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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 700 OF 2018
WITH
CIVIL APPLICATION NO. 1360 OF 2016
IN
SECOND APPEAL NO. 700 OF 2018**

The Executive Engineer and ors

.....Appellants

Vs.

Subhash Ramchandra Sontakke

.....Respondent

Ms. Anjali Helekar Advocate for the Appellant

Mr. Anand S. Patil for the respondent

CORAM : GAURI GODSE, J.

DATE : 10th MARCH 2025

ORDER:

1. Heard learned counsel for the appellant. This appeal is preferred by the defendants to challenge the concurrent judgments and decrees directing the defendants to pay the amount towards the interest for the delayed payment for the work carried out by the plaintiff and the interest on refund of the security deposit at a belated stage.

2. Learned counsel for the appellants submits that the plaintiff's

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claim was two fold. Firstly towards the interest amount for the delayed payment and interest for the delayed refund of the security deposit. She submits that the security deposit was returned on 8th July 2005 and the plaintiff claimed interest from 18th September 2003 i.e. the date due for refund of the security deposit till 23rd June 2008. She, therefore, submits that the suit filed on 28th July 2008 was clearly barred by limitation as it was filed beyond the period of three years. She further submits that the interest claimed from 18th September 2003 to 8th July 2005 is for the interest towards the cost of amount paid for the work carried out. She submits that for claiming benefit of the limitation period, the plaintiff has erroneously clubbed two cause of actions regarding two different claims at a belated stage. She, therefore, submits that the suit is barred by limitation in view of Section 18 of the Limitation Act, 1963. She, therefore, submits that the second appeal would raise substantial question of law on the applicability of Section 18 of the Limitation Act.

3. I have perused papers of the second appeal. The work contract given to the plaintiff and the actual work carried out is not in dispute. Both the Courts have referred to final measurements carried out on 18th March 2003 based on which the plaintiff has raised his claim. The

trial Court in paragraph 15 of the impugned Judgment has referred to the plaintiff's claim on interest for the delayed refund of security deposit as well as the claim towards the cost of the work carried out for the approach road and the interest thereon. The defendants' objections regarding claim for interest is dealt with by the trial Court based on the final bill amount and the interest claimed for the delayed payment. The evidence regarding final measurements carried out and the final bills raised based on the final measurement is examined by both the Courts.

4. The trial Court has dealt with the issue of limitation and held that the suit to be within limitation in view of Article 55 of the Limitation Act. The plaintiff has relied on letters dated 20th October 2005 and 16th December 2006 issued by the defendants. Based on the specific demands raised by the plaintiff on the said letters, demands made by plaintiff as per letters produced from Exhibits 26 to Exhibits 32 and the admission on the part of the defendants about receipt of all these letters, demands made by plaintiff as per letters the trial Court examined the cause of action for filing the suit within limitation. As per the plaintiff's pleadings regarding part payment made on 28th June 2005 and the defendants avoiding to make further the payment as

claimed on 16th December 2006 based on the final bill, the trial Court held that the suit filed on 28th June 2008 is well within limitation in view of Article 55 of the Limitation Act.

5. These findings on the plaintiff's claim for payment of the work carried out towards the approach road and the claim on interest on the delayed payment is confirmed by the first Appellate Court. The undisputed final bill based on the final measurement is taken into consideration for accepting the suit within limitation. The first Appellate Court has re-examined the rival pleadings on the objection of limitation and recorded findings of facts in paragraph 24 and 25 of the impugned Judgment.

6. In addition to the acknowledgment by the defendants of the plaintiff's demand and the part payment in terms of the letter dated 20th October 2005 and demand by letter dated 16th December 2006, the first Appellate Court has also referred to the payment partly done on 28th June 2005, 8th July 2005 and 5th July 2006. Hence, the first Appellate Court held that in view of Section 19 of the Limitation Act, fresh period would begin. For the claim of refund of security deposit, appeal Court held that for the first time on 20th October 2005,

defendant no. 3 informed the plaintiff that security deposit was withheld; hence the limitation period for said claim would begin from 20th October 2005. Therefore, it was held that the suit filed on 28th July 2008 was within limitation for all the claims. In view of the concurrent finding of facts recorded by both the Courts on the initial part payments made by the defendants before expiration of period of limitation, and refusal to make payment as per the demand made, I see no fault in the reliance placed by the first Appellate Court on Section 19 of the Limitation Act.

7. In view of the concurrent findings on facts regarding the amounts due and the part payments made by the defendants, coupled with the acknowledgments in writing as referred to by both the Courts, the grounds argued on behalf of the appellants by relying upon Section 18 of the Limitation Act would not require any consideration by this Court.

8. In view of the admitted facts regarding the work carried out, part payments made before the expiration of the amounts due and the cause of action based on acknowledgments given by the defendants, the suit is rightly held to be within limitation in view of Article 55 of the Limitation Act read with Section 19 of the Limitation Act.

9. In view of the concurrent findings of facts recorded by both the Courts, the grounds raised on behalf of the appellants would not require any consideration by this Court. The second appeal does not raise any substantial question of law.

10. Hence, the second appeal is dismissed.

11. In view of dismissal of second appeal, Civil Application No. 1360 of 2016 is disposed of as infructuous.

[GAURI GODSE, J.]