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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 362/2019 and I.A. 9759/2019, I.A. 17975/2019

AIRPORTS AUTHORITY OF INDIA

..... Plaintiff

Through: Mr. Dig Vijay Rai, Mr. Aman Yadav,
Mr. Archit Mishra, Advocates
(Ph. 9873103599, e-mail:
digvijayra.redifmail.com).

versus

CENTRE FOR POLICY RESEARCH

..... Defendant

Through: Mr. Sanat Kumar, Senior Advocate
with Mr. Rahul Narayan and
Mr. Shashwat Goel, Advocates
(Ph. 9810950526, e-mail:
raol.naranayan @ gmail.com).

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

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09.02.2023

MINI PUSHKARNA, J.

I.A. 17975/2019 (under Order VII Rule 11 read with Section 151 CPC)

1. The present application has been filed on behalf of defendant under Order 7 Rule 11 read with Section 151 CPC praying for rejection of the plaint of the plaintiff as being barred by limitation and there being no valid cause of action arising in favour of the plaintiff against the defendant.

2. The facts relevant for the present adjudication are that the plaintiff had issued Advertisement No. 02/2012 inviting applications

from eligible candidates for 558 vacancies in 33 cadres/ posts of Junior Executives, Manager and Deputy General Manager/ Deputy Company Secretary, respectively against which a total number of 1,35,367 candidates registered for various posts.

3. The plaintiff vide letter dated 10.07.2012 engaged the defendant to conduct the recruitment process pursuant to Advertisement No.02/2012 on mutually agreed scope of work i.e. development of bilingual objective type paper consisting of 100 questions, fee of the OMR Sheet, processing results and generation of / supply of category-wise list and Test Administration Costs, printing of attendance sheet, honorarium payable to the Chief Test Administrator, venue hire charges and other expenses. The plaintiff paid a total amount of Rs.1,55,12,374/- to the defendant towards the recruitment process carried out by the defendant pursuant to Advertisement No.02/2012.

4. Subsequently, the corporate vigilance department of the plaintiff herein examined the process of recruitment and submitted a preliminary report to the Chairman of the plaintiff vide CVO Note dated 09.05.2013. As per the preliminary report, several irregularities were noticed in the recruitment process, especially in the written examination conducted by the defendant. Later, Chairman of the plaintiff approved to refer the case to Central Bureau of Investigation on recommendation of Chief Vigilance Officer (CVO). The case was referred to the CBI vide letter dated 30.05.2013. Pursuant to the said letter dated 30.05.2013, there were correspondences exchanged between the office of the CVO and the CBI.

5. The plaintiff vide notice dated 10.05.2013 put the recruitment process relating to Advertisement No. 02/2012 on hold. Subsequently, a show cause notice dated 19.08.2013 was issued to the defendant on the basis of irregularities in conducting the exams requiring it to show cause as to why action should not be taken against it including debarring the defendant.

6. Keeping in mind the gravity of the matter, the plaintiff sought legal advice from Additional Solicitor General (ASG). The ASG vide his opinion dated 06.09.2013 opined that an enquiry Committee may be constituted to enquire whether cancellation of the previous examination was warranted and whether a fresh examination is to be conducted.

7. Pursuant to opinion of the Ld. ASG dated 06.09.2013, the Competent authority of the plaintiff vide order dated 08.10.2013 constituted a Committee in connection with the recruitment work undertaken by the defendant. The Committee vide its letter dated 12.11.2013 submitted its report dated 07.11.2013 whereby it opined that the process of written examination conducted by defendant was wholly questionable. It recommended that written test be conducted again.

8. The plaintiff placed the report of the Committee before the Competent authority. The report of the Committee was approved by the Competent Authority of the plaintiff i.e. the Chairman on 31.01.2014. Accordingly, a notification to this effect was uploaded on the website of the plaintiff on 21.03.2014 that due to the

administrative reasons, it is decided to redo the entire selection process afresh. A press notification was also given in this regard in the leading newspapers on 24.03.2014.

9. In the meanwhile, the decision of the plaintiff to put the recruitment process on hold was challenged in W.P.(C) No. 399/2014, which was disposed of vide order dated 29.01.2014, thereby directing the competent authority to take a decision in the matter not later than eight weeks from the date of order.

10. The order dated 29.01.2014 passed by this Court in W.P.(C) No. 399/2014 is reproduced as below:

“1. Pursuant to last order, the respondents have filed a short counter- affidavit. In sum and substance, a perusal of the counter affidavit of the respondents, is indicative of the fact that the matter was referred to a committee to inquire as to whether or not, during the pendency of the criminal investigation, the examinations held pursuant to the advertisement no. 2/2012 to the post of Junior Executive (Information Technology) and Junior Executive (Engineering Electrical) ought to be cancelled or not. The affidavit also reveals that a report has been submitted by the Committee.

2. The Committee, I am told, has opined that the candidates who had sat in the exam should be asked to take the exam once again. The Committee has also, it appears, opined that the agency, which was involved in the earlier exam, should be excluded. It also appears to be the opinion of the Committee that exam should be held under a different agency, though under supervision.

3. I am informed that the report of the Committee is required to be placed before the competent authority for taking a decision in the matter. Since nearly two months have passed since the report was generated by the

Committee, The competent authority is requested to take a decision in the matter with expedition; though not later than eight weeks from today.

4. With the aforesaid observations in place, Mr Saini, learned counsel for the petitioner, says that he does not wish to press the writ petition any further.

5. The petition is, accordingly, disposed of.”

11. Subsequently, the plaintiff on 19.11.2014 decided to scrap the entire recruitment process in view of the fact that the recruitment process was tainted with illegalities and to re-do the examinations advertised vide Advertisement No. 02/2012.

12. Pursuant to the decision dated 19.11.2014 by the Competent Authority, the plaintiff entered into negotiations with EdCIL (India) Limited (“EdCIL”) for re-conducting the recruitment process. Plaintiff vide their letter dated 26.03.2015 informed EdCIL that the plaintiff had accepted the cost proposal submitted by it vide letter dated 13.02.2015 and awarded the end to end recruitment exercise for 28 cadres to EdCIL.

13. Writ petition, W.P.(C) 2204/2014 and other connected writ petitions were filed challenging the action of the plaintiff to re-do the entire recruitment process. The said writ petitions were dismissed vide judgment dated 25.01.2016. This Court upheld the submission on behalf of the plaintiff herein that there were large scale irregularities in the entire selection process. The irregularities were serious in nature and cast a doubt on the accuracy of the results and the integrity of the recruiting agency. Further, most of the candidates who had applied were not sent their admit cards and hence, large number of candidates

could not take the examination. Thus, the said writ petitions were dismissed thereby upholding the action of the plaintiff herein to cancel the examination process pursuant to advertisement No. 02/2012.

14. Against the aforesaid judgment dated 25.01.2016, appeal being LPA No. 168/2016 was preferred. The said appeal was also dismissed vide judgment dated 31.03.2016 by Division Bench of this Court. Ultimately, SLP against the aforesaid judgment dated 31.03.2016, was also dismissed on 09.05.2016 by Supreme Court. Hence, the decision of the plaintiff to scrap the recruitment process was upheld and became final.

15. The plaintiff had also issued a second show cause notice dated 11.02.2015 to the defendant calling upon it to show cause as to why it should not be debarred from participating in the future tender process for conducting recruitment exercise of the plaintiff. The plaintiff vide the said show cause notice also intimated the defendant that it was contemplating to quantify the damages suffered by it and also raise a demand for the same. Subsequently, by order dated 20.10.2015, plaintiff blacklisted the defendant. The same was challenged by the defendant in this Court in W.P.(C) No. 1846/2016. The said order of blacklisting was ultimately set aside by judgment dated 29.07.2019.

16. Subsequently, the plaintiff issued fresh advertisement bearing No. 02/2016, which was published in the Employment News dated 23/29.04.2016. Fresh examinations for recruitment were conducted in September, 2016.

17. The plaintiff through its counsel issued a legal notice dated

01.06.2016 to the defendant to pay an amount of Rs. 11, 73, 46, 122/- towards damages suffered by the plaintiff. The defendant through letter dated 20.06.2016 replied to the notice of the plaintiff denying its liability to pay any amount to the plaintiff. As per para 71 of the plaint, the said reply was received in the office of the counsel of plaintiff on 27.06.2016.

18. The present suit has been instituted on 19.07.2019 by the plaintiff seeking damages from the defendant to the extent of Rs.19,31,86,310/- along with pendente lite and future interest @12% p.a. till realisation.

19. By way of the present application, defendant has put forth that the plaint in the present case ought to be rejected as the same has been filed after an inordinate delay of 6 years and is barred under Article 55 of the Limitation Act.

20. It is the case of the defendant that the first show cause notice alleging irregularities in conducting the exams was sent on 19.08.2013 by which the defendant was asked to show cause why action should not be taken against it including debarring. It is submitted that the alleged breach on account of which the plaintiff has filed the present suit for damages took place prior to 19.08.2013, when the plaintiff found alleged irregularities in conducting the exams.

21. Vigilance Department of the plaintiff issued a preliminary report dated 09.05.2013 alleging irregularities in the recruitment process. Based on this internal report, the plaintiff decided to conduct re-examination on 12.11.2013 and a notification to this effect was

issued on 21.03.2014 and 24.03.2014. Subsequently, a second show cause notice was issued on 11.02.2015 to the defendant. The show cause notice clearly stated that another agency had been engaged for conducting the exams at a cost of Rs.3.38 crores and that AAI Management was contemplating to quantify the damages suffered by it and also raised a demand for the same.

22. Thereafter, the defendant was blacklisted by the plaintiff on 20.10.2015. Defendant challenged the same vide W.P.(C) No.1846/2016 before this Court. The order of blacklisting was set aside vide judgment dated 29.07.2019. It is submitted that the order of blacklisting and the proceedings challenging the same before this Court had nothing to do with quantification of the alleged damages and/ or filing of the present suit. Further, issuance of second show cause notice did not extend the period of limitation, which had already commenced prior to 19.08.2013.

23. The plaintiff sent a legal notice on 01.06.2016 claiming a sum of Rs.11,73,46,122/- towards damages. The same was denied by the defendant vide letter dated 20.06.2016. It is the case on behalf of the defendant that the present suit was filed on 19.07.2019, i.e. much after the expiry of its period of limitation. Learned counsel for the defendant submits that even going by plaintiff's own second show cause notice dated 11.02.2015, where it says that it was contemplating to quantify the damages, the present suit is still barred by limitation. Even if it is assumed for the sake of arguments that the plaintiff had quantified the damages and issued a legal notice to the defendant on

01.06.2016, then also the present suit is barred as the same was filed on 19.07.2019.

24. It is further submitted that though the successful candidates had challenged the decision of the plaintiff to conduct re-examination, no stay was ever granted by any Court at any stage of the proceedings.

25. Thus, it is submitted on behalf of the defendant that the suit is barred by limitation on perusal of the facts as stated in the plaint and the documents alone. The suit was filed well after three years prescribed from the date the cause of action arose.

26. In support of its submissions, defendant has relied upon the following judgments:

- I. Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) dead through Legal Representatives and Others, (2020) 7 SCC 366.*
- II. Fatehji and Company and Another Vs. LM Nagpal and others, (2015) 8 SCC 390.*
- III. State of Punjab and Another Vs. Balkaran Singh, (2006) 12 SCC 709.*
- IV. CLP India Private Limited Vs. Gujarat Urja Vikas Nigam and Another, (2020) 5 SCC 185.*
- V. Geo Miller and Company Private Limited Vs. Chairman Rajasthan Vidyut Utpadan Nigam, (2020) 14 SCC 643.*
- VI. KLA Construction Technologies Pvt. Ltd. Vs. Chadha Sugar and Industries Pvt. Ltd and Another, 2018 SCC OnLine Del 10226.*
- VII. Delta Foundations and Constructions, Kochi and Others Vs. Kerala State Construction Corporation Ltd., Ernakulam, 2003 SCC Online Ker 19.*

VIII. *Balakrishna Savaeram Pujari Waghmare and Others Vs. Sh. Dayaneshwar Maharaj Sansthan and Others, AIR 1959 SC 798.*

27. On the other hand, the plaintiff has denied the submissions made on behalf of the defendant. It is submitted that in Para 83 of the plaint, the cause of action has been detailed for filing the present suit. It was on 03.10.2016 that the work of conducting the recruitment process qua four cadres was awarded to EdCIL. Further, the cause of action arose on 01.06.2016, when the plaintiff through its counsel issued a legal notice demanding an amount of Rs.11,73,46,122/- towards damages. The cause of action further arose on 20.06.2016, when the defendant sent a reply to the legal notice and denied any liability to pay damages as claimed. The cause of action further arose on 01.05.2015, 16.05.2015, 27.07.2016, 13.10.2016, 10.04.2017, 08.08.2017 and 22.08.2017, when consolidated payments were made by the plaintiff to EdCIL for conducting online recruitment process against Advertisement Nos. 02/2015 and 02/2016.

28. As per the plaintiff, the cause of action finally arose in favour of the plaintiff and against the defendant when EdCIL vide its letter dated 31.08.2018 provided the details of the charges raised on the plaintiff for re-doing the recruitment process online of the old candidates, who had applied pursuant to Advertisement No. 02/2012. The cause of action is still continuing in favour of the plaintiff and against the defendant. Hence, the present suit has been filed within the period of limitation.

29. It is submitted that the action of the plaintiff to debar the

defendant is a separate proceeding and cannot be linked to the present suit. Moreover, the order of blacklisting was set aside on the ground that the vigilance report was not provided to the defendant prior to passing the order of debarment. Thus, it is contended that the present suit has been filed within the period of limitation and is not barred by limitation.

30. In support of its submissions, the plaintiff has relied upon the following judgments:

- I. Hardeh Ores (P) Ltd. Vs. Hede & Co, (2007) 5 SCC 614.*
- II. Balasaria Construction (P) Ltd. Vs. Hanuman Seva Trust, (2006) 5 SCC 658.*
- III. P.V. Guru Raj Reddy Vs. P. Neeradha Reddy & Others, (2015) 8 SCC 331.*
- IV. Salim D. Agboatwala Vs. Shamalji Oddhavji Thakkar, 2021 SCC OnLine SC 735*

31. I have heard the learned Counsels and have perused the record.

32. The present suit has been filed by the plaintiff for damages against the defendant for breach of contract. As per Article 55 of the Schedule of The Limitation Act, 1963, the limitation period for filing a suit for compensation for breach of any contract is three years. Article 55 of the Schedule of The Limitation Act, 1963, reads as under:

PART II – SUITS RELATING TO CONTRACTS

Description	Period of Limitation	Time from which period begins to run
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55. For compensation for the breach of any contract, Three express or implied, not herein specially provided for.	When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases.
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33. Plain reading of the plaint in the present case clearly shows that the breach of contract by the defendant took place in the year 2012, when the examinations were carried out between August 2012 to October 2012. Under Article 55 of The Limitation Act, 1963, for compensation for breach of contract, the limitation begins when the contract is broken. Accordingly, the right to sue accrued in the year 2012 upon the conduct of the exam. It also accrued on 05.09.2013 when the preliminary report of the Vigilance Department pointed out the breaches by the defendant. It accrued on 19.08.2013 when the first show cause notice was issued to the defendant or when the decision to re-conduct the examinations was taken on 12.11.2013 and approved by Chairman of the plaintiff on 31.01.2014.

34. Even if we consider that the issue pertaining to the breach of contract by the defendant herein was pending consideration before this Court and subsequently before Supreme Court wherein the decision of the plaintiff herein to re-do the examinations advertised vide Advertisement No. 02/2012, was under challenge; the said issue attained finality when the SLP pertaining to the challenge to the

decision of the plaintiff to re-do the examinations in question, was dismissed by Supreme Court vide its order dated 09.05.2016.

35. Thus, even if the period of limitation is held to begin from 09.05.2016 when the Supreme Court dismissed the SLP, thereby upholding the decision of the plaintiff to re-do the entire recruitment process, the three years period expired on 08.05.2019. Therefore, the present suit that came to be instituted on 19.07.2019, is clearly barred by limitation.

36. First show cause notice based on irregularities in conducting the exams, was sent on 19.08.2013 by which the defendant was asked to show cause why action should not be taken against it including debarring. Further, the Vigilance Department of the plaintiff had issued the preliminary report dated 09.05.2013 bringing forth the irregularities in the recruitment process. Based on this internal report as well as legal opinions, the plaintiff decided to conduct re-examination on 12.11.2013, which was approved by its Chairman on 31.01.2014. A notification dated 21.03.2014 was issued with respect to conducting re-examination. The decision to engage EdCIL for conducting re-examination was taken by the Chairman of the plaintiff on 11.02.2014.

37. A second show cause notice was issued on 11.02.2015 to the defendant stating that another agency had been engaged to conduct the exams and that the management of the plaintiff was contemplating to quantify the damages suffered by it.

38. The defendant herein was blacklisted by the plaintiff on

20.10.2015. The defendant challenged the same by way of W.P.(C) 1846/2016 filed before this Court. The said order of blacklisting was set aside vide judgement and order dated 29.07.2019. However, the order of blacklisting and the proceedings challenging the same before this Court had nothing to do with the filing of the present suit or quantification of the damages. It is the case of even the plaintiff that the action of the plaintiff to debar the defendant is separate proceedings and cannot be linked to the present suit. Thus, in para -3 of its reply to the present application, the plaintiff has submitted as under:

“3. That in reply to the contents of para 3 of the application, it is submitted that the action of the Plaintiff to debar the Defendant is a separate proceedings and cannot be linked to the present suit. Moreover, the Order of blacklisting was set aside on the ground that the Vigilance report was not provided to the Defendant prior to passing the Order of debarment. It is further submitted that the Vigilance Department of the Plaintiff did not have the jurisdiction to direct the Defendant to join investigations. It is submitted that this Hon'ble Court came to a definitive finding that "Thus, it is imperative that it be concluded with some degree of certainty that the Petitioner is guilty of the allegations leveled against it". It is further submitted that the Crime Branch of the Delhi Police is still investigating the matter.”

39. Further, the issuance of second show cause notice dated 11.02.2015 also did not in any manner extend the period of limitation which had already commenced in August – October 2012 when examinations were conducted by the defendant, which led to breach of contract as various irregularities were found in the conduct of

examinations. Even going by plaintiff's own second show cause notice dated 11.02.2015 wherein it was stated that the plaintiff was contemplating to quantify the damages, the present suit is still barred by limitation. Even if it is considered that the plaintiff had quantified the damages and issued a legal notice to the defendant on 01.06.2016, then also the present suit is barred as the same was filed on 19.07.2019.

40. The cause of action in the present plaint is the breach of contract dated 10.07.2012 to conduct examinations on behalf of the plaintiff. This cause of action fructified in 2012-2013 when the breach was determined. There was no continuing cause of action. The averments made in the plaint make it evident that the irregularities in the conduct of examinations held during the year 2012, were in the knowledge of the plaintiff when it issued the first show cause notice dated 19.08.2013. The plaintiff decided to conduct re-examination on 07.11.2013 which was approved by the Chairman of the plaintiff on 31.01.2014. Thus, the breach of the contract made by the defendant had clearly been accepted by the plaintiff in the year 2013 and 2014 when decision was taken and approved to conduct re-examination.

41. By giving the benefit of pendency of litigation pertaining to the decision of the plaintiff to conduct re-examination, the cause of action accrued finally on 09.05.2016 when the Supreme Court dismissed the SLP. Thus, seeing from all accounts, the present suit having been filed on 19.07.2019 is clearly barred by limitation.

42. Supreme Court in the case of ***Dahiben Vs. Arvindbhai Kalyanji***

Bhanusali (Gajra) Dead Through Legal Representatives and Others¹, held as follows:

“23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.

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25. The Limitation Act, 1963 prescribes a time-limit for the institution of all suits, appeals, and applications. Section 2(j) defines the expression “period of limitation” to mean the period of limitation prescribed in the Schedule for suits, appeals or applications. Section 3 lays down that every suit instituted after the prescribed period, shall be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article.

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28. A three-Judge Bench of this Court in State of Punjab v. Gurdev Singh [State of Punjab v. Gurdev Singh, (1991) 4 SCC 1 : 1991 SCC (L&S) 1082] held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words “right to sue” mean the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order 7 Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected.”

¹ (2020) 7 SCC 366

43. It may be noted that subsequent events mentioned in the plaint, whether the proceedings before the police or CBI, the proceedings relating to blacklisting or the actions or inactions of EdCIL as regards re-examination, have no relevance for the purposes of limitation for suit for damages for breach of contract. Once time starts running, the same would not stop or extend due to communications between the parties.

44. The present case is also not a case of continuing breach, as the acts of defendant came to an end in 2012 itself. The defendant had no role to play afterwards. Thus, time of limitation for damages/compensation for breach of contract, began to run in terms of Article 55 of Schedule of The Limitation Act, 1963, when the breach occurred. The fact of engagement of a third party for re-conduct of examinations, will have no bearing on the aspect of limitation.

45. Thus, this Court in the case of ***KLA Construction Technologies Pvt. Ltd. Vs. Chadha Sugar and Industries Pvt. Ltd. and Another***², held as under:

9. However, insofar as limitation is concerned, the fact that the Defendant was forced to engage third party contractors would not extend the period of limitation insofar as the Plaintiff is concerned, as the date of abandonment is a complete cause of action in itself. The amounts that the third party contractors may have charged would affect, at best, the quantum of damages/compensation but the same does not change the date when the cause of action arose. In Delta Foundation and Constructions, Kochi v. State

² 2018 SCC OnLine Del 10226

Construction, Corporation Ltd., Ernakulam, AIR 2003 KERALA 201 which was also recently followed by a Single Judge Bench in IVRCL Limited v. Union of India [Arbitration Request Nos. 67, 68 and 69 of 2014, Decided on 10.04.2015], a similar issue has arisen wherein the Division Bench of the Kerala High Court held:

“...At the moment breach occurs, time begins to run, and the starting point of limitation for suit for compensation for breach of contract is when the contract is broken. Bench has taken the view that only when the work is re-tendered plaintiff would be able to consider the damages caused. We are of the view that would be going against the law of limitation. The Supreme Court in Essar Constructions v. N. Ramakrishna Reddy (2000) 6 SCC 94 held that statute of limitation assumes the existence of a cause of action and does not define or create one.....”

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12. However, what is important in the present case is that there is no dispute as to the fact that the abandonment took place in October, 2011. The conduct of the counter claimant post the said abandonment is not in the control of KLA, in as much as whether the counter claimant wishes to engage third party contractors or not is purely within its own discretion. When those contracts conclude is purely within the domain of the counter claimant and the third party contractors. The day the site was abandoned, the cause of action arose. A submission has been made that meetings were held between the parties to persuade KLA to conclude the work. The said meeting is claimed to have to have been held on prior to November, 2011. The cause of action paragraph is relevant and set out below:

“21. That the cause of action first arose on or around October, 2011 when the Plaintiff left the construction work relating to the boiler. That it further arose on 02.11.2011 when the Defendant No. 1 gave work order to M/s. Satkartar Construction. That the cause of action further arose on 15.06.2011 when the Defendant No. 1 had to give work order to M/s. Sadanand Civil Contractor. That the cause of action further arose on 10.09.2012 and continued till April, 2013 till the commissioning of Power Plant could be completed and power supplied to Punjab State Power Corporation Limited. It further arose on 06.09.2013 when the Defendant No. 1 gave work order to M/s. Om Prakash Associates.”

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17. In Balakrishna Savalram Pujari Vs. Shree Dayaneshwar Maharaj Sansthan, AIR 1959 SC 798, the Supreme Court observed that:

*“It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders doer of the act responsible and liable for the continuance of the said injury. **If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue.** If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong.”*

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19. As held in the Delta Foundation case (supra), the re-tendering of a contract would not result in limitation getting extended. Applying the aforesaid principles, it is clear that in the present case, no factual evidence is needed to be ascertained at this stage. The stand of the parties is clear. The engagement of third party as contractors to complete the work alleged to have been

abandoned by KLA cannot extend the period of limitation. No authority has been filed by the counter claimant in support of the preposition that re-tendering of the work would extend the period of limitation.”

46. Resultantly, it is clear that the present suit is indisputably barred by limitation.

47. In view of the aforesaid, the present suit is rejected under Order VII Rule 11, being barred by limitation.

48. The present application is allowed in terms of the aforesaid.

**(MINI PUSHKARNA)
JUDGE**

FEBRUARY 09, 2023/PB/au