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

% *Decision delivered on: 26.07.2024*

\+ **RFA(COMM) 289/2024 & CM No.42099/2024**

MAHESH CHAND SHARMA .....APPELLANT
Through: Mr J.K. Chawla, Ms Shisba Chawla and Mr Vinay Chadda, Advs.

versus

THE DEPUTY DIRECTOR, CPWD .....RESPONDENT
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM No.42099/2024

1. Allowed, subject to just exceptions.

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2. This appeal is preferred against the judgment and decree dated 18.11.2023. *Via* the impugned judgment and decree, the trial court has dismissed the suit filed by the appellant/plaintiff for recovery of Rs.18,82,669/-, along with interest at the rate of 9% per annum, on the ground of limitation.

3. Mr J.K. Chawla, learned counsel, who appears on behalf of the appellant/plaintiff, says that the trial court has committed an error which needs to be corrected.

4. The record shows that the appellant/plaintiff was awarded a contract on 01.04.2017 by the respondent/defendant.

5. The contract envisaged maintenance of garden features in and around Central Vista/Rajpath, India Gate, New Delhi. As per the terms agreed between the parties, the tenure of the contract spanned between 12.04.2017 and 11.10.2017.

6. It is the appellant's/plaintiff's assertion that the work commenced on 10.04.2017 and that it was completed on 25.11.2017. It is against this backdrop that the appellant/plaintiff filed a claim under clause 10(c) of the subject contract, concerning release of money on account of labour rate variations.

7. According to the appellant/plaintiff, the labour rate was enhanced, *via* a government notification, from Rs.374/- per day to Rs.513/- per day w.e.f. 01.04.2017.

8. To be noted, the appellant/plaintiff had, in the first instance, filed its claim for labour rate enhancement, amounting to Rs.14,72,994/-, for the period spanning between 01.06.2017 and 31.10.2017.

8.1 The claim was duly approved and bore an endorsement, dated 18.12.2017, of the concerned officer of the respondent/defendant.

9. The appellant/plaintiff avers that the claim for the labour rate variation was later enhanced to Rs.18,82,669/- by including the period between 01.11.2017 and 25.11.2017.

10. As noted above, the suit action was also filed for the said sum. It was the appellant's/plaintiff's assertion before the trial court that despite addressing several communications to the respondent to release the amount i.e., Rs.18,82,669/-, there has been no movement in the matter.

10.1 In this context, reference is made by the appellant/plaintiff to the letters dated 01.06.2018, 11.07.2018, 18.10.2018, 29.01.2019, 16.05.2019 and 20.11.2019. To buttress its claim, the appellant/plaintiff has also adverted to a legal notice dated 20.08.2020.

11. According to the appellant/plaintiff, it is the failure of the respondent in releasing the amount, as claimed, which led to the institution of the suit action on 24.09.2022.

12. It is the contention of the learned counsel for the appellant/plaintiff that the trial court has found that the claim is sustainable on merits but has denied grant of relief only on the ground of limitation.

13. The contention of the learned counsel for the appellant/plaintiff is that the cause of action for the purposes of calculation of limitation finally arose when no response was received to the legal notice served on the respondent.

13.1 In sum, it is the contention of learned counsel for the appellant/plaintiff that since there was no refusal by the respondent with regard to the claim, the suit action was within the period of limitation.

14. We have heard the learned counsel for the appellant/plaintiff.

15. While the learned counsel for the appellant/plaintiff is right that the trial court has held that the appellant/plaintiff had been able to make out a case for recovery of the suit amount along with interest, the court was unable to grant relief as the suit was barred by limitation.

16. With regard to the finding on limitation, the trial court has returned a finding of fact in paragraph 13 of the impugned judgment, which is set forth hereafter:

> *"13. In the present case, the plaintiff has claimed the amount due from the defendant due to the increase of the labour rates for the period 10.04.2017 to 25.11.2017. Even if the document Ex. PW1/3 is taking to be some sort of a*

document acknowledging the debt due to the defendant dated 18.12.2017, even then the limitation to file the present suit for recovery would expire on 18.12.2020. Even taking into account the judgment of the Hon'ble Supreme Court in ***Suo Motu Writ Petition (c) No. 3 of 2020 with Miscellaneous Application No. 21 of 2022 & Miscellaneous Application No. 665/2021 dated 10.01.2022*** *in which it has been held as under :*

> *III.* ***In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.***

The plaintiff should have filed the suit till 28.02.2022 and in view of the said judgment, the plaintiff would get additional period of 90 days to file his suit. The plaintiff has resorted to pre-institution mediation of The Commercial Courts Act, 2015 on 27.05.2022, which failed on 13.07.2022. Therefore, the said period has to be excluded, therefore, the plaintiff would only entitled the exclusion of the limitation of five days period, as the limitation would be extended by five days, as the same would have expired on 31.05.2022, whereas the suit of the plaintiff has been filed on 24.09.2022. Therefore, the suit of the plaintiff is barred by limitation, which is three years from the said acknowledgment of debt dated 18.12.2017."

17. A perusal of the aforesaid extract would show that the trial court, for the sake of argument and in order to test the submission of the appellant/plaintiff, treated the endorsement made on the bill by the concerned officer of the respondent/defendant on 18.12.2017 as the period when the limitation would commence.

17.1 Thereafter, the trial court, by taking the said date into account, also noted that the period of limitation would expire on 18.12.2020. Since the limitation had expired during the period when Covid-19 had kicked-in, the directions contained in the judgment of the Supreme Court in the *suo motu* Writ Petition No.3/2020 with Miscellaneous Application Nos.21/2022 & 665/2021, dated 10.01.2022, were also taken into account.

17.2 After excluding the period, as indicated by the Supreme Court in the aforementioned judgment, the trial court has held that the suit action had been filed beyond the period of limitation.

18. In this case, the suit action, concededly, had been filed on 24.09.2022, whereas the endorsement was made on 18.12.2017.

19. A submission of learned counsel for the appellant/plaintiff that since there was no refusal by the respondent concerning the claim made by the appellant/plaintiff, the cause of action was alive is a submission with which we are unable to agree upon.

20. We find no error in the impugned judgment. The appeal is, accordingly, dismissed.

21. Consequently, the pending application shall stand closed.

22. The parties will act based on the digitally signed copy of the judgment.

RAJIV SHAKDHER, J

AMIT BANSAL, J

JULY 26, 2024
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