



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO.482 OF 1995

M/s. D. V. Save,
A Registered partnership firm
having Head Office at Parbhani by
Branch Office at Aurangabad
by its partner Shri Moreshwar Dinanath Save
Aged 67 years, R/o. Khadkeshwar, Aurangabad ..Appellant
(Orig. Plaintiff)

Versus

The State of Maharashtra through
the Collector, Parbhani ..Respondent
(Orig. Defendant)

...
Mr. S. S. Bora, Advocate for Appellant.
Mr. V. S. Badakh, AGP for Respondent-State.
...

CORAM : S. G. CHAPALGAONKAR, J.

**Reserved On : 08th MAY, 2025.
Pronounced On: 17th JULY, 2025.**

JUDGMENT :-

1. The appellant (original plaintiff) impugns judgment and decree dated 24.04.1995 passed by Additional District Judge, Parbhani in Regular Civil Appeal No.10/1985, thereby dismissing plaintiff's suit by reversing judgment and decree dated 12.01.1984 passed by Civil Judge Senior Division, Parbhani, in Regular Civil Suit No.27/1975, by which plaintiff's suit for recovery of amount of Rs.33,650/- was decreed against State of Maharashtra.

2. In nutshell plaintiff contends that he was allotted tender for Earth-Work and Lining in Mile Nos.26 and 27 by Executive Engineer, I & P Department, Purna Project, Camp Basmath. The work of Lining in Mile No.26 was to be completed within 12 months from the date of work order dated 16.12.1964. During execution of work, defendant imposed penalty under various communications during period from 1966 to 1967 and finally took action under Clause 3(a) of Contract, thereby forfeiting security deposit and withdrawal of work. On 12.04.1967, plaintiff was called for final measurement, which was closed on 26.04.1967. On 27.04.1967 security deposit is forfeited. On 28.07.1967, Executive Engineer informed plaintiff that final bill for Mile Nos.26 and 27 is received in his office and asked plaintiff to attend office on or before 31.07.1967. Again by communication dated 09.09.1967, plaintiff was called upon to attend office of defendant within period of ten days. However, plaintiff could not attend office, since he was suffering from Typhoid. On 18.06.1975 plaintiff served legal notice to defendant for recovery of forfeited security deposit, penalty and cost of work done as shown in final bill, which was not complied. Hence, he instituted suit for declaration and recovery of amount on 29.08.1975.

3. The defendant refuted plaintiff's claim contending that as general progress of work was unsatisfactory and plaintiff failed to

comply his obligation within stipulated period, hence action under Clause 3(a) and (b) of Contract was taken and work was withdrawn from plaintiff under Clause No.15 of agreement with a view to get work done by other agency. It is stated that time provided for completion of work was two years from 16.12.1964 till 15.12.1966. The penalty was imposed from 16.12.1965 in view of terms of agreement. The plaintiff expressed his inability to execute work vide his communication dated 11.03.1967. The defendant was constrained to levy penalty to the tune of Rs.500/- per day and also forfeit security deposit of Rs.18,868/- and fine of Rs.7210.25/-. It is further stated that suit instituted on 29.08.1975 is clearly barred by limitation as cause of action to file suit arose in the year 1967.

4. The Trial Court framed as many as 14 issues based on pleadings of parties, including issue of limitation and concluded that plaintiff is entitled for recovery of amount of Rs.33,650/- alongwith interest @ 6% per annum from the date of institution of suit alongwith notice charges of Rs.125/-. The Trial Court observed that suit is governed by Article 113 of Indian Limitation Act and since plaintiff was not provided with final bill and copies of measurement books, limitation would start from 17.05.1975 i.e. date of issuance of suit notice (Exhibit-100). Thus, suit instituted on 29.08.1975 is well within limitation.

5. Aggrieved defendant filed Regular Civil Appeal No.10/1985 before District Judge at Parbhani. The learned District Judge allowed Appeal holding that suit is barred by limitation, since defendant's office had invoked provision of Clause No.2 of agreement vide communications dated 17.03.1966, 16.01.1966 and 11.04.1967 and imposed penalty upon plaintiff and further by invoking Clause 3(a) of contract action was taken. The plaintiff had raised grievance on 31.03.1968. Then period of limitation will start to run from that date. As such, suit is barred by limitation.

6. The Appellate Court has further held that in view of Section 69 of Indian Partnership Act, suit is barred by limitation as Certificate of Registration of Firm is not placed on record to indicate that person who has presented plaint is a partner in firm and shown in Register of Firm as partner in firm. Eventually, allowed Appeal by setting aside judgment and decree passed by Trial Court. The present Second Appeal is filed taking exception to judgment and decree of Appellate Court.

7. Mr. Bora, learned Advocate appearing for appellant invites attention of this Court to order of admission of Appeal dated 26.02.1996, which reads thus:

“This is a group of four second appeals

2. *There involves substantial questions of law on the point of limitation as well as effect of non-registration of partnership under Section 69 of the Partnership Act.*
3. *Admit.*
4. *Notice.”*

He would, therefore, urge that Appeal has been admitted on the point of limitation as well as effect of non-registration of partnership under Section 69 of the Partnership Act.

8. Mr. Badakh, learned AGP appearing for respondent-State submits that registration of partnership firm is not in dispute. The issue as to maintainability of suit was never raised in written statement. The defendant had pressed into service only issue of limitation, apart from contentions on merit of claim. The Appellate Court has accepted defence on the point of limitation. Therefore, present Appeal require to be heard only on the point of limitation.

9. The learned Advocates appearing for respective parties, therefore, restricted arguments on the issue of limitation only, particularly on ground no.4 as specified in Appeal Memo, which reads thus:

“That, the substantial question of law in the instant case is as to whether the lower Appellate Court was justified in applying the provisions of Article 113 of the Indian Limitation Act and further holding that the suit is barred by the law of limitation.”

10. The learned Advocates accordingly substantially argued matter on aforesaid questions of law that has been framed at the time of admission of Appeal and elaborately stated as ground no.4 in Appeal Memo.

11. Mr. Bora, learned Advocate appearing for appellant vehemently submits that Appellate Court miserably failed to appreciate material on record and apply correct principle of law while concluding that suit is barred by limitation. Relying upon judgments of Supreme Court of India in case of *Shakti Bhog Food Industries Ltd. Vs. The Central Bank of India and Ors.*¹, *Union of India and Ors. Vs. West Coast Paper Mills Ltd. and Anr.*² and judgment of this Court in case of *Shyamkumar Lalaramji Jaiswal and Ors. Vs. Dattatraya and Ors.*³ Mr. Bora would submit that plaintiff was never served with final bill alongwith measurement books and other relevant papers. The plaintiff had reason to believe that his bills were still in process. The plaintiff got cause of action when he issued legal notice dated 17.06.1975, which was not responded. As such, Trial Court was justified in holding that suit is within period of limitation. Mr. Bora would further submit that there is basic difference between language incorporated in Articles 58 and 113 of the Limitation Act. The right under Article 113 accrues when

¹ AIR 2020 SC 2721.

² AIR 2004 SC 1596.

³ 2023 (1) Mh.L.J. 430.

defendant has clearly or unequivocally threatened to infringe right asserted by plaintiff in suit. Unless particular threat gives rise to a compulsory cause of action, thereby effectively invading or jeopardizing right of plaintiff, cause of action would not arise. He would, therefore, urge that concept of first cause of action engrafted under Article 58 would not apply while interpreting Article 113 of the Limitation Act. According to Mr. Bora, Appellate Court has completely missed to observe aforesaid difference of language and landed in grave error while rejecting claim of plaintiff being barred by limitation.

12. Per contra, Mr. Badakh, learned AGP appearing for respondent-State would submit that starting point of limitation shall remain unaffected by conduct of parties or by correspondence exchanged between them and that mere attempt on the part of a litigant to persuade authorities to accede to his claim by dispatching letters may not be a ground for claiming extension of limitation for institution of a suit. According to him, cause of action accrued to plaintiff in the year 1966-67. By serving legal notice in the year 1975, plaintiff cannot claim revival of cause of action and seek relief from the Court, which is barred by limitation.

13. Having considered submission advanced by learned Advocates appearing for respective parties, interpretation of Article 113 of the Limitation Act and its application to factual aspect of

matter are issues posed into service before this Court. Article 113 of the Limitation Act reads thus:

	Description of suit	Period of limitation	Time from which period begins to run
113.	Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years.	When the right to sue accrues.

14. Plain reading of aforesaid provision depicts that limitation period shall begin to run when right to sue accrues. It is, therefore, necessary to find out when right to sue accrued to plaintiff in facts of the present case. It is not in dispute that plaintiff was allotted contract for Earth-Work and Lining in Mile Nos.26 and 27 by defendant. The work of Mile No.26 was to be completed within a year from 16.12.1964 and work in Mile No.27 was to be completed within 24 months from 16.12.1964. During execution of said work, plaintiff was held responsible for delay and penalty was imposed on him, which was communicated to him in the year 1966–67. Similarly, by invoking Clause No.3(a), action of forfeiture of security deposit and withdrawal of work is taken on 18.05.1967. The final bill was prepared and plaintiff was summoned to attend office on 31.07.1967 and by subsequent letter on 09.09.1967. The plaintiff's evidence, particular Clause No.5 suggests that Department had called plaintiff to sign final bill at Basmath. He attended office and asked them to look into measurement books and other necessary papers. However, he was shown final bill

without providing other relevant papers. Therefore, he did not sign bill. This incident took place on 01.09.1967. Apparently, plaintiff in clear terms admitted that he has seen final bill on 01.09.1967. The final bill was preceded by various correspondence between parties by which penalty was imposed and forfeiture of security deposit was made and even compensation amount was recovered. It is, therefore, clear that plaintiff was very much aware about quantification of his bill and deduction of amount towards penalty, security deposit and other heads. It is pertinent to note here that plaintiff has never raised any objection in this regard till issuance of legal notice in the year 1975.

15. It is trite that, cause of action would come into existence when right is arose in favour of plaintiff and same has been infringed or threatened to be infringed. The starting point of limitation would be decided on the basis of date of cause of action. In facts of present case, when plaintiff seen final bill, he was aware of imposing penalty and forfeiture of security deposit, so also payment approved towards execution of work done by him. From 1967 onward, plaintiff has not made any correspondence raising grievance against imposing of penalty or forfeiture of security deposit. Therefore, merely by issuing legal notice in the year 1975, plaintiff cannot assert extension of limitation. The cause of action to file suit has been rightly taken as preparation of final bill on

31.03.1968. The plaintiff cannot justify his non-action till 1975, particularly when he failed to remain present in office of defendant on 31.07.1967 and 09.08.1967 and further seen final bill on 01.09.1967.

16. Although it cannot be disputed that there is difference in starting point of limitation period in Article 58 and 113 of the Limitation Act and language is not comparable to each other, even giving liberal construction to language incorporated in Article 113 of Limitation Act, right to sue accrued to plaintiff when he has seen final bill or even prior to that action of imposing penalty and forfeiture of security deposit was taken against him and communicated to him. In that view of the matter, this Court has no reason to accede with findings recorded by Trial Court or reverse judgment and decree passed by Appellate Court accepting contention of plaintiff on the point of limitation.

17. In result, Second Appeal sans merit. Hence, stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE