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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 20th August, 2026

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CNR No. DLHC010139312026

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RFA(COMM) 206/2026

SHRI ANIL KHANDELWAL

.....APPELLANT

Through: Mr. S.C. Singhal, Adv.

versus

THE REGISTRAR UNIVERSITY OF DELHIRESPONDENT

Through: Ms. Aakanksha Kaul, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE VIKAS MAHAJAN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present appeal arises out of **CS(Comm) No. 227/2019** being a suit for recovery of a sum of Rs.1,47,92,860/- filed by the Appellant/Plaintiff before the Id. District Judge (Commercial Court)-01, Central, Tis Hazari Courts.
3. *Vide* the impugned judgement dated 16th July, 2022 the application under Order VII Rule 11 of Code of Civil Procedure, 1908 [*hereinafter* 'CPC'] filed by the Respondent/Defendant was allowed and the suit of the Appellant was dismissed.
4. The brief facts of the case is that the Appellant was awarded the work for 'Restoration and Renovation of Botany Department (New & Old Block, University of Delhi)' on 8th December, 2009 by the Respondent. The subject



work was awarded for an amount of Rs. 6,12,95,726.25/-.

5. The case of the Appellant was that the said work was completed and the Appellant was paid a sum of Rs.7,03,26,014/-. The said sum was accepted by the Appellant allegedly on the assurance from the Respondent that additional expenditure could be claimed at a later stage. The Appellant, thereafter, raised further claims under various heads amounting to Rs. 1,47,92,860/- for which several representations were sent by the Appellant. However, the said sum was not paid by the Respondent and being aggrieved by the same the Appellant had instituted the subject suit.

6. The said suit was filed with a delay as the Appellant had initially filed a petition under Section 11 of the Arbitration and Conciliation Act, 1996 before this Court. The said petition being **ARB.P. 802/2018** was dismissed as withdrawn and subsequently the suit was filed.

7. The Respondent filed an application under Order VII Rule 11 CPC, raising, *inter alia*, the following two grounds:

- (i) that the suit was barred by limitation as the same had been filed after withdrawing the arbitration petition before this Court on the ground of being time barred;
- (ii) that the full and final payment was already made to the Appellant.

8. At this stage, it is relevant to note that the suit from which the present appeal arises is one of two suits which was filed by the Appellant. Another suit being **CS(Comm.) No. 226/2019** was filed by the Appellant in respect of a contract for construction of '*Vertical Extension of Two Storeys of Dr. B.R. Ambedkar Centre for Biomedical Research, North Campus, University of Delhi*', wherein similar claims were raised by the Appellant.



9. The Commercial Court in the said case had *vide* order dated 12th July, 2022 also rejected the suit and had allowed the application filed under Order VII Rule 11 CPC.

10. Against the said judgement in the second suit, the Co-ordinate Bench of this Court *vide* judgment dated 5th January, 2024 in ***RFA(Comm) 43/2023*** has upheld the impugned order dismissing the second suit, upholding the submission that the suit was barred by limitation. The relevant portion of the said judgment is set out below:

“29. Thus, the period for limitation for making a claim for any amount due in respect of the work done would be reckoned from the date when the work was completed, that is, on 30.11.2010 or from the date when the respondent was obliged to pay the amount for executing the works. It is also the appellant’s case that the final bill was raised at the material time. The learned Commercial Court had noted that the final bill was raised by the appellant in the year 2010. The appellant does not dispute the same, however, he contends that the appellant had reserved his right to raise further amounts after payment of the final bill.

30. It is relevant to note that the claims raised by the appellant in the suit includes Labour Escalation under Clause 10C of the GCC amounting to ₹11,81,330.49/-; Hiring Charges for shuttering material from 14.04.2009 to 30.10.2009 quantified at ₹14,92,000.00/-; Supervisory Charges for a period of six months and fifteen days quantified at ₹97,500/-; Watch and Ward expenses for the said period quantified at ₹1,56,000.00/-; Material Escalation due to delay in completion of the work quantified at ₹7,50,000.00/- and loss of material quantified at ₹4,00,000.00/-. In addition, the appellant also claims an interest on late payment quantified at ₹23,32,847.27/-. Plainly, the



cause of action for recovering the amounts due on Labour Escalation, Additional Hiring Charges, Charges for Supervision and Watch and Ward, Material Escalation and loss of material had arisen prior to, or on completion of the works. In terms of Clause 7 of the GCC, the appellant was required to claim the said amounts along with his final bill and pursue the same within the specified period. These claims are, clearly, barred by limitation as they have been filed beyond the period of three years from the date of completion of the works, the date of the final bill or from the date of receipt of the final bill.

31. *The application filed by the appellant before the learned Commercial Court seeking condonation of delay in filing the suit indicates that the appellant had calculated the period of limitation of three years with effect from 08.02.2016. According to the appellant, he had raised the said bills on the said date and therefore, the period of limitation was required to be computed from the said date. A plain reading of the letter dated 08.02.2016 indicates that the appellant had made a claim for payments under two heads: Reimbursement of Labour under Clause 10C of GCC and Reimbursement of Testing Charges. The appellant had not made any claim with regard to Hiring of Charges for Shuttering, Supervision Charges and Watch and Ward, Material Escalation, Loss of Material or Interest on late payment. These claims are concededly barred by limitation.*

32. *As noted above, the cause of action for making a claim regarding Labour Escalation had arisen on or prior to the completion of the works or on expiry of six months from submission of the final bill. Thus, any action seeking such amount would be barred by limitation. The letter dated 08.02.2016, inter alia, requesting for payments of Labour Charges (Labour Escalation) under Clause 10C of GCC, would not*



extend the period for limitation for making such a claim.

33. *It is settled law that once the period of limitation starts running, it does not stop on account of any unilateral communications issued by the claimant. In **Geo Miller and Company Private Limited v. Chairman, Rajasthan Vidyut Utpadan Nigam Limited: (2020) 14 SCC 643**, the Supreme Court had observed as under:*

“21. Applying the aforementioned principles to the present case, we find ourselves in agreement with the finding of the High Court that the appellant's cause of action in respect of Arbitration Applications Nos. 25/2003 and 27/2003, relating to the work orders dated 7-10-1979 and 4-4-1980 arose on 8-2-1983, which is when the final bill handed over to the respondent became due. Mere correspondence of the appellant by way of writing letters/reminders to the respondent subsequent to this date would not extend the time of limitation. Hence the maximum period during which this Court could have allowed the appellant's application for appointment of an arbitrator is 3 years from the date on which cause of action arose....”

34. *In view of the above, we find no fault with the decision of the learned Commercial Court in dismissing the appellant's suit as barred by limitation.”*

11. Coming back to the present appeal, the Court has perused the record including the impugned judgement and heard the Id. Counsels for the parties.

12. The Commercial Court has dismissed the subject suit of the Appellant on the ground of delay. The relevant portion of the same is as under:

“11. I have heard the arguments from the parties and gone through the record. It is a settled law that at the



stage of deciding an application under Order 7 Rule 11 CPC, only plaint and documents alongwith the plaint are to be seen and defendant cannot be looked upon.

12. From the plaint, it is evident that plaintiff has categorically stated in the plaint that there is a delay of 44 days in filing of suit and an application for condonation of delay has also been filed, which means suit of the plaintiff was barred at the time of filing of suit. As per section 3 of Limitation Act every suit, application or appeal file after prescribed period of limitation. Section 3 is reproduced as Below:

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13. From perusal of Section 5 of the Limitation Act, it is evident that the delay can be condoned by a Court only in cases of appeal or an application, other than an application under Section 21 CPC, which means this court has no jurisdiction to condone the delay in cases of suit and this court cannot condone the delay of 44 days even if, I take all the averments of the plaintiff as correct.

*14. Even otherwise, from the plaint it is evident that plaintiff was awarded contract for work vide letter of award dated 8.12.2009 by the defendant and plaintiff had completed its work on 10.8.2013 and final bill of Rs. 7,03,26,014/- was paid on 12.5.2015 and security amount was released on 26.10.2015. **Hence, even if I calculate the period of limitation from the date of last payment i.e. 26.10.2015, the limitation period will expire on 25.10.2018. The plaintiff has filed the application for pre litigation mediation on 18.1.2019 hence, same is time barred.***

15. I am not agreed with the contention of Ld. Counsel for plaintiff that plaintiff would not be entitled to exclude period which was taken in High Court during proceeding



file by plaintiff for appointment of Arbitrator u/s 11(6) of Arbitration Act as he was bonafidely perusing the matter there. As per section 14 of the Limitation Act, only those time could be excluded from computing the period of Limitation when he was bonafidely pursuing in another civil proceeding which for defect of jurisdiction or for other similar cause in unable to entertain it where as according to own admission of plaintiff he withdrew the petition from Hon,ble High Court not for defect of jurisdiction but he was in right Court which was having jurisdiction for appointment for Arbitrator but since admittedly plaintiff filed petition for appointment of arbitrator after 120 days and thus was time barred therefore in order to avoid dismissal of the application, he withdrawn the same. He cannot be allowed to take benefit of his wrong by seeking exclusion of time as he himself responsible for filing petition before High Court after expiry of time. In this circumstances I held that period during which plaintiff was pursuing petition u/s 11 of Arbitration and Conciliation Act cannot be excluded while computing period of limitation.

16. Further, I am also agreed with the submission of Ld. Counsel for the defendant that there is arbitration clause between the plaintiff and defendant to resolve the dispute through Arbitrator. Plaintiff cannot seek jurisdiction of civil court merely because he has failed to get the relief of appointment of Arbitrator as his application was time barred. In my view, if such kind of ground is allowed then, it would entirely defeat the purpose of Arbitration and Conciliation Act as every mischievous person, instead of approaching for initiation of proceedings under Arbitration & Conciliation Act, will wait for passing of limitation period and thereafter, will approach the civil court. Hence, in these circumstances, present suit is also not maintainable because there is arbitration clause



between plaintiff and defendant, the dispute is to be decided through arbitration only.

17. In view of above discussion, I held that the application to condone the delay file by plaintiff is dismissed and application under Order 7 Rule 11 CPC file by defendant is allowed and plaint is rejected. File be consigned to record Room."

13. As can be seen from the above, the Commercial Court refused to accept the argument of the Appellant that the time spent before this Court pursuing appointment of an arbitrator should be excluded while computing the period of limitation for instituting the subject suit in terms of Section 14 of the Limitation Act, 1963. The Commercial Court notes that it is not the Appellant's case that the proceedings before this Court for appointment of arbitrator were withdrawn for lack of jurisdiction. It is an admitted position, as recorded by the Commercial Court, that the said proceedings were withdrawn as it had been filed after a delay of 120 days.

14. A perusal of the application seeking condonation of delay in filing the subject suit would show that it is the case of the Appellant that subsequent to the payment of Rs. 7,03,26,014/- by the Respondent, additional demand under various heads was raised by the Appellant *vide* letter dated 8th October, 2015. In respect of the same, the Respondent had released the security amount to the Appellant on 26th October, 2015. It is admitted that the subject suit had to be filed within three years from the said date *i.e.*, 26th October, 2015.

15. The subject suit was filed on 18th January, 2018. The Appellant has sought to explain the delay on the basis of two grounds: (i) that it was pursuing proceedings for appointment of an arbitrator before this Court, and (ii) the Appellant was suffering from certain medical ailments which prevented him



from contacting his counsel. The relevant portion of the application for condonation of delay is extracted hereunder:

“2. That as set out in the plaint, the Plaintiff claimed the amount under the various heads as per the agreement vide its letter dated 8.10.2015 in pursuance of the payment made by the Defendant to the Plaintiff on 26.6.2015. Thereafter the security amount of the Plaintiff was paid/released by the Defendant to the Plaintiff on 26.10.2015.

*3. **That it is submitted that the Plaintiff was required to file the suit within three years i.e. 26.10.2015.** The Plaintiff filed the petition U/5 11(6) of the Arbitration & Conciliation Act before the Hon'ble High Court on 23.10.2018. The said petition was dismissed as withdrawn with liberty to file the civil suit on 5.12.2018.*

*4. That there is a delay of about 120 days in filing the present suit. The Plaintiff claimed the amount under the various heads as per the agreement vide its letter dated 8.10.2015 in pursuance of the payment made by the Defendant to the Plaintiff on 26.6.2015. Thereafter the security amount of the Plaintiff was paid by the Defendant to the Defendant on 26.10.2015. However, the Defendant failed to clear the aforesaid final bill of the Plaintiff and consequently, the Plaintiff was constrained to file the Arbitration Petition before the Hon'ble High Court of Delhi U/5 11(6) of the Arbitration and Conciliation Act on 23.10.2018. However, **the Hon'ble High Court was of the view that as per the Agreement between the parties the Arbitration Clause is time barred for the purpose of revoking arbitration clause seeking appointment of the Ld. Arbitrator and the Hon'ble High Court of Delhi was pleased to grant liberty to the Petitioner to file a Civil Suit in Civil Court and due to aforesaid reasons the Petition was disposed off vide its order dated 05.12.2018.***



It is submitted that thereafter the Plaintiff could not contact his counsel due to his illness and he remained under treatment for his said ailment. The Plaintiff thereafter could contact his counsel only on 9.1.2019 and instructed him to file the suit for recovery against the Defendant. Consequently the counsel, for the Plaintiff drafted the present suit and the same is being filed before this Hon'ble Court at the earliest and the plaint was filed before the filing counter on 18.01.2019 and the same was referred to Pre Institution Mediation and Settlement as per the Section 12A of the Commercial Court Act and the defendant refused on 16.02.2019 to participate in the mediation process at this stage and the Non-Starter Report dated 16.02.2019 for handed over to the plaintiff on 16.02.2019 after lunch session.”

16. Thus, the petition for appointment of arbitrator was withdrawn not on the ground of defect of jurisdiction, rather, the same had been withdrawn as the said petition was time barred.

17. It is the settled position in law that Section 5 of the Limitation Act does not apply to suits filed beyond the limitation period. In fact Section 5 of the Limitation Act does not apply in such situations. This is the settled position as held by the Supreme Court in ***The Deputy Commissioner And Special Land Acquisition Officer vs M/s. Global Mill Limited, 2026 INSC 138***. The relevant portion of the said judgement is as under:

55. In 1983, the Law Commission of India took up a suo motu revision of the 1963 Act. Section 5 of the said Act has been discussed elaborately in Chapter 5 of its Report. A clear view has been expressed that Section 5 does not apply to the initiation of a suit. Relevant excerpts are extracted hereunder.



“CHAPTER 5

SECTION 5: EXTENSION OF THE PRESCRIBED PERIOD FOR SUFFICIENT CAUSE

5.1. Section 5 empowers the court, for “sufficient cause”, to entertain an appeal or application (except an application for execution) filed after expiry of the prescribed period. A number of points require to be considered with reference to this section. The section does not apply to suits.

I. Suits

5.2. Section 5, as stated above, does not apply to suits. We have considered the question whether the section should be amended so as to include within its ambit suits filed after the prescribed period. Delving into the old records relating to the drafting of the Indian Limitation Bill, 1908, we discovered that this question was considered at that distance of time also. When the draft of the Indian Limitation Bill 1908 was circulated for comments, Dr. Hari Singh Gaur commented as under:

“I am not sure if a suit may not be also included in the clause; if the intending plaintiff is wrongfully confined by the defendant, why he should lose his suit? Section 18 ‘fraud’ does not cover such a case.”

However, the Divisional Judge, Nagpur, was apprehensive that if the ambit of the clause was enlarged, it would lead to unsavoury practices; false grounds were often invented when the litigant found that he was out of time. In most cases they were, accordingly to him, based on purely personal incidents or conditions which his adversary was not expected to



refute.

5.3. Though there is some merit in Dr. Hari Singh Gour's suggestion, we think that enlarging the scope of section 5 to cover suits would do more harm than good to the administration of justice. The rapport between the lawyer and his rural client is generally so well established that a visit to the family lawyer on the weekly market day is always on the agenda of a villager. Such being the style of functioning of village folks, it is improbable that the munshi to the lawyer would allow his client's case to go by default by asking him to wait till the last day of limitation. If, as contemplated by Dr. Hari Singh Gour, a plaintiff may be prevented from reaching his lawyers on the last day of limitation by scheming defendants, he could as well as prevented by other causes like breakdown of the bus service, floods, illness, etc the authorship of which cannot be imputed to the defendants.

In view of the above, we do not recommend extension of the principle of section 5 to suits."

(emphasis supplied)

56. The Report makes it clear that Section 5 of the 1963 Act does not apply to a suit. Rather, it applies only to an appeal or an application. Section 5 of the 1963 Act must be construed with respect to an appeal or an application during its pendency or an application pending the suit, or any other petition. In other words, it does not apply to original proceedings. This view is fortified by the very heading of the provision itself, which provides for the extension of the prescribed period in "certain cases".

18. In the opinion of this Court, the Commercial Court has rightly rejected the prayer for exclusion of the time spent before this Court from computing



the period of limitation.

19. Considering the above, there is no ground made out for interfering with the impugned judgement rejecting the subject suit on the ground of delay. The Commercial Court has rightly allowed the application under Order VII Rule 11 and rejected the subject plaint.

20. The appeal is dismissed in the above terms. Pending applications, if any, are also dismissed.

PRATHIBA M. SINGH
JUDGE

VIKAS MAHAJAN
JUDGE

AUGUST 20, 2026/aj/msh