

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 3385 of 2010****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR. JUSTICE R. T. VACHHANI**

Approved for Reporting	Yes	No

EVERGREEN TRADING & CONSTRUCTION CO.**Versus****GUJARAT WATER SUPPLY & SEWERAGE BOARD & ANR.****Appearance:****MR KG SUKHWANI(871) for the Appellant(s) No. 1****MR RITURAJ M MEENA(3224) for the Defendant(s) No. 1,2****CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR. JUSTICE R. T. VACHHANI****Date : 16/09/2026****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)**

1. By way of filing the present appeal under Section 96 of the Code of Civil Procedure, 1908, the appellant herein original plaintiff has challenged the impugned judgment and decree dated 31/03/2010 passed by the learned 3rd Additional Senior Civil Judge, Gandhinagar, in Special Civil Suit No. 116 of 2003 (Old Suit No. 323 of 1991), whereby the suit instituted by the appellant for recovery of damages and compensation was dismissed.

2. Considering the issue involved in the matter, the matter has been taken up for hearing as it transpires that the entire gamut of the matter apart from the other issue raised on the issue of limitation which if is dealt with, then the question to deal with the other issue of the case would be futile exercise and the learned Counsel appearing for the appellant has also conceded that the

said issue may be taken up for hearing. Considering the fair submissions advanced by the learned advocate for the appellant, we deem it appropriate to take up the issue of limitation first.

3. It is a well-settled principle of law that an appeal is a continuation of the original proceedings, and as an Appellate Court, this Court is empowered to re-appreciate the entire material on record and evaluate all issues, including the legal questions raised. Keeping in mind the aforesaid, as well as the request made by the learned advocate for the appellant, instead of going into or touching upon the other claims, as fairly conceded, we are of the view to take up the fundamental issue of limitation first.

4. The brief facts relevant for deciding the issue of limitation are that the offer of the appellant for laying, lowering, and jointing RCC drainage pipelines was accepted by the respondents under Agreement No. B-2/44 of 1972-73. Pursuant thereto, the work order was issued on 06/03/1973 (Exh. 217), stipulating a completion period of 30 months, i.e., on or before 05/09/1975. However, the work could not be completed within the stipulated time. Extension of time was granted up to 23/05/1980 vide Exh. 165, and the work in question was completed on 30/05/1980.

5. As contended by the learned advocate for the appellant, several communications and correspondence ensued between the parties with regard to the demands raised by the appellant, which were negated and refused by the respondent authority. Thus, efforts seem to have been made by the appellant to show that after completion of the work on 30/05/1980, several demands were raised due to unpaid bills. However, nothing short of any such material has been placed on record to substantiate the aforesaid claim. Not only that, the appellant went on claiming damages and

compensation alleged to have accrued for the period between 30/09/1980 and 30/07/1988.

6. It is apparent from the material placed for consideration more particularly the documents produced at Exh. 165 that the period to complete the work was extended up to 23/05/1980. Further, considering the letter produced by the appellant vide Exh. 188, the final bill prepared was admittedly signed on 30/07/1988. Thus, it can be presumed that on that particular day, whatever demands were raised by the appellant were considered, and the rest were rejected in final form.

7. The sum and substance of the entire gamut of the issue pertaining to limitation is that even if that demand was refused by the respondent on 30/07/1988, the appellant could have brought an action against them by approaching the competent Court within the period of limitation, that is within a period of three years. In a nutshell, even if the period of limitation is counted from 30/07/1988 for a period of three years, the said period expired on 29/07/1991 / 30/07/1991. Within the aforesaid period, the appellant had to lodge its claim, and if the same is not done, then the claim of the petitioner is hit by the law of limitation.

8. To buttress its argument on the issue of limitation so as to abridge the period of limitation and to bring its claim within time, the appellant sought to place on record that the amount of security deposit was released on 01/10/1988. However, contrary to the aforesaid stance, vide letter Exh. 189 written by the appellant to the defendant Board/Government, the appellant explicitly admitted having received the amount towards the final bill on 30/07/1988, whereupon the rest of the claims stood turned down. Therefore, the cause of action to file the suit can be said to have started from

30/07/1988. The attempts made by the appellant to extend the period of limitation post-release of security deposit appear to be against even the documents produced by the plaintiff-appellant himself. The appellant is not expected to approbate and reprobate so as to abridge the time period on his own will and whims.

9. The appellant has also placed reliance upon the decision of this Court in Civil Revision Application No. 1201 of 1971 to contend that the cause of action begins from the date of release of the security deposit. Having respectfully perused the said judgment, we are of the opinion that the facts of that case differ from the circumstances of the present case. In the present case, there is no factual foundation on record to establish that the security deposit of the plaintiff was deducted from the final bill. Therefore, the cited judgment cannot assist the arguments of the appellant.

10. In view of the aforesaid factual and legal position, the cause of action arose on 30/07/1988 upon the final rejection of the demands. The suit ought to have been filed within three years therefrom as per the provisions of the Limitation Act, 1963, i.e., on or before 29/07/1991. The present suit was instituted on 19/09/1991, which is clearly beyond the prescribed period of limitation. The Trial Court, therefore, committed no error in answering Issue No. D-(4) in the affirmative and holding the suit to be barred by limitation.

11. At this stage, it is apt to make reference to the decision of the Hon'ble Supreme Court in ***State of Uttar Pradesh & Ors. v. M/s. Satish Chand Shivhare and Brothers [SLP (Civil) No. 5301 of 2022]***, wherein the Apex Court observed as under:

"The questions of law purported to be raised in this Special Leave petition are misconceived. The right of appeal is a statutory right,

*subject to the laws of limitation. The law of limitation is valid substantive law, which extinguishes the right to sue, and/or the right to appeal. **Once an appeal is found to be barred by limitation, there can be no question of any obligation of the Court to consider the merits of the case of the Appellant.***"

12. Applying the settled principles laid down by the Hon'ble Supreme Court to the facts of the present case, since the action of the appellant was demonstrably barred by limitation, there remains no legal obligation on the part of this Court to enter into or consider the merits of the remaining claims raised by the appellant.

13. The First Appeal stands dismissed. The impugned judgment and decree dated 31/03/2010 passed by the learned 3rd Additional Senior Civil Judge, Gandhinagar, in Special Civil Suit No. 116 of 2003 (Old Suit No. 323 of 1991) is hereby affirmed. Record & Proceedings, if any, be sent back to the trial Court forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

MVP/Kaushal Rathod