

Form No. J (2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Prasenjit Biswas

M.A.T. 1182 of 2025

IA NO: CAN/1/2025

Ascensive Educare Ltd. & Anr.

vs.

West Bengal Minorities' Development and Finance Corporation & ors.

For the Appellants : Mr. Sarathi Dasgupta, Advocate
Mr. Apalak Basu, Advocate
Mrs. Pritha Bhaumik, Advocate
Ms. Sanghamitra Mridha, Advocate
Mr. A. Chakraborty, Advocate
Ms. Archita Kundu, Advocate

For the Respondent
Nos. 1 & 2 : Mr. Shamim ul Bari, Advocate

For the State : Sk. Md. Galib, Advocate
Mr. Kapil Guha, Advocate

Heard & Judgment on : 07.08.2025

DEBANGSU BASAK, J.:-

1. Appeal is directed against the order dated June 24, 2025 passed in
W.P.A. 5192 of 2024.

2. By the impugned order, learned Single Judge dismissed the writ petition on the ground of money claim of the appellants being hopelessly barred by limitation. Writ petitioners are the appellants before us.
3. Learned advocate appearing for the appellants submits that, although, on one plane it can be argued that, claim made by the appellants is barred by limitation so far as regular Civil Court is concerned, nonetheless, facets of the Limitation Act, 1963 are not visited upon a Constitutional Court exercising jurisdiction under Article 226 of the Constitution of India. He submits that, in a given case, Court should exercise discretion in overlooking the so-called delay in approaching the constitutional Court. In support of such contention, he relies upon **(2009) 6 Supreme Court Cases 791 (*Basanti Prasad vs. Chairman, Bihar School Examination Board & Ors.*)** and **(2013) 1 Supreme Court Cases 353 (*Tukaram Kana Joshi & Ors. Vs. Maharashtra Industrial Development Corporation & Ors.*)**.
4. Learned advocate appearing for the appellants submits that, appellants worked under two work orders dated February 16, 2014 and February 20, 2014. Appellants raised and submitted bills from time to time. Respondent authorities paid a portion of such bills. The last payment was in the year 2016. Thereafter, the appellant was embroiled in a criminal case till 2019. Thereafter, appellants approached the Micro, Small and Medium Enterprise Council with regard to the claim which

was rejected since, the appellants did not possess the requisite certificate as MSME. Thereafter, a demand for justice was made and the present writ petition was filed resulting in the impugned order.

5. State and respondent authorities are represented.
6. Records placed before us suggest that, the appellants discharged a contract in terms of two several work orders dated February 12, 2014 and February 20, 2014.
7. Between the period May 26, 2014 till March 26, 2015, appellants raised and submitted six several invoices/bills in respect of the two work orders. Authorities made two payments, namely, Rs.5,25,000/- in respect of the first invoice dated August 11, 2024 arising out of the first work order dated February 12, 2014 and a sum of Rs.36,93,600/- being part payment of the first invoice dated April 26, 2014 arising out of the second work order dated February 20, 2014.
8. Thereafter, criminal proceedings were initiated which ultimately resulted in an acquittal in 2019.
9. Appellants claiming themselves to be covered under the provisions of the MSME Act approached the MSME Council for payment in 2020. Such claim was not entertained in view of the appellants not being registered within the meaning of MSME Act. Appellants thereafter, raised a demand notice and approached the Writ Court in 2024.

10. As on the date of filing of the writ petition, the claim of the appellant was hopelessly barred by the laws of limitation under the provisions of the Limitation Act, 1963. In view of the provisions of the Limitation Act, 1963 a civil suit for recovery of the money claim was not maintainable.
11. Essentially, by way of the writ petition, the appellants are seeking a money decree against the respondent authorities. Such money claim, as noted above, stood barred by the laws of limitation so far as civil suit is concerned.
12. ***Basanti Prasad (supra)*** was rendered in the context of service disputes. It held that, where no third party rights were created in a claim with regard to service benefits, then, the delay in approaching the Writ Court may not be fatal provided that such delay is satisfactorily explained.
13. In ***Tukaram Kana Joshi & ors. (supra)***, Supreme Court considered inaction on the part of the authorities in respect of acquisition proceeding under the Land Acquisition Act, 1894. In the facts and circumstances of such case, Supreme Court held that, the question of condonation of delay is one of discretion and required to be decided on the basis of the facts of each case.
14. The two authorities noted above, cannot be construed to lay down that where a civil suit is barred by the laws of limitation in respect of money claim, nonetheless, the writ petition is maintainable.

15. Limitation is a mixed question of law and facts. In the present case, *ex facie*, the claims of the appellants are barred by limitation. Moreover, there is no satisfactory explanation for the delay in approaching the Writ Court assuming that in the factual matrix as obtaining in the present case can be satisfactorily condoned by the Writ Court.
16. In such circumstances, we find no merit in the present appeal.
17. **M.A.T. 1182 of 2025** alongwith connected application are **dismissed** without any order as to costs.

(Debangsu Basak, J.)

18. I agree.

(Prasenjit Biswas, J.)