



2024: DHC: 3760



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

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Judgment reserved on : 09 February 2024

Judgment pronounced on: 05 April 2024

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C.R.P. 153/2023 & CM APPL. 31321/2023

DELHI TECHNOLOGICAL UNIVERSITY Petitioner

Through: Ms. Avnish Ahlawat, SC with
Ms. Tania Ahlawat, Mr. Nitesh
Kumar Singh, Ms. Laavanya
Kaushik, Ms. Aliza Alam &
Mr. Monish Sehrawat, Advs.

versus

CHANDER PRABHA

..... Respondent

Through: Mr. Jatin Arora, Adv.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide the instant civil revision petition filed by the petitioner under Section 115 of the Code of Civil Procedure, 1908¹ assailing the impugned order dated 27.08.2022 and consequential order dated 15.11.2022 passed by the learned District Judge (Commercial), Rohini Courts², New Delhi, in CS(Comm) No. 379/2020 titled as "*Chander Prabha vs. Delhi Technological University*" wherein the petitioner's application under Order VII Rule 11(d) of the CPC read with Section 3 of the Limitation Act, 1963 was dismissed.

¹ CPC

² Trial Court



2. The petitioner herein is the Delhi Technological University³, constituted under the Delhi Technological University Act⁴, 2009. The financial powers of the University are exercised by the Finance Committee, which is regulated by the Board of Management under Section 23 of the DTU Act and also the financial rules framed by the Government of India are followed by the University from time to time whilst dealing with contracts and other financial matters.

FACTUAL BACKGROUND:

3. The respondent/plaintiff in the present *lis* filed a Civil Suit (Comm) bearing No. 379/2020 titled as “*Chander Prabha V. Delhi Technological University*” for the recovery of Rs. 11,43,280/- before the Rohini Court, New Delhi on 15.10.2020 in respect of six work orders from 2012-2013, which were purportedly issued by the Project and Estate Officer. It was contended by the petitioner/defendant that each of the work orders were to be completed in a stipulated period of 15 days, however, the work orders were not completed satisfactorily. The claim by the respondent/plaintiff before the learned Trial Court was that the work orders were completed but the alleged amount sanctioned to them on 28.02.2012 was not released by the petitioner/defendant. The details of the six work orders are reproduced below: -

S. No.	Name of work	Work Order No. & Date	Amount of Work Order
1.	White wash and Water Proofing in Type-I, Flat no. 63 in DTU	DTU/Engg. Cell/Civil/2012-13/75 dated 13.08.2012	Rs. 1,46,931/-

³ University

⁴ DTU Act



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2.	Preparation of BPL in Room No. LW1TF4 in DTU	DTU/Engg. Cell/Composite/2012-13/152 dated 16.10.2012	Rs. 95,682/-
3.	Requirement of Power Points in Biometric Lab in IT Dept. In DTU	DTU/Engg. Cell/Elect./2012-13/80 dated 08.11.2012	Rs. 1,65,571/-
4.	Fixing of remaining dismantles chairs in Convocation Hall in DTU	DTU/Engg. Cell/Gen/2012-13/128 dated 18.01.2013	Rs. 1,52,380/-
5.	Supply & fixing of AL Partition in Convocation Hall in DTU	DTU/Engg. Cell/Civil/2012-13/175 dated 19.02.2013	Rs. 1,06,298/-
6.	Urgent repair, AL Partition & other works in room no. LW4TF4 in DTU	DTU/Engg. Cell/Civil/2012-13/177 dated 19.02.2013	Rs. 1,19,317/-

4. It was the case of the respondent/plaintiff that she submitted the bills dated 21.05.2013, 08.08.2013, 21.05.2013 and 21.05.2013 but no monies for the same were released by the petitioner/defendant as they contended that the six work orders were obtained by fraud. It was stated that the petitioner/defendant discovered that Sh. Ratan Singh, Assistant Engineer (Electrical) who was assigned with the task of awarding the work order to the respondent, was the husband of the respondent. The respondent in collusion with the Assistant Engineer (Electrical) secured the work orders by falsifying details of M/s Watts Consultancy and played fraud upon the petitioner/defendant; and when such facts came to light, the services of Sh. Ratan Singh were terminated w.e.f. 13.11.2013. The respondent/plaintiff issued a letter dated 19.02.2014 seeking release of the payment against the work orders, however the same was not replied by the petitioner.

5. It appears that the respondent/plaintiff sent demand letters dated 07.08.2017, 15.06.2018 and 20.07.2018, which were never replied by



the petitioner/defendant. It is the case of the respondent/plaintiff that she filed an RTI Application dated 21.07.2018 seeking the status of the action taken on the letter dated 15.06.2018, which was replied on 22.10.2018 wherein they stated that *“the payment will be made only after scrutiny of bills”*.

PROCEEDINGS BEFORE THE LEARNED TRIAL COURT AND THE IMPUGNED ORDERS:

6. On institution of the suit, learned Trial Court issued summons to the petitioner/defendant for settlement of issues on 04.12.2020. The petitioner contends that the Learned Trial Court did not consider the fact that the Civil Suit filed by the respondent was hopelessly time barred and no summons in such condition could have been issued.

7. The petitioner/defendant along with their Written Statement filed an application under Order VII Rule 11(d) of the CPC read with Section 3 of the Limitation Act, 1963, for “Rejection of Plaint” on the ground that the Civil Suit was barred by limitation under Section 3 of the Limitation Act as limitation for a recovery suit is three years and the cause of action for the defendant arose in 22.02.2013 and that the cause was available to the defendant/respondent to file the suit up to 21.02.2016, for non-payment of the amount mentioned in the aforementioned six work-orders.

8. The application of the petitioner/defendant under Order VII Rule 11(d) of the CPC was dismissed on 27.08.2022 and issues were framed on 15.11.2022, wherein no issue in respect to the aspect of limitation was framed. The petitioner/defendant had challenged the orders dated 27.08.2022 and 15.11.2022 in CM(M) No. 19/2023 and



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the Hon'ble Court by way of the order dated 06.01.2023, noticed the contention of the petitioner/defendant that the learned Trial Court not only dismissed the application under Order VII Rule 11(d) on the question of limitation, but also refused to frame an issue on such aspect of the matter. This Court gave directions to the learned Trial Court to defer the proceedings listed for 21.01.2023 to a date beyond the date fixed by the Court.

9. Learned Trial Court in spite of the order dated 06.01.2023 by this Court, proceeded further in the Suit and closed the PE and directed the petitioner/defendant to file its affidavit by way of evidence. This Court in view of the judgement in the matter of **Shiv Shakti Co-operative Housing Society v. Swaraj Developers**⁵ granted leave to the petitioner/defendant to withdraw the petition with liberty to take appropriate remedy under law.

GROUND FOR REVISION

10. The petitioner/defendant has assailed the impugned orders on the grounds that the recovery of amount under the bills/work invoices in question dated 21.05.2013 and 08.08.2013 were subject to a limitation period for filing a recovery suit that expired in the month of August 2016, while the Suit No. 379/2020 was filed on 15.10.2020, rendering it hopelessly barred by limitation.

11. The petitioner/defendant contends that the learned Trial Court erred in appreciating the settled position of law that the period of limitation cannot be extended merely on account of issuance of reminders, repeated demands for payments or even seeking

⁵ (2003) 6 SCC 659



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information under the Right to Information. Responding to an RTI request after the expiration of limitation period given by the PIO does not constitute an acknowledgement of debt. The petitioner/defendant has placed reliance on the decision in the case of **M/s J. M. Construction Pvt. Ltd. v. Smt. Krishna Sachdev and Ors**, wherein it was held that :

“60. The issuance of repeated legal notices/public notices does not extend the period of limitation. The effort of the plaintiff to bring the present suit within the period of limitation on the basis of its legal notice dated 8th July, 2005 and the reply by the defendant Nos.1 to 9 dated 20th July, 2005 is totally untenable under law, unlawful and the same does not lead to the extension of limitation period under Article 54 of the Limitation Act, as once the suit is already barred by limitation in the year 2002, either by the service of notice or any admission in reply after the expiry of limitation, no benefit can be derived by the plaintiff under Section 18 of the Limitation Act, 1963.”

LEGAL SUBMISSIONS:

12. Ms. Avnish Ahlawat, learned Standing Counsel for the petitioner has urged that the Suit for recovery filed by the respondent of Rs. 11,43,280 on 14.10.210 in respect of the work orders was hopelessly barred by limitation. It is urged that it should be demonstrated in the cause of action that the right to sue is claimed within limitation, which fact clearly amiss in the plaint. Reliance is placed on **Draupadi Devi v. Union of India**.⁶, wherein it was held that :

“72. That brings us to the issue of limitation. The learned Single Judge held that the plea of limitation not having been taken in the pleadings Defendants 1 and 2 should not be allowed to raise the said plea.

⁶ (2004) 11 SCC 425



73. We may notice here that under the Code of Civil Procedure, Order 7 Rule 1(e) requires a plaint to state “the facts constituting the cause of action and when it arose”. The plaintiff was bound to plead in the plaint when the cause of action arose. If he did not, then irrespective of what the defendants may plead in the written statement, the court would be bound by the mandate of Section 3 of the Limitation Act, 1908 to dismiss the suit, if it found that on the plaintiff's own pleading his suit is barred by limitation. In the instant case, the plaint does not plead clearly as to when the cause of action arose. In the absence of such pleadings, the defendants pleaded nothing on the issue. However, when the facts were ascertained by evidence, it was clear that the decision of the Government of India not to recognise the suit property as private property of the Maharaja was taken sometime in the year 1951, whether in March or May. Dewan Jarmani Dass, the plaintiff and the Maharaja were very much aware of this decision. Yet, the suit was filed only on 11-5-1960.

74. The Division Bench was, therefore, right in applying Article 120 of the Limitation Act, 1908 under which the period of limitation for a suit for which no specific period is provided in the Schedule was six years from the date when the right to sue accrues. The suit was, therefore, clearly barred by limitation and by virtue of Section 3 of the Limitation Act, 1908, the Court was mandated to dismiss it.

75. As rightly pointed out by the Division Bench, the learned Single Judge ought to have permitted the plea to be raised on the basis of the facts which came to light. The Division Bench has correctly appreciated the plea of limitation, in the facts and circumstances of the case, and rightly come to the conclusion that the suit of the plaintiff was liable to be dismissed on the ground of limitation. We agree with the conclusion of the Division Bench on this issue.”
{bold portions emphasized}

13. Learned counsel for the petitioner/defendant further urged that there was no admission or acknowledgement of deb or financial liability by them in their reply to the information sought by the respondent under RTI on 21.07.2018; and that the DTU had not sanctioned any monies in favour of the respondent as far back as on 21.02.2013, as no work was done. The cause of action arose from



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22.02.2013 and the cause was available to file the Suit for recovery up to 21.02.2016, whereas the Suit was filed on 14.10.2020. It is argued that the issuance of the reply dated 22.10.2018 to the RTI would not afford a fresh cause of action in favour of the respondent. It is also submitted that it is a well-established legal principle that in a suit for recovery, a mere issuance of a legal notice does not extend the period of limitation. Reliance has been placed on the decision in the case of **Sampuran Singh v. Niranjana Kaur**⁷ and **Rajendera Bajoria v. Hemant Kumar Jalan**⁸.

14. *Per contra*, learned counsel for the respondent/plaintiff has vehemently urged that the learned Trial Court rightly determined that the petitioner/defendant did not ever reject the liability under the bills submitted by the respondent. Much mileage was sought to be drawn from the petitioner/defendant's response to the RTI dated 22.10.2018, wherein the petitioner stated that "*the payment will be made after the scrutiny of bills*", suggesting that the bills remained under review and were not rejected as of 22.10.2018.

15. It was urged that the claim of the petitioner/defendant regarding fraudulent acquisition of work orders and/or the alleged vitiation of any agreement between the petitioner and respondent must be examined during the trial phase and cannot be determined at the preliminary stage under Order VII Rule 11 CPC since it is specifically asserted in Paragraph (16) of the plaint that the cause of action arose on 15.06.2018; and that learned Trial Court correctly ruled that the

⁷ (1992) 2 SCC 679

⁸ (2022) 12 SCC 641.



respondent's suit falls within the limitation period since the issue of limitation involves a mixed question of law and fact. Reliance has been placed on a judgement by the Apex court in **Salim D. Agboatwala v. Shamalji Oddhavji Thakkar**.⁹

16. Lastly, it was urged that the petitioner/defendant must adhere to the General Financial Rules established by the Government of India, and therefore, is obligated to maintain balance sheets for auditing purposes, akin to all governmental entities. The acknowledgement of the debt in the balance sheet falls within the purview of Section 18 of the Limitation Act, as affirmed by the Supreme Court's ruling dated 15.04.2021 in **Asset Reconstruction Company (India) Limited v. Bishal Jaiswal**.¹⁰

ANALYSIS & DECISION:

17. I have given my anxious consideration to the submissions advanced by the learned counsels for the rival parties at the Bar. I have also gone through the relevant record of the case.

18. At the outset, the impugned order dated 27.08.2022 and the consequential order dated 15.11.2022 passed by the learned Trial Court cannot be sustained in law. First things first, the case-law is replete with the proposition of law that while considering an application under Order VII Rule 11(d)¹¹ of the CPC, the court has to

⁹ Civil Appeal No. 5641/2021

¹⁰ MANU/SC/0279/2021

¹¹ 11. Rejection of plaint.

The plaint shall be rejected in the following cases-

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xxx

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(d) where the suit appears from the statement in the plaint to be barred by any law:



only consider the averments in the plaint as a whole and it cannot travel beyond the pleading so as to look into the defence or the case being put forth by the opponent. While that may be so, the respondent/plaintiff has to demonstrate that as when the cause of action arose and how right to sue survives. The plaint must bring out facts so as to show existence of a legal right, its denial or violation by the opposite party and must satisfy the court that the redressal of grievance or violation of his legal right has been sought within the period of limitation.

19. Avoiding long academic discussion, it would be suffice to invite reference to the decision by the Supreme Court in **Raghwendra Sharan Singh v. Ram Prasanna Singh**¹², wherein it was held that the plaint can be rejected, when the suit is patently barred by limitation. The Supreme Court held as under: -

“7. Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order 7 Rule 11 CPC to the facts of the case in hand and the averments in the plaint, we are of the opinion that both the courts below have materially erred in not rejecting the plaint in exercise of powers under Order 7 Rule 11 CPC. It is required to be noted that it is not in dispute that the gift deed was executed by the original plaintiff himself along with his brother. The deed of gift was a registered gift deed. The execution of the gift deed is not disputed by the plaintiff. It is the case of the plaintiff that the gift deed was a showy deed of gift and therefore the same is not binding on him. However, it is required to be noted that for approximately 22 years, neither the plaintiff nor his brother (who died on 15-12-2002) claimed at any point of time that the gift deed was showy deed of gift. One of the executants of the gift

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

¹² (2020) 16 SCC 601



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deed, brother of the plaintiff during his lifetime never claimed that the gift deed was a showy deed of gift. It was the appellant herein-original defendant who filed the suit in the year 2001 for partition and the said suit was filed against his brothers to which the plaintiff was joined as Defendant 10. It appears that the summon of the suit filed by the defendant being TS (Partition) Suit No. 203 of 2001 was served upon Defendant 10-plaintiff herein in the year 2001 itself. Despite the same, he instituted the present suit in the year 2003. Even from the averments in the plaint, it appears that during these 22 years i.e. the period from 1981 till 2001/2003, the suit property was mortgaged by the appellant herein-original defendant and the mortgage deed was executed by the defendant. **Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting the plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation.** Therefore, considering the decisions of this Court in *T. Arivandandam* [*T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467] and others, as stated above, and as the suit is clearly barred by law of limitation, the plaint is required to be rejected in exercise of powers under Order 7 Rule 11 CPC. **{bold portions emphasized}**

20. In the light of the aforesaid proposition of law, reverting back to the instant matter, it is evident from the table detailing six work orders that the works are claimed to have been completed during the period August, 2012 to March 2013. The bills were evidently submitted on 21.05.2013, 08.08.2013, 21.05.2013 and 21.05.2013 but without any response by the petitioner/defendant, so much so that even when the demand letters/notices were issued dated 07.08.2017, 15.06.2018 & 20.07.2018, there was no response by the petitioner/defendant either.

21. It is the case of the respondent/plaintiff that it was after she filed the RTI application dated 21.07.2018 and received status of action taken on 15.06.2018 that she instituted the present suit on 15.10.2020. In the absence of any stipulation as to the timeline for scrutiny and payment of bills between the parties, it is but patently manifest that





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the suit for recovery was filed beyond the period of three years from the date the amount allegedly became due, which fell due from the date of submissions of the bills; and thus clearly falling foul of Articles 1¹³, 54¹⁴ and 113¹⁵ of the Limitation Act, 1963. The said period of limitation could not have been extended by any stretch of imagination merely because the respondent/plaintiff received status report on her claims from the petitioner/defendant vide reply to the RTI on 22.10.2018 to the effect that *“the payment will be made only after scrutiny of bills”*..

22. At this juncture, it would be relevant to refer to the provision of Section 18 of the Limitation Act, 1963, that provides as under: -

“18. Effect of acknowledgment in writing. —

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation. - For the purposes of this section, -

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for

¹³ Article 1: - For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties. **Period of Limitation = Three years.**

Time from which period begins to run = The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.

¹⁴ Article 54: - For specific performance of a contract. **Period of Limitation = Three years**

Time from which period begins to run = The date fixed from the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

¹⁵ Article 113: - Any suit for which no period of limitation is provided elsewhere in this Schedule. **Period of Limitation = Three years.**

Time from which period begins to run = When the right to sue accrues.



payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”

23. The Supreme Court in the case of **Kotak Mahindra Bank Ltd. v. Kew Precision Parts (P) Ltd.**¹⁶, had an occasion to interpret the aforesaid provision and it was held as under:

“33. There is a distinction between acknowledgment under Section 18 of the Limitation Act, 1963 and a promise within the meaning of Section 25 of the Contract Act. **Both promise and acknowledgment in writing, signed by a party or its agent authorised in that behalf, have the effect of creating a fresh starting of limitation.** The difference is that an acknowledgment under Section 18 of the Limitation Act has to be made within the period of limitation and need not be accompanied by any promise to pay. If an acknowledgment shows existence of jural relationship, it may extend limitation even though there may be a denial to pay. On the other hand, Section 25(3) is only attracted when there is an express promise to pay a debt that is time-barred or any part thereof. Promise to pay can be inferred on scrutinising the document. Only the promise should be clear and unconditional.

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65. Section 18 of the Limitation Act speaks of an acknowledgment in writing of liability, signed by the party against whom such property or right is claimed. Even if the writing containing the acknowledgment is undated, evidence might be given of the time when it was signed. The Explanation clarifies that an acknowledgment may be sufficient even though it is accompanied by refusal to pay, deliver, perform or permit to enjoy or is coupled with claim to set off, or is addressed to a person other than a person entitled to the property or right. “Signed” is to be construed to mean signed personally or by an authorised agent.”

24. In the light of the said proposition of law, the writing in the RTI reply dated 22.10.2018 that ***“the payment will be made only after***

¹⁶ (2022) 9 SCC 364



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scrutiny of bills” does not amount to the acknowledgement of a debt or liability. It was neither unequivocal nor tantamounted to accepting that the claims submitted were sustainable and legally payable. The claim was only subject to *scrutiny* which was yet to be conducted by the accounts department of the petitioner/defendant. Be that as it may, even the RTI reply dated 22.10.2018 was almost after five years of the submission of the bills and not within three years from the date of submission of the bills. In other words, assuming that there was an acknowledgement of debt or liability, such acknowledgment was not made during the period of three years of the bills becoming due for payment.

25. To sum up, learned Trial Court has committed grave jurisdictional error in holding that although the invoices/bills were pertaining to the year 2013 and the suit was filed in the month of October, 2020, there was a continuous cause of action available to the respondent/plaintiff since till the date of its reply dated 22.10.2018, the petitioner/defendant had not even made any assessment whether or not to accept the bills and make payments. At the cost of repetition, the petitioner/defendant never replied even to the demand letters/notices issued by the respondent/plaintiff, not to hold that it was under any legal obligation to reply. Apparently, there were no records available with it and the disciplinary action had already been initiated against the husband of the respondent/plaintiff. The petitioner/defendant never acknowledged any debt towards the aforesaid invoices/bills and the decision by the learned Trial Court that there was a continuous cause of action is absolutely flawed, based



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on reckless conjectures and cannot be sustained in law. Further, the learned Trial Court has committed another grave irregularity in not framing an issue on the point of limitation either.

26. In view of foregoing discussion, the present revision petition is allowed. The impugned order dated 27.08.2012 followed by the consequential order dated 15.11.2022 are hereby set aside. The sum result is that the suit of the plaintiff bearing No. CS (COMM) No. 379/2020 titled as “*Chander Prabha v. Delhi Technological University*” is held to be barred by limitation in terms of Order VII Rule 11(d) of the CPC, and accordingly, the same is hereby rejected.

27. The pending application also stands disposed of.

28. A copy of this order be sent to the learned Trial Court for information and necessary compliance.

DHARMESH SHARMA, J.

APRIL 05, 2024/ck