

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO. 3 OF 2020

M/s. Namasthetu Infratech Pvt & ors. ..vr. ..M/s. Pawanputra Buildcon Pvt. Ltd.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. I.J.Damle, Advocate for applicants

Mr. A.A.Bansod, Advocate for non-applicants

CORAM : AVINASH G. GHAROTE, J.

DATE : 23/06/2023

1] The revision seeks to challenge the order dated 11.12.2019 below Exh.16, whereby the application under Order 7 Rule 11(d) of the CPC filed by the applicant/defendant has been rejected on the ground that the issue of limitation is a triable issue and therefore, the plaint on this ground cannot be rejected.

2] Mr. Damle, learned counsel for the applicant submits that the averments in the plaint indicate the dates of invoices to be 31.5.2014 and 9.7.2014 and as the last payment is made on 22.9.2015 by the applicant/defendant and the suit having been filed on 31.10.2018, was clearly barred by limitation as it falls under Article 14 of the Limitation Act. He therefore submits that the application ought to be allowed.

3] Mr. Bansod, learned counsel for the respondent submits that the question of limitation is always the mixed question of facts and law and therefore, the question whether the matter would fall within Article 14 of the Limitation Act would also depend upon the evidence which is to be laid.

4] There cannot be any doubt with the proposition that the question of limitation is a mixed question of facts and law, unless it is glaringly apparent from the averments in the plaint, and has to be decided on the touchstone of evidence to be laid. Though in the instant case the last payment made by the applicant to the non-applicant as indicated in the plaint is 22.9.2015, there is a subsequent notice issued by the non-applicant to the applicant on 12.10.2015 to which a reply has been given through counsel of the applicant dated 28.10.2015, which has been received subsequently thereto. The cheques issued in favour of the non-applicant by the applicant have also been dishonoured. This would clearly indicate that the plaint averments in so far as the limitation is concerned, have to be tested in view of the averments. Whether a claim in a suit is covered by a particular Article of a Limitation Act, itself is

something which cannot be decided without looking into the evidence, considering which the reliance placed by Mr. Damle, learned counsel for the applicant on **Vijaykumar Satischandra & Co. vrs Rajgopal Badrinarayan Malpani, 1996 &(1) Mh.L.J. 594** is of no assistance. I therefore do not see any reason to interfere in the impugned order. The revision is dismissed. No costs.

JUDGE

Rvjalit