



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

% **Judgment reserved on: 23 March, 2022**
Judgment pronounced on: 8 April, 2022

+ C.R.P. 7/2019 & CM APPL. 1434/2019 (Stay)

FORTUNE BUILDERS PVT LTD Petitioner

Through: Mr. Sanjeev Sindhwani, Sr. Adv.
with Mr. Sanjay Dua, Adv.

versus

BLUE STAR LTD Respondent

Through: Mr. Jeevesh Nagrath, Mr. Harshit
Agarwal and Mr. Kamal Kumar,
Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T

1. The plaintiff/petitioner assails the order of 19 November 2018 passed by the Trial Judge rejecting an application made by it purporting to be under Order VII Rule 11 of the **Civil Procedure Code, 1908¹**. The application itself had come to be made with respect to a counter claim which was instituted by the defendant/respondent on 15 March 2018. The suit instituted by the plaintiff was essentially a money claim seeking the issuance of a decree for a sum of Rs. 36,07,194/- together with interest @ 24% per annum being rendered in favour of the petitioner. In terms of the counter claim which was preferred, the defendant/respondent sought a

¹ Code



decree against the petitioner for a sum of Rs. 47,99,228/- together with interest @ 20% per annum. The Trial Judge while dealing with the rival contentions and the prayer for rejection of the plaint noticed that the principal contention of the petitioner was that the counter claim was barred in terms of the provisions made in the **Limitation Act 1963**². The case set forth by the petitioner in support of the invocation of Order VII Rule 11 of the Code was premised on the fact that the final invoice was issued and raised by the respondent on 17 April 2014. It was asserted that the counter claim which came to be instituted on 15 March 2018 would thus clearly be barred under the provisions of the Act when viewed in light of the prescriptions contained in Articles 14 and 18 of the Schedule thereto. Dealing with the question of limitation, the Trial Judge in terms of the impugned order made the following pertinent observations: -

“5.3 Firstly, Article 14 of the Limitation Act (Schedule 1) envisages the case the goods are supplied and bills and invoices are raised pursuant to that. Herein it is not simpliciter a case of sale of goods. The work was executed by the defendant pursuant to the main contract vide which the work for supply including installation, testing, heating, Ventilation, Air conditioning of the under taken by the defendants. Though the bills were raised on pro-rata basis but the parties were under continuous contractual obligations to carry out the work in terms of the letter of intent.

5.4 In the present case also as per the averments made in the plaint/counter-claim and the documents filed along-with, apparently, it is not a case in which each transaction between the parties, i.e. each and every delivery of the product; the work carried out by the claimant and raising of invoice against that, can be said to be independent and different from the other. The entire transaction between the parties appears to be so that the dealings are not intended to be terminated with execution of a part of the contract. But to

² Act



be continuous, so that one item(goods and services) if not paid, shall be united with another, and from one continuous demand, the whole together forms but one cause of action and cannot be divided. Certainly it can not be a case of numerous, different & independent, contracts within a main contract. Contention to the contrary is superfluous.”

Proceeding further to deal with the contention of the application of Article 18, the Trial Judge observed thus:-

“5.11 In the backdrop of the facts noted above, it is thus evident that the work of the commissioning of the project was yet to be completed, the accounts were yet to be settled, the final cost of installation was yet to known/calculated as on dt 04.06.2016, the day on which the reply to legal notice was issued by the respondent/plaintiff, and it was vide the said reply that the defendant for the first time appears to have denied the demands raised by the claimant/defendant.”

It ultimately proceeded to record the following conclusions: -

“6. Thus in view of the established principles of law and reading the facts in light of the abovesaid arguments regarding the limitation, the contention of the defendant stands rejected, the case of the counter-claimant is not governed by Article 14 (Schedule I) of the Limitation Act, but the residue provision Article 113, vide which the suit for which there is no prescribed period, the period of limitation is three years when the right to sue accrues. And in the present case the right in favour of the claimant accrued only once the reply to the legal notice, disputing the claim was issued on dated 04.06.2016 and the counter claim filed on 15.03.2018 cannot be said to be stale and barred by Limitation. At best it is a disputed question of fact and law, issue can be framed and adjudicated upon after evidence is adduced by the parties. The plaint cannot be rejected at the outset on demur.

The application u/O 7 R 11 CPC stands dismissed and disposed of accordingly.”

2. In order to evaluate the merits of the rival contentions, it would be apposite to advert to the relevant averments as carried in the counter claim. The relevant parts of the counter claim are extracted hereinbelow: -



“6. That in year 2006 the Defendant company invited the Counter Claimant to offer its bid for supply, installation, testing and commissioning of Heating, Ventilation and Air Conditioning System ("HVAC") at Plot No A-17, Sector- (illegible), Noida, Uttar Pradesh. The Counter Claimant submitted its techno-commercial bid on 15.09.2006. Thereafter, vide Counter Claimant's letter dated 22.12.2006 the total contract value was offered Rs.2,47,00,000/- (Rupees two crores forty seven lacs only).

7. The Defendant company vide its letter of intent dated 19.01.2007 ("Letter of Intent") accepted the bid of Rs.2,47,000/- (Rupees two crores forty seven lakhs only) and requested the Counter Claimant to commence work effective from .02.2007 which work was commenced by Counter Claimant as instructed.

8. That as regards the total contract amount of Rs.2,47,00,000/- (Rupees two crores forty seven lakhs only) the agreed terms of payment as mentioned in Counter Claimant's letter dated 22.12.2006 which was accepted by Defendant company vide their Letter of Intent were as below:

- a) 10% of the total contract value as mo(illegible) sation advance against the submission of bank guarantee equivalent amount valid till scheduled completion of project.
- b) 70% of total contract value to be paid against pro-rata delivery of equipment and materials at site.
- c) 10% of total contract value to be paid against pro-rata installation of material and equipment.
- d) 10% of total contract value to be paid after commissioning against submission of bank guarantee of equivalent amount, valid until scheduled completion of defect liability period of 12 months.

11. That the Defendant has failed to release the payment of the Counter Claimant which was on pro-rata basis and on a bill to bill basis as per the terms of the Letter of Intent. Defendant company has failed to release the payment to the Counter Claimant company against the invoices raised by the Counter Claimant and has been delaying the release of payments due to the Counter Claimant without any reasonable cause or explanation.

12. That the Counter Claimant carried out part-commissioning of the work by 17.04.2014 of the project as is evident from its final Invoice No.P-49/32791-W/VII dated 17.04.2014, wherein the Defendant has claimed 90% payment upto installation of all the equipment supplied the Defendant. The Counter Claimant has always extended its full support and cooperation to the Defendant company at all times.

13. It is submitted that the Counter Claimant had completed all the work except for fixing of 40 nos. diffusers in the corridors and 200 meters of



cabling in the basement as is evident from Counter Claimant's letter to Defendant bearing ref. no. DKA/010/P10-34036/C.K.01 dated 15.03.2012. This letter further clearly states that the Counter Claimant was unable to do the above and fully commission the system due to non-availability of power and soft water for the past 18-24 months, which were bound to be provided by the Defendant herein and such reasons are solely attributable to the Defendant and not the Counter Claimant herein.

14. That since despite several requests by the Counter Claimant to the Defendant, the Defendant failed to provide power and soft water for commissioning of the system and accordingly the Counter Claimant, despite their efforts and due for no fault of theirs, were unable to fully commission the system.

15. That as per the terms of the Letter of Intent, the Counter Claimant raised multiple invoices from time to time on a pro rata basis dated 12.05.2007, 20.06.2007, 16.07.2007, 07.08.2007, 19.09.2007, 16.11.2007, 14.03.2008, 16.05.2008, 18.08.2008, 02.01.2009, 02.03.2009 and 17.04.2014. The Counter Claimant submitted the final invoice P- 49/32791-W/VII dated 21.04.2014 for verification and payment to the Defendant company, which was duly attested by the Defendant company. It is submitted that despite Defendant's failure to provide power and soft water to enable the Counter Claimant to fully commissioning the system, the Counter Claimant in good faith only claimed part commissioning charges of 5% against 10% commissioning charges, which were to be claimed as per terms and conditions of the contract.

16. That it is submitted that vide letter dated 02.12.2015, the Counter Claimant company has also clearly communicated to the Defendant that from the final cumulative amount of Rs.2,47,33,160/- (Rupees two crores forty seven lakhs thirty three thousand one hundred and sixty only), a total of 47,99,228/- (Rupees forty seven lakhs ninety nine thousand two hundred and twenty eight only) is still due to be paid by the Defendant company against the HVAC work done by the Counter Claimant at Plot No. A-17, Sector-6, Noida, Uttar Pradesh.

17. That the last payment made by the Defendant company was on 16.01.2015 and as on date the total principal amount due stands at Rs.47,99,228/- (Rupees forty seven lakhs ninety nine thousand two hundred and twenty eight only) along with an interest at the rate 20% p.a. from 17.01.2015 until the amount is due is paid as clearly specified in the invoices raised by Counter Claimant company."



3. Mr. Sindhwani, learned Senior Counsel appearing for the revisionist contended that a bare perusal of the averments made in the counter claim would establish that it was the respondent's own case that payment was to be released on a pro rata basis and against individual bills that were raised as per the terms of the **Letter of Intent**³. Learned Senior Counsel further contended that the respondent itself referred to the bill of 17 April 2014 as the "*final invoice*". Viewed in that backdrop he would contend that the plaint on the face of it was clearly barred by limitation and was thus liable to be rejected.

4. Learned Senior Counsel contends that once the respondent had based the counter claim on individual bills that were raised from time to time, it would be the provisions of Article 14 which would apply. Much stress was laid on the respondent's own stated stand in the counter claim of the bills being liable to be paid on a pro rata basis and on a "bill to bill" system. Learned Senior Counsel submitted that the invoices which embodied the claim of payment had admittedly been issued prior to the period of three years when computed from 15 March 2018 and thus evidence of the claim being barred by limitation. It was further submitted that even if the commencement of the period of limitation were to be computed from 17 April 2014, that too would render the claim being barred by time bearing in mind the undisputed fact that the counter claim was instituted only on 15 March 2018. It was lastly submitted that even if the date of last payment as

³ LOI



made by the revisionist were to be taken into account and which according to him was on 12 December 2014, then too the claim as raised was liable to be rejected.

5. Mr. Sindhvani, while addressing submissions with respect to the scope of Article 18, drew the attention of the Court to the decision rendered in **Ahlcons India Pvt. Ltd v. Victoria Hospitalities Pvt. Ltd.**⁴ and more particularly to the following passages as appearing therein.

“7. Similarly, In South Eastern Coalfields Ltd. v. B.S. Agrawal the High Court of Chhattisgarh held as follows:—

“9. Article 18 of the Limitation Act, 1963 provides as under:

“18. For the price of work done by the Plaintiff for the defendant in his request where no time has been fixed for payment.	Three Years	when the work is done.”
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10. “Work and Labour” in legal nomenclature is a term of precise legal import. In England, it is the name of one of the common counts in actions of assumpsit being for work and labour done and materials furnished by the plaintiff for the defendant: Black's Law Dictionary 6th Edn. p. 1604. The Courts in India have, therefore, given a wider meaning to the words ‘work done’ in Article 18 and treated a works contract as coming within its purview. The starting point of limitation in each case must, however, depend on its own facts and circumstances.

11. In *Halsbury's Laws of England* 3rd Edn. Vol. 24 p. 218, the meaning of the expression ‘work done’ is given thus:

“On a general contract for work to be done, the cause of action accrues when the work is done. A contract to do work may, however, contain a condition that the price should be paid out of.....when a certain contingency has happened, and in such a

⁴ 2019 SCC OnLine Del 7479



case the cause of action does not arise until the.....Contingency has happened.”

12. In *Gannon Dunkerley and Co. Ltd. v. Union of India*, (1969) 3 SCC 607, the Supreme Court held as under:

“11.In our judgment, there is no right to sue until there is an accrual of the right asserted in the suit, and its infringement, or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted : *Bolo v. Kokan*, 51 IA 325.”

13. In *Major (Retd.) Inder Singh Rekhi v. Delhi Development Authority*, (1988) 2 SCC 338, the Supreme Court, while considering applicability of Article 137 of the Limitation Act, 1963, held as under:

“It is also true that on completion of the work a right to get payment would normally arise but where the final bills as in this case have not been prepared as appears from the record and when the assertion of the claim was made on February 28, 1983 and there was non-payment, the cause of action arose from that date, that is to say, February 28, 1983. It is also true that a party cannot postpone the accrual of cause of action by writing reminders or sending reminders but where the bill had not been finally prepared, the claim made by a claimant is the accrual of the cause of action.”

14. In *National Aluminium Co. Ltd. v. G.C. Kanungo*, (2009) 14 SCC 365 : AIR 2009 SC 2928, the Supreme Court held as under:

“5. In other words, there was no finality in the matter and the matter was alive for consideration. If this date i.e. 26-5-1992 is taken into account, the claim made was within the period of three years. That being so, the claim as made was within the period of limitation and the stand of the appellant that the claim was barred by limitation is not tenable.

15.....

16....

17....

18. In *Ashok Construction Company v. Union of India*, (1971) 3 SCC 66, the Supreme Court held that question of limitation is not a pure question of law. Para 8 of the report states as under:



“8. The question of limitation was not a pure question of law. Whether the claim was barred by law of limitation depended upon proof of facts. From the date of settlement of claims three years had not lapsed before a notice asking for reference was made. Prima facie, the claim was not barred by the law of limitation.”

8. The legal position that follows from the above judgements are that Article 18 of the Limitation Act would apply for the purpose of computing the period of limitation for work done where no period of limitation is prescribed. The period of limitation would normally commence when the work is completed. Admittedly, in the present case final bill has been presented on 23.07.2011. It has been corrected and certified on 31.03.2012. Limitation at best would have expired on 30.03.2015. Any payment or entries made in 2017 in the Statement of Account would be beyond the period of limitation.”

6. Learner Senior Counsel further urged that while a question of limitation may in some situations be a mixed question of fact or law, where from a bare perusal of the plaint allegations it is ex facie evident that the suit would be barred, the plaint would be liable to be rejected. In support of the aforesaid submission, learned Senior Counsel placed reliance on the judgment rendered by a Division Bench of the Court in **Minu Chibber and Others v. LT. Col. (Retd.) S.S. Chibber**⁵ and more particularly upon paragraph 13 of the report which is reproduced hereinbelow: -

“13. We are afraid the learned Single Judge, in holding the suit instituted on 10th December, 2010, for declaration of the Will dated 16th May, 1993 and relinquishment deed dated 18th December, 2003 as null and void, to be not barred by time on the averments in the plaint itself, has completely misread the plaint and in the impugned order does not even discuss the period of limitation for such a relief. An issue of limitation is not always a mixed question of law and fact. Where a suit, from statement in the plaint, can be said to be barred by time, certainly a case for rejection under Order VII Rule 11 CPC is made out. The Supreme Court in N.V. Srinivasa

⁵ 2014 SCC OnLine Del 7726



Murthy v. Mariyamma, (2005) 5 SCC 548 has held that if on a critical examination of the plaint, the suit seems to be clearly barred on the facts stated in the plaint itself, the plaint is liable to be rejected. Again, in *Hardesh Ores Pvt. Ltd. v. Hede & Company, (2007) 5 SCC 614* it was held that plaint can be rejected on the ground of limitation where the suit appears from the statement in the plaint to be barred by any “law” which includes the law of limitation. Similarly, the Division Bench of this Court in *Snowwhite Apparels Ltd. v. K.S.A. Technopak (I) Ltd., (2005) 121 DLT 351* also held that if reading of the averments in the plaint would admittedly establish that the suit is barred by any law which would include the Limitation Act also, the plaint would have to be rejected. Reference in this regard may be made to *T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467* laying down that the Court, if on a meaningful - not formal reading of the plaint, finds it to be manifestly vexatious and meritless in the sense of not disclosing clear right to sue, it should exercise its power under Order VII Rule 11 CPC and clever drafting creating an illusion of cause of action should be nipped in the bud so that bogus litigation can be shut down at the earliest stage. To the same effect are the judgments in *ITC Ltd. v. Debt Recovery Appellate Tribunal, (1998) 2 SCC 70* and *Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315.*”

7. It was lastly submitted that it is well settled that the period of limitation cannot stand extended merely on account of the issuance of reminders or repeated demands for payment. Reliance in support of the aforesaid proposition was placed upon the following observations as appearing in the decision of **J. M. Construction Pvt. Ltd. v. Krishna Sachdev and Ors.**⁶

“80. The issuance of repeated legal notices/public notices does not extend the period of limitation. The effort of the plaintiff to bring the present suit within the period of limitation on the basis of its legal notice dated 8th July, 2005 and the reply by the defendant Nos. 1 to 9 dated 20th July, 2005 is totally untenable under law, unlawful and the same does not lead to the extension of limitation period under Article 54 of the Limitation Act, as once the suit is already barred by limitation in the year

⁶ 2016 SCC OnLine Del 10



2002, either by the service of notice or any admission in reply after the expiry of limitation, no benefit can be derived by the plaintiff under Section 18 of the Limitation Act, 1963.

81. Under these circumstances, the present application filed by defendant No. 14 is allowed, as the suit filed by the plaintiff against the defendant No. 14 is barred by limitation and it also does not disclose any cause of action against the said defendant. The trial, therefore, is not necessary against the applicant/defendant No. 14; it would be wastage of time of the Court and expenses of the parties. The plaint is accordingly rejected against the defendant No. 14 as prayed for in the application.”

8. Refuting the aforesaid contentions, Mr. Nagrath, learned counsel appearing for the respondents, would contend that a plaint is liable to be rejected under Order VII Rule 11 of the Code only when upon its wholesome and meaningful reading it becomes manifest that it either fails to disclose a cause of action or is otherwise evidently barred by law. Learned counsel submitted that the allegations in the plaint or a counter claim cannot be read in a disjointed manner and the plaint would be liable to be rejected only if upon a holistic reading of the pleadings in entirety the Court comes to conclude that on the admitted facts as asserted and disclosed, the claim is liable to be held as barred by time. Learned counsel drew the attention of the Court to the terms of payment as well as the LOI to contend that this was not a contract for supply of goods alone. It was submitted that it was a composite contract which envisaged the supply, installation, testing and commissioning of equipment. It was further submitted that the LOI clearly specified the stages at which payments were to be released. According to learned counsel, the LOI would itself undisputedly establish that the contract was not merely for the supply of goods.



9. It was urged that undisputedly the contract which was a turnkey project had to be abandoned by the respondent on account of non-cooperation on the part of the petitioner and its failure to comply with the stipulations in the agreement. It was further highlighted that even at the time when the bill of 17 April 2014 was raised, no dispute as such could have been said to have come into existence since the revisionist was yet to respond and formally repudiate the claim raised. According to learned counsel, neither Articles 14 nor 18 could be said to apply bearing in mind the structure of the contract and in view of the above the Trial Judge had rightly come to conclude that it would be the provisions of Article 113 which would stand attracted and that the period of limitation would have to be computed from the date when the revisionist submitted a reply to the legal notice and denied the claim as raised by the respondents. Learned counsel submits that a plaint or counter claim is not liable to be rejected merely on the basis of a formal or facile reading or examination thereof. He drew the attention of the Court to the following principles as enunciated by the Supreme Court in **Popat and Kotecha Property v. State Bank of India Staff Association**⁷.

“16. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party

⁷ (2005) 7 SCC 510



searchingly under Order 10 of the Code. (See *T. Arivandandam v. T.V. Satyapal* [(1977) 4 SCC 467].)

17. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in *Roop Lal Sathi v. Nachhattar Singh Gill* [(1982) 3 SCC 487] only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

18. In *Raptakos Brett & Co. Ltd. v. Ganesh Property* [(1998) 7 SCC 184] it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 was applicable.

19. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.”

10. Learned counsel lastly submitted that the issue of limitation and whether a particular claim is barred thereunder would ultimately have to be answered based on the facts of each particular case. Viewed in that light, it was contented, that the facts as borne out from the record would establish that the counter claim was filed within the prescription of limitation as provided for under the Act. Learned counsel sought to sustain the aforesaid submission based upon the following observations as appearing in the



decision of the Supreme Court in **Balasaria Construction (P) Ltd. v. Hanuman Seva Trust**⁸.

5. Noticing the conflict between the various High Courts and the apparent conflict of opinion expressed by this Court in *N.V. Srinivasa Murthy v. Mariyamma* [(2005) 5 SCC 548] and *Popat and Kotecha Property v. State Bank of India Staff Assn.* [(2005) 7 SCC 510] the Bench referred [See below the Order at p. 662, et seq.] the following question of law for consideration to a larger Bench:

“Whether the words ‘barred by law’ under Order 7 Rule 11(d) would also include the ground that it is barred by the law of limitation.”

6. Before the three-Judge Bench, counsel for both the parties stated as follows:

“...It is not the case of either side that as an absolute proposition an application under Order 7 and Rule 11(d) can never be based on the law of limitation. Both sides state that the impugned judgment is based on the facts of this particular case and the question whether or not an application under Order 7 Rule 11(d) could be based on law of limitation was not raised and has not been dealt with. Both sides further state that the decision in this case will depend upon the facts of this case.”

11. It would and at the outset be appropriate to note and clarify that the Court in the present case is not called upon to enter a definitive conclusion with respect to the merits of the case or the assertions made by either side. The sole question which stands posited and which alone merits adjudication is whether the counter claim could be said to be time barred and thus liable to be rejected under Order VII Rule 11 of the Code. The Court has thus consciously recorded and noticed only those facts which would have some bearing on the question formulated above.

⁸ (2006) 5 SCC 658



12. For the purposes of considering the question which falls for determination, it would be equally important to refer to the offer letter as well as the LOI which are extracted hereunder: -

OFFER OF LETTER

“BLUE STAR LIMITED

BLOCK 2-A, DLF Corporate Park
DLF Qutab Enclave, Phase-III
Gurgaon – 122 002 (Haryana)
Tel: +91 (124) 509 4000
Fax: +91(124) 409 4000
(Prefix ‘95124’ from Delhi)
www.bluestarIndia.com

Our REF: 06/07/D-SA/010/141/1
November 16, 2006

M/s FORTUNE BUILDER (P) LTD.
17, Hemkunt Colony
New Delhi

Sub: supply, Installation, Testing and Commissioning of HVAC System at Plot No. A-17, Sector-62, Noida, U.P.

Dear Sir,

We thank you for the courtesy extended toward us during the meeting held at your office premises on 11th November 2006 and subsequent to our earlier offer No. 06/07/D-SA/010/141 dated September 14, 2006 regarding the above mention work.

Please find enclosed herewith the revised price bid for the subject work. Our prices are based on the following point as discussed in the meeting:-

- Client will open an irrecoverable letter of credit for all the imported equipment. We will separately give the details of the L.C value after the award of work.



- We will request you to place a separate order for supply and labour order for the subject work. However if client is willing to issue form C then a major reduction can be passed.
- We have not considered any KW sensor and Flow sensor in the V.S.P.S.
- We have considered single pump with expansion tank. However the other accessories will be charged separately as per the rate indicated in BOQ.
- We have considered Single speed jet fans.
- We appreciate your decision to incorporate the following make in addition to the list of make provided in NIT:-

○ AHI with cooling Coll	:-	Blue Star/Waves
○ F.C.Us	:-	Waves
○ Jet Fans	:-	System Air/Flakt
○ Inline Fan	:-	Caryair
○ Motorized Butterfly Valves	:-	Siemens
○ Balancing Valves	:-	Castle
○ E.P.S (TF Quality)	:-	Styrene Packaging
○ Factory Fabricated Ducting	:-	Rollstar
○ Expansion Tank	:-	Anergy

We hope you will find our offer in line with your requirement. In case you need any further clarification/confirmation, please feel free to contact us.”

LETTER OF INTENT

“ FORTUNE BUILDERS PRIVATE LIMITED
COLONISERS, BUILDERS & PROMOTERS
REGD. OFFICE
H-15, Maharani Bagh, New Delhi-110065
Telephone: 26838973

January 19, 2007

____/BSL-HVAC/0102

M/s Blue Star Limited
H-140,



Nirala Nagar,
Lucknow-226 007

Job: **S.I.T.C. of HVAC System at Plot No.A-17, Sector-62, Noida, UP**

Subject: **Letter of Intent**

Dear Sir,

This has reference to the tender of the above-mentioned job.

Based on your letter # 06/07/D-SA/010/141/II and our subsequent discussions, we are pleased to award the above work to you for an amount of Rs. 2,47,00,000.00 (Rupees Two crore forty seven lacs only). This amount shall be confirmed in the final Contract Document and Work Order, and is inclusive of all the prevailing taxes in the State of Uttar Pradesh.

The terms of payment for this project are as follows:

- 10% of the total contract value as mobilization advance against the submission of bank guarantee of equivalent amount valid till schedule completion of project.
- 70% of the total contract value shall be paid against prorata delivery of equipment/material at site.
- 10% of the total contract value shall be paid against prorata installation of material and equipment.
- Balance 10% of the total contract value shall be paid after commissioning against submission of bank guarantee of equivalent amount, valid till schedule completion of defect liability period of 12 months.
- _____approved makes is appended here with for your final acceptance.
- _____finalisation of the Contract documents and detailed Work Order, you are _____ to make arrangements to mobilize your men and other resources to start theeffective from 1st February, 2007.
- _____Condition of Contract you shall institute a Quality Management System, approved _____Builders, which shall govern each stage of work namely design, _____procurement and execution at site. The QMS shall be implemented from _____of this letter.
- _____are requested to commence the work immediately. The Completion period for the _____work is 5 months from the date of award.



- _____ acknowledge the receipt of this “Letter of Intent” and sign the duplicate Copy as a _____ of your acceptance.

Yours faithfully,

Accepted

____Fortune Builders Pvt. Ltd.

(.....Suneja)
Director

Mr. Sandeep Anand
Sr. Manager Sales
A.C. Projects”

13. From a reading of the counter claim it further transpires that an invoice was raised by the respondent on 17 April 2014. According to the respondent, the total project value was pegged at Rs. 2,47,33,760/- out of which a sum of Rs. 2,00,07,931/- is acknowledged to have been paid by the revisionist. The dispute essentially relates to an asserted outstanding amount of Rs. 47,99,228/-. According to the respondent, the revisionist made the last payment under the contract on 16 January 2015. This fact is disputed by the revisionist which asserts that the last payment was released on 12 December 2014. While the respondent is stated to have raised the issue of outstanding payments through its various communications and e-mails, a legal notice for the balance sum was issued on 10 March 2016. The claim raised in terms of that notice was repudiated by the revisionist in terms of its reply dated 4 June 2016. The counter claim came to be instituted thereafter on 15 March 2018.

14. On a compendious reading of the allegations on which the counter claim rests as well as the communications of parties which accompanied



that claim, it further transpires that the work was left at an incomplete stage with the respondent alleging that the revisionist failed to lay in place adequate facilities to enable it to complete the work, the revisionist at the other end alleging that the counter claimant abandoned the project mid-way constraining it to source material and machinery from independent sources and thus incurring further expenditure.

15. Having noticed the factual matrix of the case, the issue of limitation may now be taken up for consideration. Articles 14, 18 and 113 of the Act read thus: -

Description of suit	Period of limitation	Time from which period begins to run
14. For the price of goods sold and delivered where no fixed period of credit is agreed upon.	Three years	The date of delivery of the goods
18. For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Three years	When the work is done.
113. Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues.

16. The following salient facts emerge from a reading of the counter claim and the material placed along with it. Upon a careful consideration of the offer document and the LOI, it becomes apparent that the contract awarded to the respondent was clearly not one for supply of goods alone.



This is evident from a perusal of the offer letter which described it to be as one for **“Supply, Installation, Testing and Commissioning of HVAC System....”**. It was thus a composite contract which envisaged the supply of equipment, its installation, testing and its final commissioning. A perusal of the LOI bears out that the payment schedule was staggered and moneys liable to be released dependent upon a particular stage of the work or contract milestone being completed or achieved. In view of the above, it is manifest that Article 14 would clearly not be attracted since the contract was clearly not one for supply of goods per se.

17. Turning then to Article 18, there are two facets of that provision which would merit articulation. The Article firstly relates to suits which may be instituted in relation to a contract for *“work done”*. The use of the phrase *“work done”* as employed in the provision is an apparent and evident iteration of the legislative intent of it being distinct from a claim which may stem from a mere supply of goods. It is this aspect of Article 18 which has led to the precedents rendered on the subject recognising its applicability to works contracts and turnkey projects. Article 18 would thus apply to contracts which do not merely entail the supply of goods and machinery but also contemplate erection, installation and successful commissioning. The view expressed above is fortified from a reading of the plain language of the provision which uses the phrase *“For the price of work done....”* as distinct from a claim arising from or relating to price of goods alone. It is thus apparent that it does not apply to a contract which may entail a mere supply of goods. Undisputedly, in terms of its language



the period of limitation would commence once the work is done or completed or when a final bill is raised. The second facet of Article 18 which merits enunciation is that its application is dependent upon the suit being for the price of work done “*where no time has been fixed for payment*” It is these two distinct facets of Article 18 which must be borne in mind while adjudging the rival submissions which have been addressed.

18. This Court has already held that the offer letter and the LOI indubitably establish that the contract was not confined to a mere supply of goods. The contract clearly envisaged the installation of the HVAC system as well as its successful commissioning. It was clearly not a contract for the supply of the system alone. This was thus evidently a composite contract which required the respondent to source, install and commission the equipment. The counter claim as presented would thus fall within the ambit of a claim for the price for work that had been performed. However, while that satisfies a part of Article 18, the difficulty in accepting its application to the facts of the present case arises when one gleans the terms of the contract in order to ascertain whether or not a stipulation for payment existed. It is here that the argument based on Article 18 falters. As is evident from a reading of the LOI, the release of moneys under the contract was linked to different milestones being achieved in the course of implementation of the contract. The LOI in unambiguous terms set out the percentage of the total contract value which was to be released at different stages. This was therefore not a case where no time frame for payment was



fixed. Article 18 in *stricto sensu* thus could not be said to apply for the purposes of computing and answering the question of limitation.

19. Additionally, it may be noted that it is the revisionist's own case that the work was not completed by the respondent and it had to consequently engage the services of others for completion of the project. This was so disclosed in the reply to the legal notice sent by the revisionist. This aspect too would establish that Article 18 would have no application in the facts of the present case. This since the period of limitation in terms of this provision would commence only when the work is completed and a final invoice is raised. The Court deems it apposite to notice the decision rendered by a learned Judge in **M/S Collage Estates Pvt. Ltd Vs. Blue Star⁹** where faced with a somewhat similar factual position, the Court made the following pertinent observations:-

“16. The petitioner has not before this Court pleaded as to which particular Article of the Limitation Act is applicable. Article 137 of the Schedule to the Limitation Act reads as follows:—

137	Any other application for which no period of limitation is provided elsewhere in this Division	3 years	When the right to apply accrues
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17. Reference may also be had to Article 18 of the Schedule to the Limitation Act which reads as follows:—

“18	For the price of work done by the plaintiff for the defendant at his request, where no	3 years	When the work is done
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⁹ 2018 SCC Online Del 9730



	time has been fixed for payment		
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18. I may look at some of the judgments dealing with Article 18 above. This court in Municipal Corporation of Delhi v. Gurbachan Singh & Sons, 208 (2014) DLT 177 had noted that in a proceeding for recovery of price for work done, cause of action commences when work is done in terms of Article 18 of the Schedule to the Limitation Act. This court held as follows:—

“3. xxx

Three things, inter-alia, can be culled out from these paragraphs. Firstly ordinarily on the completion of the work, the right to get payment begins. Though Article 18 is not stated, this line is in terms of Article 18 of the Limitation Act. The second aspect is that a dispute arises when there is a claim on one side and its denial/repudiation by the other. The third aspect is that a person cannot postpone the accrual of cause of action by repeatedly writing letters or sending reminders.

16. A summary of the conclusions on reading of the aforesaid relevant clauses of the contract in question and the judgments as dealt with above, bring out the following salient points:

(i) Limitation commences when the cause of action accrues/arises.

(ii) Accrual/arising of cause of action necessarily varies as per facts and circumstances of each case and the nature of jural relationship between the parties viz contractual or otherwise and so on.

(iii) As regards contracts for execution of building work, Article 18 comes into play in that when no specific date for payment is fixed, limitation commences and the cause of action accrues for the purpose of limitation on the completion of work.

(iv) In its application, Article 18 will cause different dates for accrual of causes of action in building works when a time period is fixed for submitting of a bill by the contractor and to which there is no response of the owner. Where a final bill is submitted and liability under the same, even if, in part, is admitted or some payment is made then such actions extend limitation in terms of Section 18 of the Limitation Act.



(v) No fresh period of limitation can arise simply because letters and reminders are written time and again, attempting to keep the claim alive, although the claim by virtue of Article 18 of the Limitation Act, has become clearly time barred.

xxx”

19. Similarly, the Bombay High Court in the case of State of Maharashtra v. Hindustan Construction Company Limited (2010) 4 SCC 518 (“HCC”) held that it is Article 18 of the Limitation Act that would normally apply. The following was noted:—

“19....

6. On behalf of the Petitioner reliance is placed on Article 18 of the Limitation Act. That Article reads as under:

(18) For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment. The Period of limitation is three years and the time begins to run when the work is done.

7. Perusal of the above quoted Article shows that when a suit is to be instituted for recovery of the price of the work done by the Plaintiff for the Defendant, and when there is no time fixed for payment to be made, the cause of action for instituting the suit arises when the work is completed and the suit has to be instituted within a period of three years from the accrual of cause of action. It is clear from the record that the present dispute which was referred to arbitration is for recovery of the price of the extra work done by the Respondent for the Petitioner at the request of the Petitioner and there was no time fixed for making the payment. Therefore, according to this Article, the cause of action will accrue when the work is done. The learned Counsel appearing for the Respondent relied on Article 113 of the Limitation Act. Article 113 reads as under:—

113. Any suit for which no period of limitation is provided elsewhere in the Schedule, the period of limitation is three years and the time begins to run when the right to sue accrues.

8. Perusal of the above Article makes it clear that this Article comes into play only on a finding that for institution of a suit for the claim which is involved in the present matter, there is no period of limitation provided elsewhere in the schedule. Therefore, unless a finding is recorded that Article 18 does not apply, Article 113 cannot apply. I do not see any reason



why Article 18 will not apply to the present dispute, because the present dispute is in relation to the price of the work done by the Respondent for the Petitioner. The learned Counsel for the Respondent also could not give any reason why Article 18 will not apply. Thus, as the work was completed in the year 1992, the cause of action in terms of Article 18 will accrue in 1992 and therefore the reference will have to be made within a period of 3 years from 1992 unless according to Respondent the time gets extended because of any acknowledgement etc.....”

20. In Arbitration Petition No. 466/2006 titled Maharashtra State Power Generation Co. Ltd. v. Geo Miller Co. Pvt. Ltd. decided on 26.12.2011 the Bombay High Court held as follows:—

“8..... In my opinion, this is an impossibility. An argument as to whether a claim is made within the period of limitation has always to be made with reference to some Article in the Schedule of the Limitation Act, without referring to any article in the Schedule of the Limitation Act, a finding either that the claim is barred by limitation or it is not so barred is impossible to be recorded. So far as application of Article 137 is concerned, that Article is in Part-II, relating to applications. For invoking the arbitration clause the limitation provided by the Limitation Act for making application will not apply, the limitation provided by the schedule for institution of a suit will apply.”

21. In South Eastern Coalfields Ltd. v. B.S. Agrawal, the High Court of Chattisgarh held as follows:—

“9. Article 18 of the Limitation Act, 1963 provides as under:

“18	For the price of work done by the Plaintiff for the defendant in his request where no time has been fixed for payment	3 years	when the work is done
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10. “Work and Labour” in legal nomenclature is a term of precise legal import. In England, it is the name of one of the common counts in actions of assumpsit being for work and labour done and materials furnished by the plaintiff for the defendant: Black's Law Dictionary 6th Edn. p. 1604. The Courts in India have, therefore, given a wider meaning to the words ‘work done’ in Article 18 and treated a works contract as coming within its



purview. The starting point of limitation in each case must, however, depend on its own facts and circumstances.

11. In Halsbury's Laws of England 3rd Edn. Vol. 24 p. 218, the meaning of the expression 'work done' is given thus:

"On a general contract for work to be done, the cause of action accrues when the work is done. A contract to do work may, however, contain a condition that the price should be paid out of.....when a certain contingency has happened, and in such a case the cause of action does not arise until the.....Contingency has happened."

12. In Gannon Dunkerley and Co. Ltd. v. Union of India (1969) 3 SCC 607, the Supreme Court held as under:

"11.In our judgment, there is no right to sue until there is an accrual of the right asserted in the suit, and its infringement, or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted: Bolo v. Kokan, 51 IA 325."

13. In Major (Retd.) Inder Singh Rekhi v. Delhi Development Authority (1988) 2 SCC 338, the Supreme Court, while considering applicability of Article 137 of the Limitation Act, 1963, held as under:

"It is also true that on completion of the work a right to get payment would normally arise but where the final bills as in this case have not been prepared as appears from the record and when the assertion of the claim was made on February 28, 1983 and there was non-payment, the cause of action arose from that date, that is to say, February 28, 1983. It is also true that a party cannot postpone the accrual of cause of action by writing reminders or sending reminders but where the bill had not been finally prepared, the claim made by a claimant is the accrual of the cause of action."

14. In National Aluminium Co. Ltd. v. G.C. Kanungo (2009) 14 SCC 365 : AIR 2009 SC 2928, the Supreme Court held as under:

"5. In other words, there was no finality in the matter and the matter was alive for consideration. If this date i.e. 26-5-1992 is taken into account, the claim made was within the period of three years. That being so, the claim as made was within the period of limitation and the stand of the appellant that the claim was barred by limitation is not tenable.

15.....

16....



17....

18. In Ashok Construction Company v. Union of India (1971) 3 SCC 66, the Supreme Court held that question of limitation is not a pure question of law. Para 8 of the report states as under:

“8. The question of limitation was not a pure question of law. Whether the claim was barred by law of limitation depended upon proof of facts. From the date of settlement of claims three years had not lapsed before a notice asking for reference was made. Prima facie, the claim was not barred by the law of limitation.”

22. The legal position that follows from the above case law is that normally for work done by a plaintiff for the defendant it is article 18 of the Limitation Act that would apply for the purpose of computing the period of limitation. The period of limitation would normally commence when the work is completed. However, the accrual of cause of action would necessarily vary as per facts and circumstances of each case.

23. It is quite clear from a reading of the stand of the petitioner that as far as the petitioner is concerned, they have been repeatedly seeking to have the alleged defects in the work done by the respondent rectified. Finally it is on 27.04.2015 that they are said to have got their chillers commissioned through a third party, presumably at the risk and cost of the respondent Company. It is quite clear from the above that it cannot be said that the cause of action for filing of this case first arose in 2010 as is sought to be pleaded by the petitioner.

24. Perusal of the award shows that it notes that on one hand the petitioner claims that as per the respondent the work was completed in 2010 but in the same breath the petitioner states and pleads a long list of defects which as per the petitioner the respondent did not complete. Based on these facts the learned Arbitrator was of the view that the plea of the petitioner is without merits. The learned arbitrator has concluded on the facts that the claim was within the period of limitation. The view of the learned arbitrator is a plausible view taken in the facts of the case. There are no reasons for this court to take a different view than the one taken by the learned Arbitrator.”

20. The question of whether the counter claim could be said to be time barred from a reading of the allegations levelled may also be tested in the backdrop of the salient facts which were noticed hereinabove. The



revisionists have laid much emphasis on the fact that the last invoice was described as the “*final invoice*” as well as the averments made in the plaint to the effect that payments were to be made on a pro rata and “*bill to bill*” basis. It was in this light that learned Senior Counsel essentially contended that the Trial Judge should have rejected the plaint.

21. This Court finds itself unable to accept the submission addressed on these lines for the following reasons. For the purposes of evaluating whether a plaint is liable to be rejected under Order VII Rule 11 of the Code, the Court is obliged by law to read the plaint as a whole. The conclusion of the plaint being liable to be rejected would have to be founded on a comprehensive and meaningful reading of the pleadings as tendered. A mere stray assertion cannot be read in isolation to the case as set up in the plaint as a whole. Similarly, a description of facts which is otherwise established to be ex facie inaccurate or contrary to the record would also not warrant the invocation of Order VII Rule 11. A facile examination of the LOI itself would clearly establish that a pro rata system of payment was clearly not envisaged. The averment with regard to payments being made “*bill to bill*”, is paraphrased with the counter claimant stating it to be “.....*as per the terms of the Letter of Intent.*” The description of the final invoice as the “final” bill would also, in the considered view of the Court, not be determinative of the question which stands raised. Ultimately the issue of limitation would have to be answered on a holistic consideration of the counter claim and the documents on which



it was based. The Court consequently negatives the submissions addressed on behalf of the revisionist on the above score.

22. While admittedly an invoice of 17 April 2014 and which is described in the counter claim as the final bill was in fact raised, it becomes pertinent to note that the work had clearly not been completed by the respondent. The work is alleged to have been abandoned unfinished resulting in the revisionist sourcing machinery and other parts of the system independently. The parties dispute the date when the last payment was made. However even if the Court were to refrain from recording any definitive finding with respect to the exact date when that payment was made, going by the disclosures made by respective sides it was evidently made after the issuance of the last invoice. In any case that payment made after the last invoice was raised would clearly constitute an acknowledgment of debt for the limited purpose of computation of the period of limitation. If one were to answer the question of limitation based on the assertion of the respondent, limitation would have stood extended upto January 2018. If one were to go by the case set up by the revisionist, the claim would have been in accord with the statute of limitation upto December 2017.

23. However, and notwithstanding the above, the Court notes that even after those payments, issues relating to the execution of the contract simmered and festered between the parties. The rival claims ultimately stood crystallised and embodied in the legal notice and the reply that was exchanged. Regard must be had to the well settled precept of the



prescription of limitation commencing from the time when an actual “dispute” can be said to have arisen. That, as has been consistently held, depends upon the assertion of a right by one party and its repudiation by the other. It would be appropriate to advert to the celebrated enunciation of this aspect by the Supreme Court in **Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority**¹⁰:-

4. Therefore, in order to be entitled to order of reference under Section 20, it is necessary that there should be an arbitration agreement and secondly, difference must arise to which this agreement applied. In this case, there is no dispute that there was an arbitration agreement. There has been an assertion of claim by the appellant and silence as well as refusal in respect of the same by respondent. Therefore, a dispute has arisen regarding non-payment of the alleged dues of the appellant. The question is for the present case when did such dispute arise. The High Court proceeded on the basis that the work was completed in 1980 and therefore, the appellant became entitled to the payment from that date and the cause of action under Article 137 arose from that date. But in order to be entitled to ask for a reference under Section 20 of the Act there must not only be an entitlement to money but there must be a difference or dispute must arise. It is true that on completion of the work a right to get payment would normally arise but where the final bills as in this case have not been prepared as appears from the record and when the assertion of the claim was made on 28-2-1983 and there was non-payment, the cause of action arose from that date, that is to say, 28-2-1983. It is also true that a party cannot postpone the accrual of cause of action by writing reminders or sending reminders but where the bill had not been finally prepared, the claim made by a claimant is the accrual of the cause of action. A dispute arises where there is a claim and a denial and repudiation of the claim. The existence of dispute is essential for appointment of an arbitrator under Section 8 or a reference under Section 20 of the Act. See *Law of Arbitration* by R.S. Bachawat, first edition, page 354.

¹⁰ (1988) 2 SCC 338



There should be dispute and there can only be a dispute when a claim is asserted by one party and denied by the other on whatever grounds. Mere failure or inaction to pay does not lead to the inference of the existence of dispute. Dispute entails a positive element and assertion of denying, not merely inaction to accede to a claim or a request. Whether in a particular case a dispute has arisen or not has to be found out from the facts and circumstances of the case.

24. The decision in **Inder Singh Rekhi** was explained by the Supreme Court in a more recent decision in **Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd.**¹¹, in the following terms: -

23. Turning to the other decisions, it is true that in *Inder Singh Rekhi* [*Inder Singh Rekhi v. DDA*, (1988) 2 SCC 338], this Court observed that the existence of a dispute is essential for appointment of an arbitrator. A dispute arises when a claim is asserted by one party and denied by the other. The term “dispute” entails a positive element and mere inaction to pay does not lead to the inference that dispute exists. In that case, since the respondent failed to finalise the bills due to the applicant, this Court held that cause of action would be treated as arising not from the date on which the payment became due, but on the date when the applicant first wrote to the respondent requesting finalisation of the bills. However, the Court also expressly observed that “a party cannot postpone the accrual of cause of action by writing reminders or sending reminders”.

28. Having perused through the relevant precedents, we agree that on a certain set of facts and circumstances, the period during which the parties were bona fide negotiating towards an amicable settlement may be excluded for the purpose of computing the period of limitation for reference to arbitration under the 1996 Act. However, in such cases the entire negotiation history between the parties must be specifically pleaded and placed on the

¹¹ (2020) 14 SCC 643



record. The Court upon careful consideration of such history must find out what was the “breaking point” at which any reasonable party would have abandoned efforts at arriving at a settlement and contemplated referral of the dispute for arbitration. This “breaking point” would then be treated as the date on which the cause of action arises, for the purpose of limitation. The threshold for determining when such a point arises will be lower in the case of commercial disputes, where the party's primary interest is in securing the payment due to them, than in family disputes where it may be said that the parties have a greater stake in settling the dispute amicably, and therefore delaying formal adjudication of the claim.

29. Moreover, in a commercial dispute, while mere failure to pay may not give rise to a cause of action, once the applicant has asserted their claim and the respondent fails to respond to such claim, such failure will be treated as a denial of the applicant's claim giving rise to a dispute, and therefore the cause of action for reference to arbitration. It does not lie to the applicant to plead that it waited for an unreasonably long period to refer the dispute to arbitration merely on account of the respondent's failure to settle their claim and because they were writing representations and reminders to the respondent in the meanwhile.

25. Tested on the principles enunciated in the two decisions noticed above, it is evident that the disputes between the parties before this Court ultimately crystallised and came to be raised by the respondent in its legal notice. The claim as raised was negated by the revisionist when it replied to the aforesaid notice. It is this which would constitute the “breaking point” as was explained by the Supreme Court in **Geo Miller**. It becomes relevant to note that here too while the project was abandoned and left unfinished, parties were yet to settle their differences. This was not a case where the work had been duly finished at the time when the last invoice was raised by



the respondent. Both sides have raised competing claims of why the project could not be completed. The legal notice and the reply of the revisionist disputing the claim in essence not only constituted a positive assertion of the claim by the respondent but also a point of no return in the dealings between the parties. It would thus constitute the crucial point in time from which the period of limitation would be liable to be viewed as having commenced.

26. The Court has already held that both Articles 14 and 18 of the Act were inapplicable. The issue of limitation would thus have to be considered on the anvil of Article 113 of the Act. When so tested and the period of limitation computed from the date of repudiation, it is manifest that the counter claim could not be said to be barred by time. This evidently when one computes it from the time when the reply to the legal notice was sent and the filing of the counter claim thereafter.

27. In view of the aforesaid conclusions, the Court comes to hold that the counter claim did not deserve to be rejected under Order VII Rule 11 of the Code. The decision of the Trial Judge impugned in the present revision would consequently not merit interference.

28. The revision fails and shall stand dismissed.

YASHWANT VARMA, J.

APRIL 8, 2022
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