OD – 13

ORDER SHEET

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

CS/51/2010
IA NO: GA/3/2017(Old No:GA/1959/2017)

M/S MAITY AND CO.
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 1959 of 2017) is an application with multiple prayers including prayer for rejection of plaint.

Before adverting to the contentions of the petition, the plaint case must be looked into since the principal prayer of GA 3 of 2017 is rejection of plaint.

The nutshell of the plaint case is as follows:

a) Plaintiff is a partnership firm, registered under Indian Partnership Firm Act, 1932 having office at Village – Shyam Sundarpur, P.S. – Debra Bazar, District – Pschim Medinipore.

b) Plaintiff carries on business of construction under various Government Authorities as well as private organizations.

c) Pursuant to invitation of a tender, the Plaintiff submitted tender which was accepted by the Defendant no. 2 in terms of Memo No. 26-18/28/2 dated 07/01/2004. Estimated amount of the tender was Rs.51,39,221/-. Work was to be completed within the stipulated time. Written contract was executed. Date of completion of the work was 31/12/2004.

d) The contract provided for payment of running account bill every month, if the work executed in the previous month was more than Rs.1000/-, irrespective of the fact of preparation of such bills by either of the parties. Final bill was to be paid within a month of completion of such work and security deposit was to be refunded within three months from the date of completion.

e) The Plaintiff executed work and his first running account bill was paid upto the first part of March 2004. Since March 2004, the Plaintiff had executed and completed balance portion of the work. During the said work a second running account bill was prepared for a gross amount of Rs.25,71,985/-. After such second running account bill, the Plaintiff had executed further works.

f) The Plaintiff submitted second running account bill. Repeated requests and reminders were made by the Plaintiff but the Defendant did not make any payment either of the second running account bill or the final bill.

g) The instant suit is filed by the Plaintiff claiming for the payment of bill amount of Rs.12,29,651/- with interest at the rate of 18 percent per annum from 1st January, 2005 till realization.

h) It is pleaded that cause of action of the suit arose on 07/01/2004 when the letter of acceptance was issued by the Defendant no. 2 and thereafter on several days when the work was proceeded with and ultimately completed on 31/12/2004.

In the context of plaint case, the instant application is filed containing one of the prayers for rejection of plaint on the ground that, *prima facie,* the suit is barred by law of limitation.

Parties exchanged their affidavits.

The Learned Counsel for the Defendant argued vehemently that while considering an application filed under Order VII Rule 11 of the Code of Civil Procedure, periphery of consideration is only the four corners of the plaint. According to the Learned Counsel for the Defendant, *prima facie*, reading of the plaint clearly shows that the suit is barred by limitation. The Learned Counsel for the Defendant referred to the observation of the Division Bench of this High Court in **State Bank of India Staff Association Vs. Popal & Kotech Property [(2001) 2 Cal LT 34)]** to substantiate his argument. 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. 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.25,71,985/-. It is further asserted that the Plaintiff is entitled to a decree for Rs.12,29,651/- 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 51 of 2010 stands rejected and the suit along with all applications stands disposed of.

Let the deemed decree be drawn up.

(SUGATO MAJUMDAR, J.)