



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

% *Date of decision: November 6, 2023*

+ RFA(COMM) 245/2023, CM APPLs. 57498/2023, 57499/2023 & 57500/2023

(75) SATYA NARAYAN SHARMA Appellant
Through: Mr. Ashish Chauhan, Adv.

versus

UNION BANK OF INDIA Respondent
Through: Mr. O.P. Gaggar and Mr. Sachindra Karn, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 57498/2023 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM APPL. 57499/2023 & CM APPL. 57500/2023

These applications have been filed by the appellant seeking condonation of 202 and 22 days delay in filing and re-filing the appeal respectively.

For the reasons stated in the applications, the delay in filing and re-filing the appeal is condoned.

Applications stand disposed of.

**RFA(COMM) 245/2023**

1. The present appeal has been filed impugning the judgment dated February 23, 2023 passed by the learned District Judge, Commercial Court-03, Central District, Tis Hazari Courts, New Delhi whereby the suit filed by the appellant bearing No. Civil Suit (Commercial) 1272/2020 has been dismissed.
2. At the outset we may narrate the brief facts leading up to the appeal. The appellant is a proprietor of the firm namely "M/s India Wood Craft" and is engaged in the business of civil and interior work. The respondent is a Nationalised Bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and provides all kind of banking related services amongst others to its customers. The respondent invited a tender for civil and interior furnishing, modular furniture and partition work at Konnectus Tower, New Delhi. The said tender was awarded to the appellant *vide* work order dated May 10, 2014. As per the work order, the appellant was to execute the work and raise bills which were to be verified by M/s Sandeep Geeta & Associates Pvt. Ltd., an Architect appointed by the respondent. After verification of bills and work done, the respondent was to release payment for the same.
3. Accordingly, the appellant executed work and issued bills at regular interval which were duly verified by the Architect at the site and thereafter payments were released by the respondent. As per the appellant, he executed the work within the stipulated time period and raised the final bill on January 12, 2015 which was duly verified by the Architect for total gross amount and total work done by the appellant



amounting to ₹2,99,84,991/- which included ₹2,21,10,379/- towards gross payment of work done as per tender and ₹78,74,612/- towards gross payment for additional/ extra items. The verified bill was received by the respondent, who also issued a completion certificate dated August 16, 2016 with the assurance that complete payment would be released to the appellant as soon as possible. The appellant *vide* his letters dated September 24, 2015 and December 06, 2015 requested the respondent to release the final payment. The said letters were replied to by respondent bank *vide* letters dated October 01, 2015, February 10, 2015 and December 16, 2015 whereby the respondent acknowledged that the matter is under process at its end and payment would be released shortly. The appellant *vide* his letter dated January 14, 2016 again requested the respondent to release the balance payment. He also wrote a letter on May 25, 2016 requesting the respondent to release the security deposit, retention money and EMD charges. As per the appellant, he had carried out work worth ₹3,01,61,864/- which included the actual work as well as extra items and taxes, but the Architect certified only a sum of ₹2,99,84,991/- on account of tender items and extra items. The respondent, however, released an amount of ₹2,92,47,640/- which included the last released payment of ₹6, 77,451/-, leaving a sum of ₹7,37,351/- outstanding. The appellant approached respondent multiple times for balance payment but the respondent failed to pay the same. The appellant even contacted the Regional Head of the respondent bank in Delhi but without any avail. Ultimately, the respondent *vide* its letter dated May 16, 2019, in response to appellant's letter dated May 07, 2019, refused to release the



balance payment for work done without considering the certification of the amount claimed by the Architect appointed by the respondent itself. Aggrieved by the same, the appellant *vide* his letters dated July 19, 2019, May 18, 2020 and June 05, 2020 again requested the respondent bank to release the balance amount of ₹7,37,351/- but with no avail. The respondent *vide* its letter dated July 04, 2020 refused to release the balance amount. The appellant even attempted pre-institution mediation, however the respondent never appeared to participate in the proceedings and thus a non-starter report dated March 24, 2020 was issued to the appellant. Thus aggrieved by the acts of respondent, appellant filed the suit for recovery of ₹7,37,351/-.

4. The Trial Court on the basis of pleadings and upon hearing the parties framed the following issues:-

1. Whether the Plaintiff is entitled for a money decree of Rs. 7,37,351/- as prayed? (OPP)
2. Whether Plaintiff is entitled for interest. If yes, at what rate and for which period? (OPP)
3. Whether the claim of the Plaintiff is barred by limitation? (OPD)
4. Whether the suit filed by the Plaintiff is without any cause of action? (OPD)
5. Relief

5. The Trial Court dismissed the suit of the appellant being barred by limitation and without any cause of action. As per the appellant, the fundamental premise adopted by the Trial Court to hold that no cause



of action arose in favour of the appellant was on the fact that the appellant did not dispute or demand the suit amount immediately after the last payment received on June 07, 2016 and issuance of completion certificate dated August 16, 2016. Thus, no outstanding balance amount was liable to be paid to the appellant. Further, the Trial Court also went on to observe that “Balance of Final Bill” would mean that whatever remained balance from final bill was sought to be claimed by the appellant.

6. It is submitted that the Trial Court did not take into consideration the unequivocal and unassailable admission made by DW-1 wherein he categorically admits the amount *qua* work done and the insufficient payment made by the respondent. The Trial Court also erred in appreciating that the appellant was well within the limitation period of three years from the date of the last payment and even the denial of the payment by the respondent was within three years of limitation. The Trial Court while observing that the suit was barred by limitation, relied on Article 18 of the Schedule to the Limitation Act, 1963 and to hold that the limitation period to file the instant suit commenced from February 18, 2015 i.e., 8 weeks from the date of final certificate from the consultant. It is submitted that the Trial Court while holding so failed to appreciate the admitted fact that the respondent itself was making the payment in part up to June 07, 2016 and by letter dated May 16, 2019 marked as EX.PW 1/12 in which the respondent for the first time denied the claim of appellant giving rise to the cause of action and accrual of right to sue under Article 113 of The Limitation Act.



7. Mr. Ashish Chauhan, learned counsel appearing for the appellant has stated that the Trial Court has wrongly concluded that no amount is due and payable to the appellant and that the suit is without any cause of action only on the ground that the appellant did not protest or ask for money from the respondent after the receipt of part payment on June 07, 2016 and after completion of work on August 16, 2016. He stated that the claim of the appellant cannot be said to be stale if there is no objection from the respondent and if the claims are within the limitation period of three years. His case is that the respondent kept assuring the appellant that it will clear the payment, and considering the business relationship with the respondent the appellant kept on waiting. However, when the appellant demanded the outstanding suit amount from the respondent, it denied the same on May 16, 2019 which is within three years of last date of payment i.e., June 07, 2016.

8. Mr. Chauhan submitted that it is a settled law that no objection or no protest by the contractors regarding inadequate/incomplete payment received does not disentitle them to raise claims. In the present case, the appellant had relied upon the final bill dated January 12, 2015, which was duly verified by the Architect for the work done amounting to ₹2,99,84,991/- . Further, the respondent in its affidavit of admission and denial has categorically admitted the said bill, with PW-2 who is the representative of the Architect, further verifying the veracity of the bill. Even the respondent's witness DW-1, who is the Chief Manager of the respondent Bank, admitted the contents and amount of the bill. However, the respondent only made a payment of ₹2,92,47,640/- against the verified amount. According to him, the Trial



Court erred in not appreciating that the respondent had admitted all the documents and the work done by the appellant.

9. That apart, the Trial Court also failed to appreciate that “*balance of final bill*” reflects whatever balance is payable and not the full and final bill. Additionally, the respondent has failed to show any documents as to why the lesser amount of ₹2,92,47,640/- was paid by the respondent and to show that the appellant had conceded to have received full and final payment.

10. It is his contention that the Trial Court wrongly held the suit to be barred by limitation without considering the date of refusal of the respondent and erred in relying upon Article 18 of the Limitation Act. The suit is not governed by Article 18 as the same only covers those cases where there is no time fixed for payment of money. Clause 14 of the agreement i.e., Ex. DW1/1 provides that the final bill was to be submitted by the contractor within one month of the date fixed for completion of the work or of the date of certificate of completion furnished by the consultant and that payment shall be made within eight weeks thereof. The appellant was well within the limitation period of three years from the date of last payment, and also the date of denial. Though, the Trial Court observed that the limitation period to file the instant suit commenced on February 18, 2015, i.e., eight weeks from the final certificate from the consultant, it failed to appreciate the admitted fact that the respondent itself was making payments in part up to June 07, 2016 and that the claim of the suit amount was within three years from the said date. He submitted that the suit is governed by Article 113 of the Limitation Act which governs a case where there is



no prescribed period from “when the right to sue accrues”. Reference in this regard is placed on the judgment of the Supreme Court in the case of *Aries and Aries v. Tamil Nadu State Electricity Board* Civil Appeal No.1034/2008, wherein it was held that a suit for the price of work done is not covered by Article 18 or Article 55 of the Limitation Act, but the same shall be governed by Article 113, which is the residuary provision of the Limitation Act. It was also held that the period of limitation will begin when the claim of the appellant is denied for the first time.

11. Mr. Chauhan contended that there is a difference between “right to sue accrues” as provided in Article 113 and “right to sue first accrues” as provided in other Articles of the Limitation Act. Reference in this regard is made to the judgment of the Supreme Court in *Shakti Bhog Food Industries Ltd. v. The Central Bank of India & Ors., Civil Appeal 2514/2020*, and of this Court in *Standing Conference of Public Enterprises v. BSES Rajdhani Power Limited, LPA 778/2012*. The right to sue of the appellant first accrued on May 16, 2019, when his claim was denied for the first time, which was duly admitted by DW-1, and as such the suit of the appellant, instituted on September 02, 2020, was well within the limitation period of three years.

12. Mr. O.P. Gaggar, learned counsel for the respondent bank, would submit at the outset that the suit instituted by the appellant is barred by law and limitation as the work was completed on August 31, 2014, and the last payment was made to the appellant on June 07, 2016, as the full and final settlement towards his final bill raised on April 15, 2016. That being so, the suit of the appellant is clearly barred by



limitation, which cannot be stretched/increased or said to be continuing merely by writing letters to the respondent. The respondent has always replied to the letters of the appellant stating that no amount is due and payable by the respondent for the work in question as all the payments have already been paid as per the final bill raised by the appellant *vide* his letter dated April 15, 2016. This fact was concealed by the appellant while filing the suit. The respondent had placed the details of the said final bill and payments in a tabulated form in its written statement filed before the Trial Court.

13. He has referred to certain clauses of the work order dated May 10, 2014, reproduced as under:-

“The Bank reserves the right for technical scrutiny of the bills/claims/extra items submitted by you and recommended by the Project Architect. Upon scrutiny, the amounts/claims certified by the Project Architect are likely to change if required and for which justification is available.”

“The role of the Project Architect is advisory in nature. Any dispute/disapproval shall be referred to the competent authority of the Bank i.e. General Manager (SSD) whose decision shall be final and binding.”

....“You will execute the work strictly adhering to tender terms/conditions without any compromise or deviation. The work will be supervised by the Project Architect MIS Sandeep Geeta & Associates and their representatives. The project will also be supervised by the Bank's Technical Officers; however you will not be exonerated for any lapse/deviations in the work already completed Ito be completed.”

14. The above clauses as per the learned counsel for the respondent shows that the role of the Architect was only supervisory. The appellant had also executed Articles of Agreement dated May 21, 2014 with the



respondent, the recitals of which are in consonance with the work order dated May 10, 2014.

15. The work as awarded to the appellant was completed a month late as per the time stipulated. The appellant after re-examination has submitted a final bill dated April 15, 2016, which was duly paid to him as per the calculations explained by the respondent before the Trial Court. While Mr. Gaggar concedes to the fact that the respondent issued a completion certificate on August 16, 2016, he denies that the respondent had ever assured the appellant that complete payment will be released soon. Though the total amount certified by the Architect was of ₹2,99,84,991/-, the respondent released a total sum of ₹2,92,47,640/-, to the appellant as per his bills including the final bill dated April 15, 2016. The last and final payment of ₹6,77,451/- was released to the appellant on June 07, 2016 through RTGS.

16. By referring to letters dated October 01, 2015, December 10, 2015 and December 16, 2015, issued by the respondent to the appellant, he stated that nowhere in the said letter is it stated that the payment would be released shortly. Rather, it was mentioned that the matter is under process and after completion of the process, the appellant had rightly raised the final bill dated April 15, 2016, which was duly paid by the respondent.

17. Mr. Gaggar has vehemently contested the stand of the appellant that cause of action for filing the suit arose on May 10, 2014, when the appellant was awarded the work order. According to him, no cause of action has ever arisen in favour of the appellant against the respondent at any point of time. As the full and final payment towards the final bill



was made by the respondent on June 07, 2016, the suit filed on September 2, 2020 was barred by limitation, and as such no cause of action arose and the learned Trial Court rightly dismissed the suit.

18. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the learned District Judge has rightly rejected the suit filed by the appellant herein.

19. Before we deal with the submissions, the relevant part of the findings of the learned District Judge relating to issue no. 3 is as under:

“57. The plaintiff completed work on 31.08.2014. As per Clause 14, the plaintiff was to submit final bill within one month of the date fixed for completion of work or the date of certification of completion furnished by consultant and the bank was to make payment within eight weeks from the date of receipt of final certification from the consultant. As per plaintiff, he had submitted fifth and final bill Ex.PW1/2 on 12.01.2015 alongwith Mark-Q i.e. abstract of additional/extra item work dated 12.01.2015 which was forwarded to defendant vide letter Mark-X dated 18.02.2015 written by Sh. Sandeep Uppal, Director of M/s Sandeep Geeta & Associates Pvt. Ltd., Architect nominated by defendant. Thus as per case made out by plaintiff and recitals contained in Ex.DW1/1, the defendant was to make payment to plaintiff within eight weeks of certification by consultant. Thus defendant was to make payment to plaintiff within eight weeks of letter dated 18.02.2015. The plaintiff thereafter raised a residual/final bill, Ex.DW1/2, on 15.04.2016 and received full payment on 07.06.2016. He was also issued completion certificate dated 16.08.2016 vide Ex.PW1/4. Even if plaintiff is given benefit of period of limitation from final bill, Ex.DW1/2 dated 15.04.2016 and the last payment received from defendant on 07.06.2016, the period of limitation would expire on 16.06.2019. The plaintiff cannot seek any benefit by writing repeated



letters or replies given to said letter by the defendant for extension of period of limitation to prefer his claim against the defendant.

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59. Even otherwise, perusal of agreement Ex.DW1/1 executed between the plaintiff and defendant reveals that it contains an elaborate mechanism for default of the contractor as well as default of the bank. It even provided for arbitration of dispute or differences between the parties thereto i.e. the plaintiff and defendant. The plaintiff could have pursued his claim with the defendant as per the terms of contract Ex.DW1/1 but instead of doing so he resorted in making out a claim against the defendant when his entire claim had already been settled by the defendant bank on 07.06.2016 pursuant to bill Ex.DW1/2 raised by him on 15.04.2016. The suit of plaintiff is clearly barred by limitation. This issue is decided in favour of the defendant and against the plaintiff.”

20. The submission of the learned counsel for the appellant / plaintiff is, in fact the cause of action for the appellant to file the suit has arisen only on May 16, 2019 when the respondent / defendant rejected the appellant’s demand for the outstanding suit amount.

21. His contention is that the words “*when the right to sue accrues*” as provided in Article 113 of the Limitation Act needs to be distinguished with the words “*when the right to sue first accrues*” as provided in other Articles of the Limitation Act. According to him, the right to sue of the appellant accrued on May 16, 2019 upon the denial of the suit amount by the respondent, and not on June 07, 2016 when the respondent made the payment.



22. We are not in agreement with the submission made by the learned counsel for the appellant. As noted by the learned District Judge, as per Clause 14 of the contract which reads as under, it is clear that on the submission of the final bill by the appellant, the same was to be paid by the respondent within eight weeks.

"14. All the interim payments shall be regarded as payments by way of advance against the final payment only and not as payments for Work actually done and completed, and shall not preclude the repairing of bad, unsound, and imperfect or unskilled Work to be removed and taken away and reconstructed, or re-erected or be considered as an admission of the due performance of the contract, or any part thereof in any respect or the accruing of any claim, nor shall, it conclude, determine or affect in anyway the power of the Bank under these conditions or any of them as to the final settlement and adjustment of the accounts or otherwise or in any other way vary or affect the contract. The final bill shall be submitted by the Contractor within one month of the date fixed for completion of the Work or of the date of certificate of completion furnished by the Consultant and payment shall be made within eight (8) weeks from the date of receipt of final Certificate from the Consultant."

23. As per the case set up by the appellant, on the payment of ₹6,77,451/-, the outstanding suit amount of ₹7,37,351/- remained unpaid. No claim was made against the suit amount till June 2019 by the appellant. The claim of the balance amount was rejected *vide* letter dated May 16, 2019 by the respondent.

24. In any case, in view of the clear stipulation in the contract as we have reproduced above, the final bill was to be paid within eight weeks. As the respondent had made the payment (though not sufficiently as per the appellant) against the final bill on June 7, 2016, it



is on the said date that the cause of action to the appellant to file a suit arose. There was no reason for the appellant to wait for more than 2 years to seek the balance amount. Merely because the appellant had issued a letter making a claim for the balance amount, which has been rejected by the respondent, the same will not give rise to any cause of action in favour of the appellant against the respondent. The cause of action had already arisen in favour of the appellant on June 07, 2016 when the final bill was not fully paid. Needless to state, once the cause of action starts running, it continues to run till it comes to an end in terms of the stipulation prescribed under the Limitation Act, which is three years from that date. Concedingly, the suit has been filed on September 02, 2020, which is beyond the period of three years. Hence the suit was rightly dismissed by the learned District Judge.

25. Another plea put forth by the counsel for the appellant to assail the decision of the learned District Judge is that for the present issue it is Article 113 of the Limitation Act that is applicable and not Article 18 as has been held in the impugned order. We are not impressed by the said plea for the reason that Article 18 provides “*For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.*” whereas Article 113 provides for “*Any suit for which no period of limitation is provided elsewhere in this Schedule*”. The learned District Judge on the applicability of Article 18 has held as under:

“54. The transaction in the present case would be governed by Article 18 to the Schedule of the Limitation Act, 1963 as



defendant had not only supplied material but had also done work in terms of work order dated 10.05.2014, Ex.PW1/1, given to him by the plaintiff. The said Article reads as under:-

	Description of suit	Period of limitation	Time from which period begins to run
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

55. While elaborating upon ingredients of Article 18, the Hon'ble High Court of Delhi in case' titled as Fortune Builders Pvt. Ltd. Vs. Blue Star Ltd., C.R.P. 7/2019 & CM APPL. 1434/2019 (Stay) pronounced on 08.04.2022 held as under:-

"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."

26. Going by the terms of the contract, specifically Clause 14 thereof which we have already reproduced above, the present case is undoubtedly one where the appellant is seeking amounts due to him for the work he has done for the respondent. It is a conceded fact that the appellant had completed the work by August 31, 2014. If that be so, the learned District Judge was right holding that it is Article 18 and not Article 113 that would be applicable.

27. In *Aries and Aries (supra)* on which reliance has been placed by Mr. Chauhan, the Supreme Court was concerned with a suit for recovery of money claimed under a contract executed between the plaintiff and the defendant therein, which was dismissed by the High Court by holding that the same is barred by limitation, as the claim in the suit was not made within a period of three years from the date of final payment. The Supreme Court upon a perusal of the correspondences exchanged between the parties subsequent to the date of final payment, was of the view that the same would show that the plaintiff after receipt of final payment had reiterated claim for additional payment on different counts including escalation and extra works done. The defendant instead of rejecting the said claim entertained the same and kept the matter pending before finally rejecting it. The Supreme Court was of the opinion that in that factual



situation, it would be reasonable to assume that the cause of action for the suit arose on the date of the rejection, and the suit has been filed prior to the expiry of three years from the said date in view of Article 113 of the Limitation Act. In the case before us, after the final payment on June 07, 2016, the respondent never entertained the claim of the appellant that additional payments were due. When the appellant made representations late in 2019, the respondent had rejected the same forthwith.

28. In *Shakti Bhog Food Industries Ltd. (supra)*, the Supreme Court was concerned with the suit filed for decree of rendition of accounts in respect of interest/commission deducted by the respondent bank relating to the current account of the appellant, and also for recovery of excess amount charged by the respondent. The Supreme Court held that the expression used in Article 113 “when the right to sue accrues” is markedly distinct from the expressions used in other Articles dealing with suits which unambiguously referred to the happening of a specified event. The Court was of the view that in that case as per the averments made by the plaintiff and the relief claimed, i.e., rendition of accounts and repayment of excess money, no specific Article in the Limitation Act provides for a period of limitation. As such, it was held that the residuary provision of Article 113 of the Limitation Act would be applicable. This judgment is also distinguishable on facts, as we have already held that Article 113 has no applicability herein.

29. In *Standing Conference of Public Enterprises (supra)*, relied upon by Mr. Chauhan, a coordinate Bench of this Court was concerned



with a challenge to an order of a Single Judge who had dismissed the writ petition whereby the appellant was claiming recovery of excess amount paid by it to the erstwhile Delhi Vidyut Board. The Single Judge had dismissed the writ petition holding that the same was not maintainable to enforce a civil liability arising out of a breach of contract, unless the liability arose out of the statutory functions of the state, *inter alia* observing that there was a serious issue of limitation. The Coordinate Bench found that the learned Single Judge had come to the conclusion that since there is no specific Article governing the recovery of such an amount, the residuary Article 113 would apply, and the period of limitation would be three years from the date of payment. The appellant in the appeal took a plea that it is Article 26 of the Limitation Act which would apply to a civil suit of such nature. Another plea was that a letter written by the respondent to Delhi Transco constitutes ‘acknowledgement’ within the meaning of Section 18 of the Limitation Act. However, this Court was of the view that even a fresh period of limitation from the date of acknowledgment of debt or liability starts only in a case when the said acknowledgment is made before the expiry of the period of limitation prescribed in the statute. This Court observing that the period of limitation prescribed in the Limitation Act for recovery of the amount being claimed by the appellant had already expired, and noting that the appellant had not approached either the Civil Court or the Writ Court for about six years, dismissed the appeal. We fail to see how this judgment could come to the aid of the appellant in the factual circumstances, more so when



neither Article 26 nor Article 113 of the Limitation Act have any applicability.

30. In view of the above, the present appeal is devoid of any merit and deserves to be dismissed. It is ordered accordingly. No costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

NOVEMBER 06, 2023/aky