



A.No.6225 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
05.02.2025

PRONOUNCED ON
10.03.2025

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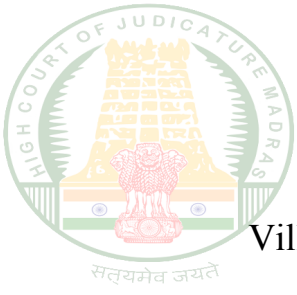
THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**

A.No.6225 of 2024 &
A.No.364 of 2025
in
C.S.No.94 of 2024

- 1.The Tamil Nadu Water Supply and Drainage Board
Rep.by its Managing Director Chepauk,
Chennai 600 005.
- 2.The Tamil Nadu Water Supply and Drainage Board,
Rep., by its Chief Engineer,
Vellore – 632 006.
- 3.The Tamil Nadu Water Supply and Drainage Board,
Rep., by its Executive Engineer,
Urban Division, Villupuram – 605 602.
... Applicants

Vs

- 1.A.Ambika
- 2.M/s.Nagarajan Construction Company Pvt., Ltd.,
Rep., by its Managing Director,
No.3A, Muktha Gardens, Spur Tank Road,
Chetpet, Chennai – 600 031.
- 3.The Commissioner,
Villupuram Municipality,



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Villupuram – 605 602.

...Respondents

Appln.No.6225 of 2024

For Applicants : Mr.Abdul Hameed Sr., counsel
for M/s.S.Mekhala

For Respondents : Mr.M.Rajasekar for R1

Mr.P.Srinivas for R3

Court summons dismissed on 08.08.2024
for R2

Appln.No.364 of 2024

For Applicants : Mr.M.Rajasekar

For Respondents : Mr.Abdul Hameed Sr., counsel
for M/s.S.Mekhala for R2 to 4

Mr.P.Srinivas for R5

Court summons dismissed on 08.08.2024
for R1

ORDER

The Application in A.No.6225 of 2024 had been filed to reject the Suit in C.S.No.94 of 2024 by the defendants. The Application in A.No.364 of 2025 had been filed to condone the delay of 42 days in filing the restoration application made in C.S.No.94 of 2024 by the plaintiff, dated 08.08.2024 against the fourth defendant.

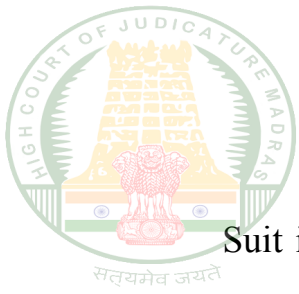


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2. The learned Senior counsel appearing for the applicants in

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A.No.6225 of 2024 would submit that the Suit is barred by law of limitation and therefore, the plaint ought to be rejected. In that context, he would submit that the husband of the first respondent had entered into an agreement with the 2nd and 3rd Applicants herein for providing water supply to Villupuram Municipality in the year 2007. The said agreement was terminated on 02.02.2009. He would further submit that the husband of the first respondent was also awarded another contract work namely the Gingee Water Supply Improvement Scheme for which an agreement was also entered into in the year 2009. During the currency of the Gingee contract, the first respondent's husband on 09.08.2010 had given an undertaking that if any recovery found in the Villupuram contract, which was terminated, the same may be adjusted in his future payment under the Gingee contract. He would further submit that the Gingee contract was also completed on 14.12.2013 and after verifying the various payments due from the first respondent's husband under the Villupuram contract and his eligibility under the Gingee contract, final settlement was made to the first respondent's husband on 25.11.2015 and 03.05.2016. Therefore, he would submit that the claim made by the first respondent in the instant



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WEB CONTENT

Suit is wholly time barred. He would further submit that the cause of action that has been pleaded by the plaintiff based upon the order of rejection made by the applicants, pursuant to the order passed in the Writ Petition cannot be treated to be the date on which the claim of the first respondent was rejected. It is only an order reiterating the earlier calculation made by the applicants for which payment has also been lastly in the year 2016. He would submit that the period of limitation would have to be calculated only from 03.05.2016 and not as claimed by the first respondent. He would rely upon Section 9 of the Limitation Act to contend that the period of limitation had started as early as in the year 2016 itself and had been continuously running and had expired in the year 2019. He would further submit that none of the provisions contained from Sections 11 to 27 of the Limitation Act be made applicable to the claim of the first respondent. He also relied upon the judgment of the Hon'ble Apex Court in the case of ***B and T AG vs. Ministry of Defence*** reported in ***(2024) 5 SCC 358*** and contended that a deadwood cannot be revived. He would further submit that the period of limitation cannot be extended by mere exchange of letters or settlements, discussions, when a final bill had been made after making deductions & begins on the said date and the



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period of limitation would also have to be calculated from the said

date. Sending representations cannot extend the period of limitation.

Therefore, he would submit that the plaint would have to be rejected as being barred by law of limitation.

3. Countering his arguments, the learned counsel appearing for the first respondent would contend that the Suit had been filed seeking for a declaration to declare that the communication dated 19.03.2020 of the second applicant as null and void and not binding upon the first respondent/plaintiff and hence, the cause of action for filing the Suit arose on 19.03.2020 and therefore, the period of limitation would have to commence only from 19.03.2020 and not prior as claimed by the learned Senior counsel appearing for the applicants. He would further contend that reliance upon the undertaking given by the husband of the first respondent would have to be proved only in trial and not at the present stage. Therefore, the Court cannot look into the said undertaking in deciding the present application. He would further contend that the issue of limitation is a mixed question of law and fact, which has been held by various judgments of the Hon'ble Apex Court as well as this Court and therefore, he would contend that the present



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application should not be entertained by this Court. In support of his contentions, he has also relied upon the judgment of the Hon'ble Apex Court in the case of ***Salim D.Agboatwala & Ors., vs. Shamalji Oddhavji Thakkar & Ors.***, reported in ***2021 6 Supreme 252***, that the rejection of a plaint on the ground of limitation is a mixed question of fact and law. Therefore, such a plea of limitation cannot be a ground to reject the Suit at the instance of the applicants, who are the defendants and the question of limitation cannot be put against the plaintiff. If at all, an issue could be framed with regard to the claim made by the applicants herein and can be tried and therefore, he would pray this Court to dismiss the application.

4. I have heard the rival submissions made by the learned counsel appearing on either side and perused the materials placed on record.

5. It is an undisputed case that there has been a contractual obligation between the husband of the first respondent/plaintiff and the 2nd and 3rd applicants herein. Further undisputed facts are that the husband of the first respondent has been awarded two contracts, for



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convenience will be addressed as Villupuram contract and Gingee contract. The Villupuram contract was terminated and certain monies under the Villupuram contract had been retained. It is the claim of the applicants that the husband of the first respondent/plaintiff had given an undertaking for adjusting the amounts due under the Villupuram contract, if any found to be payable by him to be adjusted in the Gingee contract and the same had been disputed. The Gingee contract was completed in the year 2013. After making adjustments, the payments were made in the year 2015 and 2016 to the husband of the first respondent.

6. It has also been brought on record that the husband of the first respondent/plaintiff had died in the year 2017. Thereafter the first respondent/plaintiff had sent a representation seeking for outstanding payments under the Gingee contract. The said representation was not answered to by the second applicant and hence, she had preferred a Writ Petition in W.P.No.24336 of 2017, in which this Court had directed the respondent therein to consider the representation of the first respondent/plaintiff. As the representation of the first respondent was not considered, she had also filed a Contempt Petition in

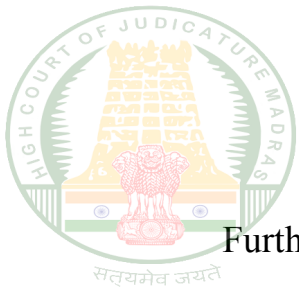


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Cont.P.No.31 of 2021. Taking note that the order has already been passed by the second applicant on 19.03.2020, the Contempt Petition was closed with liberty to the first respondent to challenge the order in the manner known to law. Pursuant to which, the first respondent/plaintiff had filed the present Suit.

7. With the above factual background, it would be useful to analysis the provisions of the Limitation Act, 1963. Section 3 of the Limitation Act, 1963, mandates that any Suit, Appeal and Application instituted or preferred beyond the prescribed period shall be dismissed, although limitation has not been set up as a defence, subject to the provision under Sections 4 to 24. This provision empowers the Court to dismiss a Suit even though a defence of limitation has not been set up except for the exclusions given under Sections 4 to 24. Section 5 extends the time for filing an appeal or any application other than the provisions of Order XXI of CPC even after the expiry of period of limitation provided such appellant or applicant satisfies the Court by giving a sufficient cause for not preferring such appeal or application within such period. The said provision cannot be applied to a Suit.



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Further other provisions from Sections 6 to 24 deals with various circumstances in which the period of limitation need not be calculated.

Section 9 in particular envisages that once a time begins to run no subsequent disability or inability to institute a Suit or make an application would stop it.

8. In this context, it is now important to find out when the cause of action arose in the present case for computing the period of limitation. It would be imperative that the breaking point of the claim made by the first respondent/applicant would have to be arrived at. The said issue had been answered to by the Hon'ble Apex Court in a judgment in the case of ***B and T AG vs. Ministry of Defence*** reported in ***(2024) 5 SCC 358***, which had been relied upon by the learned Senior counsel for the applicant. For better appreciation, the relevant paragraph is extracted hereunder:-

64. *"Cause of action" means the whole bundle of material facts, which it is necessary for the plaintiff to prove in order to entitle him to succeed in the suit. In delivering the judgment of the Board in Chand Kour v. Partab Singh [Chand Kour v. Partab Singh, 1888 SCC OnLine PC 14 : ILR (1889) 16 Cal 98] , Lord Watson observed : (SCC OnLine PC)*



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“... Now the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the [Ed. : The matter between two asterisks has been emphasised in original.] media [Ed. : The matter between two asterisks has been emphasised in original.] upon which the plaintiff asks the court to arrive at a conclusion in his favour.”

(emphasis supplied)

65. Cause of action becomes important for the purposes of calculating the limitation period for bringing an action. It is imperative that a party realises when a cause of action arises. If a party simply delays sending a notice seeking reference under the 1996 Act because they are unclear of when the cause of action arose, the claim can become time-barred even before the party realises the same.

66. Russell on Arbitration by Anthony Walton (19th Edn.) at pp. 4-5 states that the period of limitation for commencing an arbitration runs from the date on which the “cause of arbitration” accrued, that is to say, from the date when the claimant first acquired either a right of action or a right to require that an arbitration take place upon the dispute concerned. The period of limitation for the commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued:

“Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date on which the cause of action accrued, so in the case of arbitrations, the claim is not to be put forward after the expiration of the specified number of years from the date when the claim accrued.”

Even if the arbitration clause contains a provision that no cause of action shall accrue in respect of any matter agreed to be referred to until an award is made, time still runs from the normal date when the cause of action



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would have accrued if there had been no arbitration clause.

67. In *Law of Arbitration* by Justice Bachawat at p. 549, commenting on Section 37, it is stated that subject to the 1963 Act, every arbitration must be commenced within the prescribed period. Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date when the cause of action accrues, so in the case of arbitrations the claim is not to be put forward after the expiration of a specified number of years from the date when the claim accrues. For the purpose of Section 37(1) “action” and “cause of arbitration” should be construed as arbitration and cause of arbitration. The cause of arbitration arises when the claimant becomes entitled to raise the question, that is, when the claimant acquires the right to require arbitration. An application under Section 11 of the 1996 Act is governed by Article 137 of the Schedule to the 1963 Act and must be made within 3 years from the date when the right to apply first accrues. There is no right to apply until there is a clear and unequivocal denial of that right by the respondent. It must, therefore, be clear that the claim for arbitration must be raised as soon as the cause for arbitration arises as in the case of cause of action arisen in a civil action.

68. Whether any particular facts constitute a cause of action has to be determined with reference to the facts of each case and with reference to, the substance, rather than the form of the action. If an infringement of a right happens at a particular time, the whole cause of action will be said to have arisen then and there. In such a case, it is not open to a party to sit tight and not to file an application for settlement of dispute of his right, which had been infringed, within the time provided by the Limitation Act, and, allow his right to be extinguished by lapse of time, and thereafter, to wait for another cause of action and then file an application under Section 11 of the



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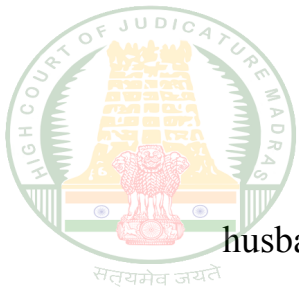


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1996 Act for establishment of his right which was not then alive, and, which had been long extinguished because, in such a case, such an application would mean an application for revival of a right, which had long been extinguished under the 1963 Act and is, therefore, dead for all purposes. Such proceedings would not be maintainable and would obviously be met by the plea of limitation under Article 137 of the 1963 Act.

69. We once again go back to the facts of the present case. Even according to the petitioner, the disputes arose between the parties in relation to the wrongful encashment of bank guarantee vide letter dated 16-2-2016 for Euro 201,793.75 ("BG") and for wrongful imposition of liquidated damages to the tune of Euro 399,0240.10. We are at one with the learned ASG that this was the "Breaking Point". What is more important is the fact that the respondent on 26-9-2016, deducted the amount towards recovery of the liquidated damages. The requisite amount was credited into the Government account in accordance with the instructions contained in the letter dated 11-8-2016. This was the end of the matter. To say that even thereafter, the petitioner kept negotiating with the respondent in anticipation of some amicable settlement would not save the period of limitation.

9. On analysing the facts of the present case with the aforesaid judgment, it could be seen that in the present case admittedly the Gingee contract which was the last contract that was done by the first respondent's husband which got completed in the year 2013. Thereafter, after making calculations and adjusting the liabilities of the



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husband of the first respondent, payment had been lastly made in the year 2016.

10. Article 18 to Schedule of the Limitation Act, prescribes the period of limitation as three years for the price of work done, where no time had been fixed for payment and such period of limitation begins to run, when the work is done.

11. Applying the said provision, it could be noted that the period of limitation for the first respondent/applicant would start kicking in the year 2013, when admittedly the first respondent's husband had completed his Gingee contract. However, the payments under the said contract were made only in the year 2015 and 2016. Even a presumption of applicability of Section 18 or 19 of the Limitation Act is sought to be applied to the facts of the case utmost the limitation period would start kicking from 03.05.2016. Any further representation or communication by the plaintiff cannot extend the period of limitation. This is the view that had been categorically pronounced by the Hon'ble Apex Court in the aforesaid judgment.



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12. Infact, the Hon'ble Apex Court had held that even the case of negotiation between the parties cannot postpone the cause of action for the purpose of limitation. For better appreciation, the relevant paragraph is extracted hereunder:-

73. Negotiations may continue even for a period of ten years or twenty years after the cause of action had arisen. Mere negotiations will not postpone the "cause of action" for the purpose of limitation. The Legislature has prescribed a limit of three years for the enforcement of a claim and this statutory time period cannot be defeated on the ground that the parties were negotiating.

13. In the present case, there is no such negotiation between the parties, but only pursuant to the directions issued by this Court, the representation of the first respondent/plaintiff was considered and rejected. This cannot allow the postponement of the cause of action for the purposes of limitation. A useful reference could also be made to the judgment of the Hon'ble Apex Court which has been reported in **2025 INSC 42**. The relevant paragraph is extracted hereunder:-

8.8 Thus, on a holistic reading of the plaint it could be rejected as being barred by law of limitation. However, it is stated that normally the question of limitation would be a mixed question of law and fact. Hence, usually, on a



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reading of the plaint it is not rejected as being barred by the law of limitation. However, the above is not an inflexible rule. We wish to discuss the relevant Article under the Limitation Act applicable to the facts of the present case which is Article 113 for the second suit with a preface on the law of limitation.

9. The Limitation Act, 1963 consolidates and amends the law of limitation of suits, appeals and applications and for purposes connected therewith. The law of limitation is an adjective law containing procedural rules and does not create any right in favour of any person, but simply prescribes that the remedy can be exercised only up to a certain period and not beyond. The Limitation Act therefore does not confer any substantive right, nor defines any right or cause of action. The law of limitation is based on delay and laches. Unless there is a complete cause of action, limitation cannot run and there cannot be a complete cause of action unless there is a person who can sue and a person who can be sued. There is also another important principle under the Law of Limitation which is crystallized in the form of maxim that “when once the time has begun to run, nothing stops it”

9.8 Under Article 113 of the Limitation Act, time commences to run when the right to sue accrues. This is in contradistinction to Article 54 of the Limitation Act relating to a suit for specific performance of a contract



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which is on the happening of an event. No doubt, the second suit which is the present suit filed by the respondent/plaintiff is also for specific performance of the contract but the right to sue accrued to file the second suit is on the basis of Order VII Rule 13 of the Code subsequent to the rejection of the plaint in the earlier suit on 12.01.1998. Therefore, the right to sue by means of a fresh suit was only after 12.01.1998. The expression “when the right to sue accrues” in Article 113 of the Limitation Act need not always mean “when the right to sue first accrues”. For the right to sue to accrue, the right sought to be vindicated in the suit should have already come into existence and there should be an infringement of it or at least a serious threat to infringe the same vide M.V.S. Manikyala Rao vs. M. Narasimhaswami, AIR 1966 SC 470. Thus, the right to sue under Article 113 of the Limitation Act accrues when there is an accrual of rights asserted in the suit and an unequivocal threat by the defendant to infringe the right asserted by the plaintiff in the suit. Thus, “right to sue” means the right to seek relief by means of legal procedure when the person suing has a substantive and exclusive right to the claim asserted by him and there is an invasion of it or a threat of invasion. When the right to sue accrues, depends, to a large extent on the facts and circumstances of a particular case keeping in view the relief sought. It accrues only when a cause of action arises and for a cause of action to arise, it must be clear that the averments in the plaint, if found



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correct, should lead to a successful issue. The use of the phrase “right to sue” is synonymous with the phrase “cause of action” and would be in consonance when one uses the word “arises” or “accrues” with it. In the instant case, the right to sue first occurred in the year 1993 as the respondent/plaintiff had filed the first suit then, which is on the premise that it had a cause of action to do so. The said suit was filed within the period of limitation as per Article 54 of the Schedule to the Limitation Act.

9.9 Thus, generally speaking, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. Article 113 of the Schedule to the Limitation Act provides for a suit to be instituted within three years from the date when the right to sue accrues and not on the happening of an event as stated in Article 54 of the Schedule to the Limitation Act. 9.10 In the facts and circumstances of the present case, it is also necessary to apply Section 9 of the Limitation Act while applying Article 113 thereto. Section 9 reads as under:

“9. Continuous running of time.— Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it:



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Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues.”

Section 9 is based on the general principle that when once limitation has started to run, it will continue to do so unless it is arrested by reason of any express statutory provision. Period of limitation can be extended, inter alia, when cause of action was cancelled such as by dismissal of a suit. Ordinarily, limitation runs from the earliest time at which an action can be brought and after it has commenced to run, there may be revival of a right to sue where a previous satisfaction of a claim is nullified with the result that the right to sue which has been suspended is reanimated [Pioneer Bank Ltd vs. Ramdev Banerjee, (1950) 54 Cal WN 710]. In that case, the court distinguished between suspension and interruption of limitation period.

9.11 Once time has begun to run, it will run continuously but time ceases to run when the plaintiff commences legal proceedings in respect of the cause of action in question. It is a general principle of some importance that bringing an action stops running of time for the purpose of that action only [Andrew McGee, Limitation Periods, 4th Edn., Sweet & Maxwell, chapter 2, para1]. The Indian law also follows the English law



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[James Skinner vs. Kunwar Naunihal Singh, ILR (1929) 51 All 367, (PC)]. Intervention of court in proceedings would prevent the period of limitation from running and date of courts' final order would be the date for start of limitation [N Narasimhiah vs. State of Karnataka, (1996) 3 SCC 88].

[Source: Tagore Law Lectures, U N Mitra, Law of Limitation and Prescription, Sixteenth Edition, Volume 1, Sections 1-32 & Articles 1-52]

14.From analysis of the facts of the present case in conjunction with the law laid down by the Hon'ble Apex Court in the aforesaid two judgments referred to supra, I am of the view that the first respondent/plaintiff is attempting to resurrect a deadwood, which would have to be nipped in the bud and the defaulting party should bear the hardship and should not transmit the said hardship to the other party.

15.In such view of the matter, the application in A.No.6225 of 2024 is allowed and the plaint filed in C.S.No.94 of 2024 is hereby rejected. As a consequence, the Application in A.No.364 of 2025 seeking to condone the delay in filing the restoration application is



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closed. However, there shall be no order as to costs.

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K.KUMARESH BABU,J.

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