained to execution of a money decree.
9. Learned counsel next cites *UCO Bank vs. Amalgamated Coalfields Ltd.*, reported at 2000 SCC OnLine Cal 361, where, also in connection with a money claim, Article 136 of the Limitation Act was referred to for the purpose of filing an application for execution of a decree.
10. Learned counsel next relies on *Dinesh Viniyog Limited & Ors. vs. The Oriental Gas Co. Limited & Ors.*, reported at 2018 SCC OnLine Cal 6675, where a Division Bench of this court, while considering a case of

execution of a money decree, applied Article 136 of the Schedule to the Limitation Act, 1963.

11. The petitioner next cites the judgment of *Bank of Baroda vs. Kotak Mahindra Bank Ltd.*, reported at 2020 SCC OnLine SC 324, where, in the context of executing a foreign decree for money, Article 136 of the Limitation Act was applied as well.
12. Lastly, learned counsel for the petitioner places reliance on *Assam Sanmilita Mahasangha and others vs. Union of India and others*, reported at (2015) 3 SCC 1. The Supreme Court held therein that the time had come for the court to say that at least when it comes to violations of the fundamental right to life and personal liberty, delay or laches by itself, without more, would not be sufficient to shut the doors of the court on any petitioner.
13. Learned counsel for the respondents, in reply, argues that Article 25 of the Schedule to the Limitation Act is applicable to the present case, as opposed to Article 136. It is argued that a writ petition cannot be a substitute for an execution case. Hence, the present claim has to be dealt with as an original money claim on the cause of action of the Order dated March 17, 2009 passed in W.P. No. 212 of 2008.
14. Learned counsel relies on *Banda Development Authority, Banda vs. Moti Lal Agarwal and others*, reported at (2011) 5 SCC 394. The Supreme Court, in the said judgment, held that, although no limitation has been

prescribed for filing a petition under Article 226 of the Constitution, one of the several rules of self-imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallized rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits.

- 15.** In the present case, it is submitted, the petitioner is espousing a time-barred claim. The Supreme Court, in the aforesaid report, categorically held that such claims would be turned down. While doing so, the Supreme Court referred to limitation prescribed for filing a civil suit for similar cause. Since the petitioner's claim boils down to a money claim, the limitation period prescribed for a money suit, in accordance with Article 25 of the Schedule to the Limitation Act, 1963, has to be applied.
- 16.** Moreover, the inordinate delay in filing the present writ petition ought not to be condoned by the court. It is submitted that the long time-lapse in filing the present writ petition tantamounts to waiver on the part of the petitioner and disentitles the petitioner to the reliefs sought herein. As such, it is argued, the writ petition ought to be dismissed.
- 17.** It appears from a consideration of the materials-on-record that as far as the nature of the present writ petition is concerned, the same is not an

original money claim but more in the nature of an execution proceeding. The cause of action for the present writ petition arose on March 17, 2009, when the respondents were directed by a court order to pay the amount of the escalation bill, along with six per cent interest from May 17, 2004 till payment. Since the respondents have deliberately not paid the interest component of the said order, the writ petitioner had to approach this court by way of the present writ petition. Thus, there is no scope for application of Article 25 of the Limitation Act.

- 18.** In *Banda Development Authority (supra)*, the Supreme Court was dealing with an original claim and, as such, referred to the limitation prescribed for filing a civil suit for similar cause. Taken in proper perspective, the said principle compares the claim made in a writ petition with that made before a civil court. In the event the present claim was of an original nature, undoubtedly, the limitation for filing a suit before a civil court would be applicable as a test of reasonableness of the delay. However, in the facts of the case, the writ petition is more in the nature of an execution application, thus attracting Article 136 of the Schedule to the Limitation Act. The judgments cited by the petitioner corroborate the view that the limitation period for execution of any decree (other than a decree granting a mandatory injunction) is 12 years, the starting point being when the decree or order becomes enforceable or, where the decree or any subsequent order directs any payment of money to be made on a

certain date or at recurring periods, when default in making the payment of delivery in respect of which execution is sought, takes place.

- 19.** In the present case, the cause of action for filing the present writ petition started immediately after March 17, 2009. As such, the writ petition, filed in the month of December, 2020, would be otherwise within time if the same was an execution case for a money decree before a civil court.
- 20.** Thus, the ratio laid down in *Banda Development Authority (supra)* has to be applied in appropriate context, reading the expression “suit” in the said report as “execution proceeding” in the present factual matrix. One of the yardsticks applied in the said report was long delay. However, the delay was to be tested, as per the said judgment, on the touchstone of limitation prescribed for a civil action for similar cause.
- 21.** Even seen independently, execution of a decree or order has to be put on a higher pedestal than an original claim. In case of an original claim, the claimant has to come before the court within a reasonable time, in order to obviate unnecessary complications. In the event the claim is made after an inordinately long period, an ingredient of waiver can be read into the delay, since the claim is, at the first instance, unilateral.
- 22.** However, the moment a claim crystallizes into a decree or an order of a court of law, the same attains finality and acquires an added sanctity, as opposed to an original claim. The decree or order of a court is not merely a unilateral claim of a party, but casts a specific liability on the

judgment-debtor to comply with the same. As such, the ingredient of waiver gets diluted in such circumstances. It is not merely the duty of the decree-holder to claim execution, but also an obligation on the part of the judgment-debtor to comply with the decree, keeping in mind the constitutional status of the courts of law. This justifies the different limitation periods for money suits and money execution cases, being 3 and 12 years respectively, as provided in the Limitation Act.

- 23.** In such view of the matter, the respondents' argument of implied waiver cannot be bought. Waiver is a conscious relinquishment of a legal right. In the absence of any ingredient to show such relinquishment on the part of the petitioner, one cannot simply read such waiver into the petitioner's act. On the contrary, although there was delay on the part of the petitioner to seek execution, the petitioner had expressed its intention to get the benefit of the order of the co-ordinate Bench dated March 17, 2009 by several letters issued to the respondents. It was also the respondents' responsibility to comply with the order, but they chose to blatantly flout the same, in so far as the payment of interest was concerned.
- 24.** Here it is relevant to mention that the decision rendered in *Assam Sanmilita Mahasangha (supra)*, also cited by the petitioner, is irrelevant and totally out of context, since the ratio therein was laid down with the fundamental right to life and personal liberty in focus. The present case,

apart from in very vague and general terms, does not pertain to such fundamental rights at all but relates to a specific right *in personam* flowing from an order passed by this court.

25. However, the other judgments referred to by the petitioner, with regard to 12-year limitation period for execution of money decrees/orders, are squarely applicable to the present case, since the limitation for the present claim, if the same were to be filed before a civil court for execution of its decree, would be 12 years, as envisaged in Article 136 of the Limitation Act.
26. In view of the above discussions, the petitioner is entitled to get interest at the rate of six per cent per annum from May 17, 2004 till December 29, 2010, on the sum of Rs.52,57,672/-, which was made available to the petitioner by the respondents on December 29, 2010, as per Annexure-P2 at page-22 of the writ petition, which is a communication by the respondents to the petitioner intimating that the said sum was ready for payment against the order passed in W.P. No. 212 of 2008.
27. However, the petitioner shall not be entitled to any further interest after December 29, 2010 in view of the long delay occasioned by the petitioner in approaching this court with the present writ petition, for which the respondents cannot be faulted.
28. Accordingly, WPA No. 11782 of 2020 is allowed, thereby directing the respondents to pay to the petitioner, within ninety days from date, an

amount equivalent to six per cent per annum on Rs.52,57,672/- for the period from May 17, 2004 to December 29, 2010. In default, the respondents shall pay to the petitioner further interest at the rate of ten percent per annum from immediately after the expiry of the period of ninety days from this day, till payment.

29. There will be no order as to costs.
30. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)