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

% ***Date of decision: 04th October, 2023***

+ **RFA(COMM) 219/2023 & CM APPLs. 51232/2023, 51233/2023**

MS AARTI HASWANI Appellant

Through: Mr. Sanjay Bansal, Advocate.

versus

THE CHIEF SECRETARY AND ORS. Respondents

Through: Mr. Naresh Kumar Beniwal & Mr.
Nikhil Beniwal, Advocates for R-1
to 3.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present **Appeal under Section 96 of the Code of Civil Procedure, 1908** (*hereinafter referred to as "C.P.C., 1908"*) read with Section 13 of the Commercial Courts Act has been filed on behalf of the appellant against the Judgment dated 05.06.2023 passed by the learned District Judge (Commercial Court-07), Central District, Tis Hazari Courts, Delhi, whereby the Suit of the appellant/plaintiff was dismissed on the ground of limitation.

2. The appellant is running a catering and crockery service with the name and style of M/s Satpal Catering and Crockery Service at R-10, Model Town-III, Delhi. She was awarded the Contract for catering services for Kailash Mansarovar Yatra, Urse Camp and Natural Calamities, like flood



and fires and any other function/meeting organized by the respondent No. 2/Revenue Department (HQ) for the period w.e.f. 15.06.2012 to 14.06.2014 *vide Award bearing No. F.1(435)/CTB/HQ/Re-catering tender/2012-13/543* dated 13.08.2012.

3. On 25.05.2013, the appellant received a phone call from the respondent Nos. 2 and 3 informing the appellant that there is a fire incident in the *Jhuggies* situated at J.J. Colony, Bawana, Delhi and the appellant was directed to provide breakfast, lunch and dinner to the affected persons. The meals were provided by the appellant to about 925 affected persons w.e.f. 25.05.2013 to 30.06.2013.

4. The appellant was also provided with the *Work Order No. F.No.1(17)Comp.Fire/SDM/NL/2013/2795-97* dated 17.07.2013 by the respondent No. 3 to provide breakfast, lunch and dinner to 800 persons only. The Challan of the same was verified by the concerned Tehsildar, Narela, Sub-Division, Alipur, Delhi on 11.07.2013. Subsequently, the appellant raised the Bill as per aforesaid work order *vide Book No. 46, Serial No. 1146* dated 12.08.2013 in the sum of Rs. 41,95,800/- to the respondents.

5. The appellant was shocked to know when she received the *Sanction Order No. F.I(505)/CTB/Fire.Floor/2013/501-03* dated 28.03.2014 from the respondent No. 2 only in the sum of Rs. 31,50,000/- against the Bill amount of Rs. 41,95,800/- leaving the balance amount of Rs. 10,45,800/-.

6. The appellant thereafter, moved the Application dated 29.03.2014 for the balance amount of Rs. 10,45,800/- to the respondent No. 1, but no action was taken on the said application. Thereafter, the appellant again moved another Application dated 01.08.2014.

7. It is claimed that the respondent No. 2 again got re-verification of the



work done by the appellant on 20.11.2014 and the same was in favour of the appellant.

8. Thereafter, the appellant again raised the Challan, and the same was again verified by the Tehsildar, Sub-Division, Narela, Alipur, Delhi, but despite the same, the outstanding amount has not been released to the appellant and subsequently, the appellant filed a Mercy Appeal for releasing of outstanding balance payment in respect of fire incident at Bawana, Delhi on 09.01.2017. The appellant then, sent the Reminder dated 29.05.2017 to the respondent No. 1 for releasing of outstanding amount, but it was of no avail.

9. The appellant served the defendants with Legal Notice under Section 80 of CPC, 1908 dated 10.07.2018 with its subsequent reminder, but no response was received.

10. **The appellant thus, filed a Suit for Recovery of Rs. 10,45,800/- along with *pendete lite* interest @ 15% per annum from the respondents.**

11. The summons was duly served upon the respondents who put an appearance on 02.02.2021. Thereafter, the respondents failed to appear and they were eventually proceeded *ex parte vide* Order dated 14.03.2022.

12. **The appellant examined herself as PW1** and tendered her evidence by way of affidavit. In support of her case, the appellant also proved the documents Ex. PW1/1 to Ex. PW1/16.

13. **The learned District Judge, Commercial Court** observed that the cause of action arose last on 28.03.2014, when the appellant received the sanctioned sum of Rs. 31,50,000/- with a shortfall of claim amount of Rs. 10,45,800. It was held that even if the contention of the appellant was



accepted that the re-verification of the work was done and reports submitted on 20.11.2014, even then, the Suit was instituted on 13.05.2019 and was barred by limitation.

14. Aggrieved by the impugned Judgment dated 05.06.2023, the present Appeal has been preferred by the appellant.

15. **Submissions heard by the learned counsels for the parties and the documents perused.**

16. The appellant had raised a Bill for a sum of Rs. 41,95,800/-, but the respondent No. 2 *vide* Sanction Order No. F.I(505)/CTB/Fire.Floor/2013/501-03 dated 28.03.2014 sanctioned the sum of Rs. 31,50,000/- against the Bill amount of Rs. 41,95,800/-. The appellant had claimed that she was entitled to the balance of Rs. 10,45,800/- from the respondents.

17. From the submissions of the appellant, it is evident that the cause of action arose on 28.03.2014 and the Suit could have been filed within the period of three years, but the same was instituted on 13.05.2019 which is beyond the period of limitation.

18. The appellant had further asserted that she had moved the Application dated 29.03.2014 and the re-verification of the work was done *vide* Report dated 24.11.2014. The said Re-verification Report dated 20.11.2014 as observed by the learned District Judge, Commercial Court, was merely a verification list of *Jhuggies* burnt in fire accident in Bawana in the year 2013 and had no bearing on the sanction of the balance amount as was claimed by the appellant. Even though no fresh cause of action arose on 20.11.2014, when the re-verification report was submitted but even if the cause of action is held to have arisen on 20.11.2014, then too, the Suit was barred by



limitation.

19. Likewise, the report furnished by the SDM (HQ)-VI confirming that 154 *Jhuggies* were burnt in response to the Letter dated 01.02.2017 bearing No. F.1(505)/CTB/Fire-Floor/2013/79 was also only in respect of *Jhuggies* that got burnt and it had no bearing on the due amount as claimed by the appellant.

20. For the foregoing reasons and discussions, we find no infirmity in the impugned Judgment dated 05.06.2023, whereby the learned District Judge, Commercial Court has rightly dismissed the Suit of the appellant on the ground of limitation.

21. Accordingly, the present Appeal is without any merit which is hereby dismissed along with pending applications.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 04, 2023
S.Sharma