OD – 12

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

CS/50/2010
IA NO: GA/3/2017 (Old No: GA/1958/2017)

GOURANGALAL CHATTERJEE CONSTRUCTION (P) LTD.
VS
STATE OF WEST BENGAL & ANR.

BEFORE:
THE HON'BLE JUSTICE SUGATO MAJUMDAR
Date: 19th July, 2024

Appearance:

Mr. Amitava Ghosh, Adv.
Mr. Tapas Kr. Dey, Adv.
Mr. Navojit Mukherjee, Adv.

...for the Plaintiff

Mr. Ritoban Sarkar, Adv.
Mr. P. Sinha, Adv.
Mr. Shourya Samanta, Adv.

...for the State

The Court: GA 3 of 2017 (old GA No. GA 1958 of 2017) is demurer application filed by the Defendant/State.

The suit is filed by the Plaintiff which carries on business of construction and is a contractor. The Plaintiff participated in a tender floated by the Irrigation and Waterways Department of the Government of West Bengal in connection with drainage improvement of lower Damodar Region. The Plaintiff's rate was accepted in terms of Memo No. 26-18/28/27 dated 07/01/2004. Estimated amount of the tender was Rs.51,39,221/-. The value of the work was Rs.25,59,175/-. There was also stipulation to finish the work within a time frame.

The contract between the Plaintiff and the Defendants provided for payment of running account bills every month. If work, executed in the previous month was more than Rs.1,000/-, irrespective of preparation of such bill by the Plaintiff or by the Defendant. Final bills were to be paid within a month of completion of such work and the security deposit would have to be refunded within three months from the date of completion. It is pleaded in the plaint that the payment of running account bill and the final bill as well as refund of security deposit are fundamental terms of the contract.

In course of execution of the work by the Plaintiff, bills were submitted to the Defendant. The first RA Bill was paid on 30/03/2004. This is for the work executed up to first part of March 2004. Since March 2004, the Plaintiff had executed and completed the balance unperformed work and the second RA Bill for a gross amount of Rs.25,45,751/- was prepared. There was also additional work which the Plaintiff had to undertake. A case is made out that in spite of repeated requests and reminders by the Plaintiff in terms of letter dated 24/12/2004, 10/01/2005, neither the second RA Bill nor the final bill was paid to the Plaintiff. The Plaintiff demanded the money along with interest claiming from 01/01/2005 since work was completed by 31st March, 2004.

It is pleaded in the plaint further that cause of action of the suit arose on 07/01/2004 when the letter of acceptance was issued by the Defendant no. 2. Thereafter, on several days when the work was proceed with and ultimately completed on 31/12/2004. It is further pleaded that correspondence between the

Plaintiff and the Defendants had been exchanged regularly, as such, no part of the cause of action is barred by law of limitation.

GA 3 of 2017 was filed praying for a) rejection of plaint; b) dismissal of plaint; c) stay of suit along with other prayers.

It is contended in the application that admittedly the first RA Bill was paid on 30th March, 2004. Since March 2004, the Plaintiff had executed and completed the balance portion of work. The second RA Bill was prepared for a gross amount of RS.25,45,751/-. Setting out the conspectus of facts, contained in the plaint, it is pleaded by the Defendant in the application that principal sum become due, payable and outstanding since March 2004. It is further contended that, *prima facie*, the suit is barred by limitation, as appears for the plaint. Therefore, order for rejection of plaint is sought.

Affidavit-in-Opposition is filed.

It is contended that final bills are neither prepared nor the Plaintiff is intimated about preparation of final bill. Therefore, there is no question of commencing the period of limitation. It is denied that the suit is barred by law.

The Learned Counsel for the Defendant argued that it is germane that considering an application filed under Order VII Order 11 of the Code of Civil Procedure, only the averments of the plaint are to be looked into; in plethora of judgments, these points have been amplified and reiterated by the Supreme Court of India. What Clause (d) of Order VII Order 11 of the Code of Civil Procedure speaks of law is undoubtedly includes of the law of limitation. Referring to a Division Bench judgment of this Court in **State Bank of India Staff Association Vs. Popal & Kotech Property [(2001) 2 Cal LT 34)]**. It is submitted that when, *prima facie,* reading of the plaint shows that the suit is barred by law of limitation, an application under Order VII Rule 11 (d) of the Code of Civil Procedure is tenable. The Learned Counsel for the Defendant also referred to the decision of the Supreme Court of India in **Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority [(1988) 2 SCC 338],** the Supreme Court of India observed that on completion of work are right to get payment normally arise, in that case assertion of claim was made on a specific dated there was non-payment. It was observed by the Supreme Court of India that cause of action arose from that date. The Learned Counsel for the Defendant also relied upon the observation of the Supreme Court of India in **N.V. Srinivasa Murthy & Ors. Vs. Moriyamma (Dead) by Proposed LRS. And Ors. [(2005) 5 SCC 548]** to expound the scope of Order VII Rule 11 (d) of the Code of Civil Procedure.

The Learned Counsel for the Plaintiff refers to various judgments **M.L. Dalmiya & Company Vs. Union of India (AIR 1963 Cal. 277)**, **Hindustan Construction Company Vs. State of Bihar (AIR 1965 Patna 254)**. It is submitted that unless final bills were prepared and final adjustments were made, limitation cannot be said to be set in motion. The Learned Counsel for the Plaintiff refers to **Hari Shankar Singhania & Ors. Vs. Gaur Hari Singhania & Ors. [(2006) 4 SCC 658]**. It is submitted that under Article 137 of the Limitation Act, period of limitation starts from three years whether the right to sue accrues first. According to the Learned Counsel for the Plaintiff, until preparation of final bill by the Defendant limitation cannot be said to run. The Learned Counsel further referred to **Shree Ram Mills Ltd. Vs. Utility Premises Pvt. Ltd. [(2007) 4 SCC 599]**. It is submitted that when negotiations were still on, there will be no question of starting limitation. It is further submitted referring to **Rashtriya Ispat**

Nigam Ltd. Vs. Prathyusha Resources and Infra Private Limited & Anr. [(2016) 12 SCC 405] that unless one party asserts and the other party denies any right, no cause of action set to arise and real dispute cannot be said to have arisen at that point of time. In nutshell, according to the Learned Counsel for the Plaintiff, the application is liable to be dismissed.

The nutshell of the plaint case is stated above. Additional work, as admitted in the plaint, was confirmed by the Defendant no. 2 in terms of the letter dated 22/03/2004. This is pleaded in the plaint. It is also in the plaint that Plaintiff is entitled to the second RA Bill as the Plaintiff executed the work up to the second RA Bill for gross amount of Rs.25,45,751/-. It is further asserted that the Plaintiff is entitled to a decree for Rs.5,23,207/- against the second RA Bill. *Prima facie*, this statement shows the entitlement of the Plaintiff, of certain sum of money. It is also in the plaint that cause of action arose on 07/01/2004 and continued up to 31/12/2004 when the work was ultimately completed. The instant suit was filed on 22nd March, 2010 that is after lapse of more than six years. It is explained in the plaint that since there were on-going correspondences between the parties and correspondences were regularly exchanged between the parties, the suit is not barred by the law of limitation. This is a queer proposition of law. Multitude or single, correspondences merely as such, do not extend the period of limitation once it starts running. This apart, this plea differs from the plea taken in argument that final RA Bills were yet to be prepared. On the other hand, if it is accepted, as argued, that period of limitation did not start running since final RA Bills were not prepared, it becomes inevitable conclusion that cause of action is yet to arise, undermining the institution of the suit in another way. If it is accepted that unless the final Bill is prepared, there is no cause of action and consequently there is no running of limitation, then it will be inevitable conclusion that the suit is premature and discloses no cause of action.

In plethora of judgments, the Apex Court of India observed that the limitation is a mixed question of law and fact which cannot be decided without aid of evidence. But there is no cavil on the point that if a *prima facie* reading of the plaint clearly and unequivocally gives an impression that the suit is barred by law of limitation, then without any aid of further evidence, the plaint shall be rejected. The question is whether on *prima facie* reading of the plaint, it appears that the suit is time barred. If the plaint in black and white speaks clearly that the suit is barred by time barred, there is no reason why the plaint should not be rejected. Argument of the Learned Counsel for the Plaintiff that limitation did not start running since the final RA Bill was not drawn is self-destructive. Firstly, this pleading is not in the plaint. Secondly, if this argument is accepted then the suit must be a premature one having failed to disclose any cause of action.

For reason stated above, this Court comes to the conclusion that a *prima facie* reading of the plaint yield impression that the suit is time barred or rather barred by the law of limitation. It is a fit case where an application for rejection of plaint should be allowed.

Therefore, GA 3 of 2017 is allowed by rejecting the plaint. Plaint of CS 50 of 2010 stands rejected and the suit along with all applications stands disposed of.

Let the deemed decree be drawn up.

(SUGATO MAJUMDAR, J.)