



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.64 OF 1996
AND
SECOND APPEAL NO.65 OF 1996
AND
SECOND APPEAL NO.84 OF 1996**

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.

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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 25.04.1995 passed by Additional District Judge, Parbhani in Regular Civil Appeal Nos.22/1987, 23/1987 and 21/1987 respectively, thereby dismissing plaintiff's suit by reversing judgment and decree dated 27.04.1984 passed by Civil Judge Senior Division, Parbhani in Regular Civil Suit Nos.29/1973, 30/1973 and 25/1973 respectively, by which plaintiff's suit for

recovery of amount of Rs.6184.37/-, Rs.9236/- and Rs.3310/- respectively was decreed against State of Maharashtra.

2. In nutshell, plaintiff averred that Department of Irrigation had allotted him work of constructions. He had made deposit of initial security deposit. The aforesaid security deposit is adjusted by defendant in other work allotted to him in respect of Mile Nos.26 and 27. The work of construction has been executed by plaintiff and final bill is paid to him. The plaintiff is entitled for refund of security deposit. According to plaintiff, forfeiture of security deposit by defendant is illegal and he is entitled for refund of the same alongwith interest. Hence, he issued legal notice under Section 80 of Code of Civil Procedure, which is served upon District Collector, Parbhani on 23.03.1972. As such, cause of action arose to file suit.

3. The plaintiff's claim was refuted by defendant contending that security deposit of plaintiff has been adjusted, when respondent was paid final bill against outstanding amount in work in Mile Nos.26 and 27. It is also contended that suit is barred by limitation.

4. The Trial Court framed issues, recorded evidence of parties and finally decreed suit holding that plaintiff is entitled for recovery of amount as claimed alongwith interest @ 6% per annum.

However, in Appeal filed by defendant-State of Maharashtra, learned District Judge pleased to set aside judgment and decree of Trial Court holding that suit is barred by limitation as well as under Section 69 of the Indian Partnership Act.

5. 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.

6. 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.

7. The learned Advocates appearing for respective parties, therefore, restricted arguments on the issue of limitation only, particularly on ground no.5 as specified in Appeal Memo, which reads thus:

“That, the learned Judge of the Appellate Court has committed an error in holding that provisions of Article 22 of the Limitation Act are not applicable in the instant case.”

8. The learned Advocates accordingly substantially argued matter on aforesaid questions of law that has been framed at the time of admission of Appeals and elaborately stated as ground no.5 in Appeal Memo.

9. 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***

¹ AIR 2020 SC 2721.

² AIR 2004 SC 1596.

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 23.03.1972, 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 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.

10. 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

³ 2023 (1) Mh.L.J. 430.

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 1972, plaintiff cannot claim revival of cause of action and seek relief from the Court, which is barred by limitation.

11. 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.

12. 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. 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) of the agreement, action of forfeiture of security deposit and withdrawal of work is taken. It is pertinent to

note here that plaintiff has never raised any objection in this regard till issuance of legal notice in the year 1972.

13. 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 1972, plaintiff cannot assert extension of limitation. The cause of action to file suit has been rightly taken as preparation of final bill in the year 1967. The plaintiff cannot justify his non-action till 1973.

14. 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.

15. In result, Second Appeals sans merit. Hence, stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/July-2025