

(2025) 07 DEL CK 0887
In the Delhi High Court
Case No : RFA(COMM) No. 424 Of 2024

M/s R.K. Goel Abhey Kumar Jain

APPELLANT

Vs

Municipal Corporation Of Delhi

RESPONDENT

Date of Decision : 14-07-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 96, Order 41
Contract Act, 1872 — Section 25(3)
Commercial Courts Act, 2015 — Section 13
Limitation Act, 1963 — Section 18
Limitation Act, 1963 — Article 18, 55, 113, 137

Citation : (2025) 07 DEL CK 0887

Hon'ble Judges : Vibhu Bakhru, J; Tejas Karia, J

Bench : Division Bench

Advocate : Avinash Trivedi, Rahul Aggarwal, A.K. Trivedi, Ritika Trivedi, Anurag Kaushik, Jatin Arora, Anand Prakash, Varsha Arya

Final Decision : Allowed

Judgement

Tejas Karia, J

1. The Appellant has filed the present Appeal under Section 13 of the Commercial Courts Act, 2015 and Section 96 read with Order XLI of the Code of Civil Procedure, 1908 ("CPC"), being aggrieved by the judgment dated 10.07.2024 ("Impugned Judgment") passed by the learned District Judge, Commercial Court-13, Central District, Tis Hazari Courts, Delhi ("Trial Court") in CS(Comm.) No 444/2023 ("Suit").

2. The learned Trial Court held that the Appellant is entitled to recover the amount as claimed by the Appellant after legible deductions and the interest at the rate of 8% per annum from the Respondent. However, the learned Trial Court further held that the claim of the Appellant is barred by limitation and, accordingly, the Suit filed by the Appellant was dismissed with costs.

FACTUAL BACKGROUND:

3. The dispute arose out of contract entered into between the Appellant and the Respondent for improving and strengthening of roads and lanes in Vikas Puri, Delhi ("the project"). The Appellant was a successful tenderer, and the project was awarded to the Appellant vide work order dated 26.08.2013 for a consideration of Rs. 14,54,216/- and the time period stipulated for the execution of the contract was two (2) months. The Appellant had to further serve a maintenance period of five (5) years from the date of completion of the work.

4. The work on the said project commenced on 11.09.2013 and was completed on 20.09.2013, which fell within the stipulated period for execution of the project, the concerned officer of the Respondent department had recorded the measurement on the same day in the measurement book no. 9357 and recorded that the work had been completed. The defect liability period for the project was valid until 20.09.2018.

5. The Appellant time and again approached the concerned officers of Respondent for release of the due amount. The Appellant also sent various reminders to the Respondent to pay the contract amount due to the Appellant. Pursuant to the request of release of the amount due to the Appellant made in August 2017, a noting dated 24.08.2017 signed by all of the concerned officers of the Respondent was sent to the Appellant acknowledging the outstanding amount due towards the Appellant. However, the dues of the Appellant remained pending after the expiration of the defect liability period on 20.09.2018. The Appellant sent a letter dated 26.09.2022 to the concerned Executive Engineer of the Respondent requesting for release of the due amount along with 18% interest per annum. Thereafter, the Appellant initiated pre-litigation mediation wherein the Respondent did not appear and a non-starter report was generated in the mediation proceedings as a result thereof.

6. The Appellant then filed a suit before the learned Trial Court for recovery of Rs. 22,32,978/- along with interest at 14% per annum. The learned Trial Court vide the Impugned Judgment, observed that the Appellant is entitled to the amount of Rs. 13,84,264/- along with interest at 8% per annum from the Respondent, however since period of limitation for filing the Suit had elapsed, the Suit was dismissed on the ground of limitation.

7. Being aggrieved by the Impugned Judgment, the Appellant has filed the present Appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

8. Mr. Avinash Trivedi, the learned counsel for the Appellant, submitted that the learned Trial Court has erroneously held that the Appellant ought to have filed the Suit within three (3) years from the date of completion of the project on 20.09.2013 and that the Suit filed on 14.03.2023 was barred by limitation. It was submitted that the Suit for recovery was filed for the payment of final bill dated 12.11.2018 and the period of limitation should be computed from 12.11.2018.

9. The learned counsel for the Appellant further submitted that a conjoint reading of Clauses 7 and 9 of the General Conditions of Contract ("GCC") reveals that disbursement of the final bill is to be made on a queue basis, conditional upon its due certification by the Engineer-in-Charge. The Respondent, acting on its own accord, prepared and duly certified the final bill on 12.11.2018, which was subsequently accepted by the Appellant. The date of certification and acceptance of the final bill, therefore, constitutes the relevant point in time at which the cause of action crystallised in favour of the Appellant to initiate proceedings for recovery of the certified final bill amount.

10. Clause 7 of the GCC is as follows-

"Payment on Intermediate Certificate to be Regarded as Advances

No payment shall be made for work estimated to cost Rs. Twenty thousand or less till after the whole of the work shall have been completed and certificate of completion given. For works estimated to cost over Rs. twenty thousand, the interim or running account bills shall be submitted by the contractor for work executed on the basis of such recorded measurement on the format of the department in the triplicate on or before the date of every month of the fixed for the same by the Engineer – in - Charge. The contractor shall not be the entitled to be paid any such interim payment if the gross work done together with net payment / adjustment of advances of material collected, if any, since the last such payment is less than the amount specified in Schedule 'F' in which case the interim bill shall be prepared on the appointed date of month after the requisite progress is achieved. Engineer-in-charge shall arrange to have the bill verified by taking or causing to be taken, where necessary, the requisite measurement of the work. In the event of the failure of the contractor to submit the bills, Engineer-in-Charge shall prepare or cause to be prepared such bills in which event no claims whatsoever due to delays on payment including that of interest shall be payable to the contract. Payment on account of admissible shall be made by the Engineer-in-Charge certifying the sum to which the contractor is considered entitled by the way of interim payment at such rates as decided by the Engineer-in-Charge. The amount admissible shall be paid by the 10th working day after the day of presentation of the bill by the contractor to the Engineer-in-Charge of his Asstt. Engineer together with the account of the material is issued by the department, or dismantled materials, if any.

All such interim payments shall be regarded as payments by way of evidences against final payment only and shall not preclude the requiring of bad, unsound and imperfect or unskilled work to be rejected, removed, taken away and reconstructed, re-entered. Any certificate given by the Engineer-in-charge relating to the work done or materials delivered forming part of such payment, may be modified or corrected by any subsequent such certificate(s) or by the final certificate and shall not by itself be conclusive evidence that any work or materials to which it relates is/ are in accordance with the contract and specifications. Any such interim payment or any part thereof shall not in any

respect conclude, determine or effect in any way powers of Engineer-in-Charge under the contract or any of such payments be treated as final settlement and adjustment of accounts or in any way vary or affect the contract.

Pending consideration of extension of date of completion interim payments shall continue to be made as herein provided, without prejudice to the right of the department to take action under the terms of the contract for delay in the completion of work. If the extension of date of completion is not granted by the competent authority.

The Engineer-in-Charge in his sole discretion on the basis of a certificate from the Asstt. Engineer to the effect that the work has been completed upon the level in question make interim advance payment without detailed measurements for work done (other than foundations, items to be covered under finishing terms) upon lintel level (including sunshade etc.) and slab level, for each floor working out at 75% of the assessed value. The advance payments so allowed shall be adjusted in the subsequent interim bill by taking detailed measurement thereof.

The payment of passed bills will be subject to availability of funds in particular head of account from time to time in MCD. Payment of bills shall be made strictly on Queue basis i.e. first the past liabilities will be cleared and after that the release of payment for passed bills be in order of the demand received at HQ under particular head of accounts. No interest shall be payable to the contractor in case of delay in payment on account of non-availability of fund in the particular head of account of the MCD."

11. Clause 9 of the GCC is as follows-

"The final bill shall be submitted by the contractor in the same manner as specified in interim bills within three months of physical completion of the work or within one month of the date of the final certificate of completion furnished by the Engineer-in-Charge whichever is earlier. No further claims shall be made by the contractor after submission of the final bill and these shall be deemed to have been waived and extinguished. Payment of those items of the bill in respect of which there is no dispute and of items in dispute, for quantities and rates as approved by Engineer-in-Charge, will, as far as possible be made after the period specified hereinunder the period being reckoned from the date of receipt of bill by the Engineer-in-Charge or his authorised Asstt. Engineer, complete with account of materials issued by the Department and dismantled materials.

(i) If the Tendered value of work is upto Rs 5lakhs: 3 months (ii) If the Tendered value of work exceeds Rs 5lakhs: 6 months

The payment of passed bills will depend on availability of funds in particular head of account from time to time in MCD.

Payment of bills shall be made strictly on Queue basis i.e. first the past liability will be cleared and after that the release of payment for passed bills will be in order of the demand received at the HQ under particular head of account. No

interest shall be payable by NDMC if delay in payment is due to non-availability of the fund in the concerned head of account.

12. Clause 4 of the work order is as follows-

"It should be noted (a) that as and when orders are given for execution of any extra/substitute item prior orders from the Competent Authority to be obtained before execution of the same to avoid any further complications; (b) that contractor has to submit his RA/Final bill with measurement otherwise nothing will be consider due on account of work execution."

13. The learned counsel for the Appellant submitted that Clause 9 of the GCC stipulates that the payment of dues will accrue after the approval of the final bill by the Engineer-in-Charge. Accordingly, as per Article 113 of the Schedule to the Limitation Act, 1963 ("Limitation Act") the period of limitation in the present case will commence from the date of approval by the Engineer-in-Charge and the cause of action arose after the Respondent did not pay their dues of the final bill dated 12.11.2018.

14. The reliance was placed on the judgment in Major (Retd.) Inder Singh Rekhi v. Delhi Development Authority, (1988) 2 SCC 338, to submit that the dispute arose when there was a claim made and was denied or repudiated and the date of completion of the contract is the date on which the Appellant became entitled to receive the contract amount and not when the work finished.

15. Article 113 of the Schedule to the Limitation Act provides that:

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.

16. The learned counsel for the Appellant submitted that the GCC stipulated a defect liability period of five (5) years, which expired on 19.09.2018. As per the internal note dated 24.08.2017, the Respondent recorded that the final bill could not be certified owing to the pendency of a quality check by the Quality Control Cell of the South Delhi Municipal Corporation. It was further noted that the said Cell had categorically informed the Respondent that works executed pursuant to work orders issued prior to 30.09.2014 would not be taken up for inspection. In view of the said communication, and with a view to safeguard departmental interests and avoid protracted litigation, the Respondent recommended passing of the final bill. Consequently, the final bill dated 12.11.2018 was certified for the

work executed by the Appellant.

17. The learned counsel for the Appellant further submitted that the Appellant is entitled to the exclusion of the period commencing from 15.03.2020 to 28.02.2022 for the purposes of computation of limitation, in view of the extraordinary circumstances arising out of the nationwide lockdown imposed due to the COVID-19 pandemic. Recognising the severe disruption caused during this period, the Supreme Court, vide order dated 10.01.2022, passed in Cognizance for Extension of Limitation, In re, (2022) 3 SCC 117 directed that the period commencing from 15.03.2020 to 28.02.2022 be excluded for all purposes relating to limitation.

18. It was further submitted by the learned counsel for the Appellant that the Supreme Court in Arif Azim Co. Ltd. v. Aptech Ltd, (2024) 5 SCC 313, took notice of the directions issued in Cognizance for Extension of Limitation, In re (supra) and held that the balance period of limitation, as available on 15.03.2020, would become available from 01.03.2022 for the purpose of computation. In view thereof, the present suit, having been instituted on 14.03.2023, falls within the prescribed limitation period of three years.

19. The learned counsel for the Appellant has further relied upon the judgment in Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd., (2020) 14 SCC 643, to submit that the period during which the parties are genuinely negotiating to reach a settlement of disputes may be excluded from the period of limitation. It was further submitted that in a commercial dispute, mere failure to pay may not give rise to a cause of action, the cause of action may arise when the Appellant has asked for payment to be made, and the Respondent has not made the requisite payment.

20. Further, Article 55 of the Schedule to the Limitation Act lays down that every subsequent breach gives rise to a new cause of action, accordingly, every time the Respondent did not pay the Appellant their dues under the work order a new cause of action arose.

21. The learned counsel for the Appellant has relied upon the judgment in OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd., (2025) 2 SCC 417, to submit that in contractual matters if the final payment is contingent upon an event, the period of limitation shall be computed from the time the contingency stands fulfilled and the payment becomes due. The period of limitation in the present case should, accordingly, start from the date the final bill dated 12.11.2018 was approved after the defect liability period stood extinguished.

22. The learned counsel for the Appellant has relied upon the judgment in North Delhi Municipal Corporation v. Garg Construction Co., Neutral Citation: 2021:DHC:957-DB to submit that Clauses 7 and 9 of the GCC were vague and drafted in such a manner so as to render it impossible for a contractor, having executed the work order, to assert a legitimate claim for payment at any point in

time.

23. The learned counsel for the Appellant further submitted that without prejudice to the foregoing submission that the cause of action in the present case arose on 12.11.2018, the certification of the final bill on the said date squarely falls within the ambit of Section 25(3) of the Indian Contract Act, 1872 ("Contract Act"). The said certification constitutes a written and signed promise to pay a time-barred debt. The act of certification, therefore, operates as a promise to pay within the meaning of Section 25(3) of the Contract Act, and not merely as an acknowledgment of debt. A fresh limitation period shall commence from the date of the final bill, that is, 12.11.2018, in accordance with Section 18 of the Limitation Act.

24. Hence, the Impugned Judgment wrongly dismissed the Suit of the Appellant on the ground that it was filed beyond the period of limitation and accordingly, deserves to be set aside by allowing the present Appeal.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

25. Mr. Anand Prakash, the learned counsel for the Respondent submitted that the Suit filed by the Appellant before the learned Trial Court was beyond the period of limitation. The period of limitation for the Suit started from the date of completion of the Project on 20.09.2013. However, the Suit was filed on 14.03.2023, which is beyond the three (3) year limitation period for filing the Suit and, accordingly, the Suit was rightly dismissed by the learned Trial Court.

26. The learned counsel for the Respondent submitted that Article 18 contained in Part II of the Schedule to the Limitation Act provides that the period of limitation is of three (3) years from when the work is completed. In the present case, where the work was done by the Appellant on request of the Respondent and where no time has been fixed for payment, the Appellant had a period of three (3) years until 20.09.2016 to bring an action against the Respondent but chose not to do so. The Appellant cannot be allowed to bring the Suit after the expiry of the limitation period and allowing the Suit to be filed beyond the period of limitation would go against the settled principles of law. Article 18 of the Limitation Act provides that-

Description of Suit

Period of Limitation

Time from which period begins to run

18

For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.

Three years

When the work is done.

27. The learned counsel for the Respondent submitted that the office note dated 24.08.2017 and the final bill dated 12.11.2018 sought to be relied upon by the Appellant as an acknowledgment of debt to begin a fresh period of limitation has not been duly proved before the learned Trial Court. Only a photocopy of the office note dated 24.08.2017 has been annexed by the Appellant. The Respondent further submitted that the Appellant cannot seek benefit of Section 18 of the Limitation Act as the acknowledgment of debt has to be taken within the period of limitation.

28. It was submitted that the office note dated 24.08.2017 and the final bill dated 12.11.2018 relied upon by the Appellant, even if proved, were taken beyond the period of limitation and would not extend the period of limitation for the Appellant.

29. The Appellant cannot rely on Cognizance for Extension of Limitation, In re (supra), when the period of limitation had already expired before the exempted period. Even though the final bill dated 12.11.2018 extended the period of limitation, Cognizance for Extension of Limitation, In re (supra) will not be helpful to the Appellant as a period of 90 days was available to the Appellant from 01.03.2022 as the original period of limitation expired during the excluded period between 15.03.2020 and 28.02.2022.

30. It was further submitted that Clauses 7 and 9 of the GCC stipulates that the Appellant had to raise the bill for payment of their dues, but the Appellant did not submit either interim bills or final bills for the payment of their dues. Further, Clause 4 of the work order provided that if the Appellant failed to raise the bill nothing would be considered due on account of the work executed. To submit the final bills was the contractual obligation of the Appellant and not the Respondent. The Appellant has not submitted their bills and cannot rely on the office noting of the Respondent to substantiate their claims at a belated stage.

31. Hence, the Appeal deserves to be dismissed.

ANALYSIS AND REASONING:

32. The Impugned Judgment, inter alia, decided three (3) issues:

(i) Whether the Appellant was entitled to a decree of the Suit amount as prayed for?

(ii) Whether the Appellant was entitled to any interest, if so, at what rate and for which period?

(iii) Whether the Suit was barred by limitation?

33. The learned Trial Court decided the first two issues in favour of the Appellant, while the third issue was decided against the Appellant. Accordingly, the primary question for consideration before this Court is whether the period of limitation commenced from the date of completion of work, i.e., 20.09.2013, or from the date on which the final bill was prepared and approved by the Respondent, i.e.,

12.11.2018.

34. Before examining the factual aspect, the legal position on the issue of limitation in cases where the contractual work is completed, but the final bill was prepared subsequently is summarised below.

35. The Division Bench of the Gujarat High Court in the case of Gujarat Housing Board vs. S. K. Ghadvi and Company, First Appeal Nos. 1615 and 1675 of 1990, decided on 19.12.2000 dealing with similar set of facts held as under:

"10. So far as the question of limitation is concerned, we find that the work order was given on 19th June 1973, the work was to start from 21st June 1973 and was to be completed within a period of 15 months, i.e. on or before 21st Sept.1974. The fact is not in dispute that the work was completed on 30th April 1978, the suit was lodged on 31st March 1983 and the final bill for the work was prepared by the defendant on 31st March 1980. It has been held by our own High Court in the case of State of Gujarat v. Shirinbai Pirojshah Wadia and anr., reported in 17 GLR 638 that the limitation in such cases would begin to run from the day the final bill was prepared and accepted. It is not in dispute that in these cases the final bill was prepared only on 31st March 1980 and therefore if the suits were filed on 31st March 1983 the suits could not be said to be time barred and the date of commencement of the limitation could not be taken on the date on which the work was completed. The reason is obvious in as much as it is open for the party to wait till the final bill is prepared because it may be that in the final bill there is no error and after issuing the final bill if the party finds that the final bill meets his dues and it has no grievance there remains no need to file the suit. Therefore, the date of commencement of the limitation has to be the date on which the final bill was prepared and there is no question of the suits being time barred in the facts of the present case. Therefore, we find that the issue no. 7 has been correctly decided by the trial Court."

36. In Inder Singh Rekhi (supra) the Supreme Court was dealing with facts wherein a dispute had arisen regarding non-payment of the alleged dues of one of the party after it had completed the work. The question was when did such dispute arise. The High Court proceeded on the basis that the work was completed in 1980 and therefore, the appellant became entitled to the payment from that date and the cause of action under Article 137 of the Limitation Act arose from that date. The Supreme Court, however, held that there must not only be an entitlement to money, but a difference or dispute must arise. It was held that it is true that on completion of the work a right to get payment would normally arise, but where the final bills were not prepared and when the assertion of the claim was made on a later date i.e., 28.02.1983 in the said case and there was non-payment, the cause of action arose from that date, that is to say, 28.02.1983. The relevant extracts are as under:

"4. ... It is true that on completion of the work a right to get payment would normally arise but where the final bills as in this case have not been prepared as

appears from the record and when the assertion of the claim was made on 28-2-1983 and there was non-payment, the cause of action arose from that date, that is to say, 28-2-1983. It is also true that a party cannot postpone the accrual of cause of action by writing reminders or sending reminders but where the bill had not been finally prepared, the claim made by a claimant is the accrual of the cause of action. A dispute arises where there is a claim and a denial and repudiation of the claim. The existence of dispute is essential for appointment of an arbitrator under Section 8 or a reference under Section 20 of the Act. See Law of Arbitration by R.S. Bachawat, first edition, page 354. There should be dispute and there can only be a dispute when a claim is asserted by one party and denied by the other on whatever grounds. Mere failure or inaction to pay does not lead to the inference of the existence of dispute. Dispute entails a positive element and assertion of denying, not merely inaction to accede to a claim or a request. Whether in a particular case a dispute has arisen or not has to be found out from the facts and circumstances of the case."

37. Under Article 113 of the Limitation Act, time commences to run when the right to sue accrues. The expression "when the right to sue accrues" in Article 113 of the Limitation Act, the same 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. 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. 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.

38. It is an admitted fact that in the present case the work was completed on 20.09.2013 and that the final bill was prepared by the Respondent on 12.11.2018, which has been accepted by the Appellant. The scheme of the GCC and the way the parties understood the same by acting upon it would be relevant while determining the right to sue, and accrual of the cause of action. Once the final bill was prepared and accepted, the amount due was determined and only then the claim for payment could have been effectively asserted.

39. In this background, the preparation and certification of the final bill constitutes the trigger for commencement of period of limitation. Therefore, the date 12.11.2018 is the point from which the period of limitation is required to be computed.

40. As the period of limitation for the purpose of filing the Suit commenced on the date on which the final bill was prepared i.e., 12.11.2018 and certified by the Respondent, three (3) years for the purpose of filing the Suit expired on

11.11.2021. However, by virtue of Cognizance for Extension of Limitation, In? re, (supra) the period from 15.03.2020 to 28.02.2022 was excluded from the computation of limitation. Further, the Supreme Court in Arif Azim (supra) has held that the balance period of limitation available as on 15.03.2020 would become available from 01.03.2022.

41. Applying the above periods, the limitation to file Suit expired 11.11.2021. However, since period of 715 days from 15.03.2020 to 28.02.2022 was excluded, 606 days were available as on 15.03.2020, which became available to the Appellant from 01.03.2022. In view of the same, the extended period of limitation expired on 28.10.2023. As the Suit was filed on 14.03.2023, the same was within the period of limitation. Hence, the dismissal of the Suit on the sole ground of limitation is unsustainable.

42. Consequently, as neither party has challenged the Impugned Judgment to the extent it decides the Issue Nos. 1 and 2 in favour of the Appellant and against the Respondent, the Suit is decreed in the terms of paragraph 61 of the Impugned Judgment. Accordingly, the Appellant is entitled to recover from the Respondent the following amounts:

(i) An amount of Rs. 13,84,264/- along with interest at 8% from 12.08.2019 till the date of actual payment.

(ii) EMD amount of Rs. 29,350/- along with interest at 8% per annum if the said amount is not already paid by the Respondent to the Appellant.

(iii) Amount of difference between VAT and GST at 12% to be payable within 60 days from the date on which the Appellant submits proof of deposit of tax to the Respondent and, if there is any delay in payment by the Respondent, the Respondent shall be liable to pay interest at 8% per annum for the delayed period.

(iv) Costs of the Suit

43. In view of the above, the Appeal is hereby allowed and the Impugned Judgment dated 10.07.2024 is set aside to the extent it holds the Suit filed by the Appellant was time barred, and the Suit is decreed in the aforesaid terms. Let the decree sheet be drawn up accordingly. Pending application(s), if any, stand disposed of. No order as to costs.