



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

COMMERCIAL APPEAL NO. 9 OF 2019

- 1] Executive Director,
G.M.I.D.C. Sinchan Bhavan, Aurangabad
- 2] Chief Engineer & Chief Administrator,
C.A.D.A. at Aurangabad
- 3] Superintending Engineer,
J.P.C. at Aurangabad
- 4] Executive Engineer,
Jalna Irrigation Division, Jalna

.. Appellants
(Orig. Resp. no. 2 to 5)

Versus

- 1] M/s Gurunanak Industries,
Now G.N.I. Infrastructure Pvt. Ltd.,
Through Khushbirsing Basantsing Bindra
Age – 63 years, R/o – 5/29 Kranti Chowk,
Aurangabad
- 2] The State of Maharashtra,
Through the Collector, Jalna

.. Respondents

...
Advocate for appellants : Mr. S.G. Bhalerao
Advocate for the respondent no. 1 : Mr. A.P. Bhandari
AGP for the respondent no. 2 : Mr. V.M. Kagne
...

**CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.**

DATE : 24 FEBRUARY 2025

ORDER (MANGESH S. PATIL, J.) :

This is a defendant's appeal, being aggrieved and dissatisfied by the judgment and decree dated 09.08.2019 of the Commercial Court at Jalna in Commercial Suit no. 08 of 2019, thereby

decreeing the suit for recovery of an amount of Rs.5,76,25,112/- with interest @ 15% per annum from the date of filing of the suit till its realization.

2. We have heard both the sides.

3. We have heard both the sides finally pursuant to the direction of the Supreme Court when the order of this Court regarding *ad interim* relief was challenged before the Supreme Court.

4. In the light of the order which we intend to pass, reference to the facts limited for the purpose, could be discerned as under:-

The respondents floated tender for construction of lower Dudhana Earthen dam (RD-580 to 2810 M). The estimated cost of the work was Rs.2.09 Crore but the accepted cost was Rs. 2.8 Crore. The plaintiff being the lowest bidder, was issued work order on 16.03.1995. The work was to be completed within 24 months i.e. by 15.03.1997. There was a price escalation clause. For a variety of reasons, extensions were granted and ultimately, the work was completed on 30.06.2013. The last bill was cleared on 12.04.2016. Pursuant to the price escalation clause entitling the contractor to receive additional sums, it registered a claim with the respondents - defendants on 29.05.2017 (Exhibit - 24). The defendants did not pay the amount hence the suit was filed on 21.12.2017.

5. Though we have heard both the sides extensively and the matter was reserved, it transpired that going by the facts and circumstances and the dates and events, it was imperative for the learned Judge presiding over the Commercial Court, to have framed and decided the issue regarding limitation, as laid down under section 3 of the Limitation Act, 1963, irrespective of the fact that limitation was set up as a defence in the written statement.

6. *Prima facie*, the claim was in respect of the work done by the respondent - plaintiff. Admittedly, the work was completed on 30.06.2013 but the suit was filed on 21.12.2017. *Prima facie*, the suit would be governed by Article 18 of the First division under the category of '*Suit for the price of work done by the plaintiff for the defendant at his request where no time has been fixed for payment*'.

7. Pertinently, as per the pleadings in the plaint, no specific statements have been made to demonstrate as to how the suit was within the limitation. It has merely been averred that the work was completed on 30.06.2013. The last RA bill was measured up and drawn on 12.04.2016, consequently, even the issue as to if this would be the effective date for a fresh period of limitation, as contemplated under section 19 of the Limitation Act, 1963, would be germane.

8. The appeal memo contains a specific plea about the suit being barred by limitation, in our considered view, it is a fit case for a

limited remand with a direction to the Commercial Court to frame and decide the issue regarding limitation by extending an opportunity to both the sides to lead additional evidence, limited for the purpose, as contemplated under Order XLI Rule 25 of the Code of Civil Procedure.

9. We have heard both the sides even in respect of our such view for framing of the issue and its decision, as contemplated under Order XLI Rule 25 of the Code of Civil Procedure.

10. Considering the conspectus of the matter, we direct that the Commercial Court at Jalna shall now frame the issue regarding limitation and decide it in accordance with law by extending an opportunity to both the sides to lead additional evidence. However, it shall not permit any amendment to the pleadings.

11. The parties shall appear before the trial Court on 10 March 2025.

12. Record and proceedings be sent to the Commercial Court.

13. The trial Court shall hear the parties, record a finding on the issue and remand back the matter to this Court within two months thereafter.

14. It is clarified that the learned Judge of the Commercial Court shall not feel influenced by the observations of this Court in this order and shall be free to decide the issue on its own merits.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/