



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

SECOND APPEAL NO.454 OF 2019

Premchand Pruthviraj Kotecha
Age: 69 Years, Occ.: Contractor,
R/o. Opp. Pandurang Talkies,
Jamner Road, Bhusawal,
Tal. Bhusawal, Dist. Jalgaon.

..Appellant
(Original Plaintiff)

Versus

Municipal Council Bhusawal,
Through its Chief Officer,
Municipal Council Bhusawal,
Tal. Bhusawal, Dist. Jalgaon.

..Respondent
(Original Defendant)

...

Mr. P. B. Gamot, Advocate for Appellant.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 09th APRIL, 2024.**

ORDER:-

1. The appellant/original plaintiff impugns judgment and decree dated 14.03.2018 passed by District Judge, Bhusawal in Regular Civil Appeal No.99/2016, thereby upholding judgment and decree dated 17.11.2016 passed by Joint Civil Judge, Junior Division, Bhusawal, Dist. Jalgaon in Regular Civil Suit No.46/2013, thereby dismissing suit of plaintiff seeking recovery of amount. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The appellant/original plaintiff instituted Regular Civil Suit No.46/2013 contending that he was contractor and executed work

of defendant and on completion of contract work, he raised total bill of Rs.1,89,500/-, however, defendant avoided to pay it. Thereafter, he approached District Collector, Jalgaon, who communicated defendant to release bills. However, there was no response. Thereafter, plaintiff had made communication under Right to Information. After getting documents, filed Appeal to District Collector, Jalgaon, who instructed defendant to release amount within a period of 15 days, however, there was no response. Lastly, he issued legal notice dated 29.01.2013 calling upon defendant to release amount alongwith interest @ 18% per annum, which was not responded. Hence, instituted suit.

3. The defendant filed written statement and denied pendency of any bill and also denied about passing of order by Government Officer as claimed. Lastly, it is pleaded that suit is hopelessly barred by limitation.

4. The Trial Court after evaluation of evidence framed issue, recorded evidence of parties and finally concluded that suit is hopelessly barred by limitation and dismissed the same. Aggrieved plaintiff filed Appeal before District Judge at Bhusawal vide Regular Civil Suit No.46/2013. The Appellate Court also confirmed findings of Trial Court on the point of limitation and upheld dismissal of suit.

5. Mr. Gamot, learned Advocate appearing for appellant invites attention of this Court to communication dated 05.12.1991 addressed by District Collector, Jalgaon to Chief Officer of defendant, whereby instructions were given to release pending bills tendered by plaintiff to the office of District Collector alongwith his complaint.

6. It is true that both Courts have accepted case of plaintiff that he has executed work under contract of defendant worth Rs.1,89,500/-. It is also true that, claim of plaintiff was acceptable. However, both Courts have decided issue of limitation against him. The plaintiff was aware that defendant has denied to release amount of his claim since 1991. However, present suit is instituted in the year 2013 i.e. after 22 years. The limitation for recovery of amount is three years as per Article 18 of the Limitation Act. The plaintiff can avoid rigor of limitation only when it's suit fall within any of exception stipulated in Sections 4 to 24 of the Limitation Act. Both Courts have rightly recorded that none of the provision prescribed under Sections 4 to 24 comes to the rescue of plaintiff. Although Section 14 of the Limitation Act is sought to be pressed into service, both Courts have rightly observed that making representation under Right to Information or pursuing some officers by making representation, benefit of exclusion provided under Section 14 cannot be solicited. Section 14 has limited

application when civil proceeding is instituted in Court of first instance or Appeal or Revision in the same subject matter in good faith and when such Court lacks jurisdiction to entertain suit.

7. The factual matrix of present case shows that plaintiff completed his work in the year 1989. Then made first representation to District Collector, Jalgaon in the year 1991. Second representation made in the year 2007. Thereafter, present suit has been instituted. Apparently, from the year 1991 to 2007, it cannot be said that plaintiff was bonafide prosecuted civil proceeding in subject matter. Therefore, conclusion drawn by Courts below that Article 14 of Limitation Act would not apply in facts of present case cannot be faulted. In result, no substantial question of law arises for consideration in this Appeal. Hence, Second Appeal stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE