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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on:11.02.2026***
Judgment pronounced on:16.07.2026
Judgment uploaded on: 16.07.2026

\+ RFA(COMM) 383/2024

M/S PRISM JOHNSON LIMITED .....Appellant
Through: Ms. Nimisha Sharma, Adv.

versus

M/S MASTER NIHAL SINGH MEMORIAL EDUCATION SOCIETY .....Respondent
Through: Mr. P.K. Agrawal, Mr. Akshay Chitkara, Ms. Sanjoli Gupta and Mr. Rishabh Tomar, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

ANIL KSHETARPAL, J.

INTRODUCTION

1. Through the present appeal, preferred under Section 96 read with Order XLI of the Code of Civil Procedure, 1908 [hereinafter, "the CPC"] and Section 13(1A) of the Commercial Courts Act, 2015 [hereinafter, "the Commercial Courts Act"], the Appellant assails the correctness of the judgment and decree dated 19.04.2024 [hereinafter, "the Impugned Judgment"] passed by the learned District Judge, Commercial Court–05, South District, Saket Courts, Delhi. By the Impugned Judgment, the learned Trial Court allowed the application

moved by the Respondent under Order VII Rule 11 read with Section 151 of the CPC and consequently rejected the plaint in CS (COMM) 576/2023 as barred by limitation.

FACTUAL BACKGROUND

2. The Appellant, M/s Prism Johnson Limited (previously Prism Cement Limited), is a public limited company incorporated under the Companies Act, 2013, engaged inter alia in the business of manufacturing, marketing and trading in cement, ready–mix concrete [hereinafter, "RMC"], tiles, sanitaryware and bath products. The supplies forming the subject matter of the suit were effected through its RMC (India) Division.

3. The Respondent, M/s Master Nihal Singh Memorial Education Society (also described as a Trust), is an educational society which approached the Appellant for the supply of various grades of concrete for the construction of a school at Sector–43, Gurugram, Haryana.

4. Pursuant to negotiations between the parties, the Respondent placed a purchase order dated 02.03.2017, the material terms whereof read as under:

> *"This has reference to your quotation and further discussion we had with you. We are pleased to award the work for supply of various grades of concrete for our school project at Sector–43, Gurgaon. The details and terms & condition are given below:–*
>
> *……*
>
> *7. Delivery will commence from Today, as per site requirement.*
>
> *8. Payment Terms: 60 days credit and weekly billing.*

....”

5. It is thus common ground that the parties contracted upon a fixed period of credit, billing being weekly and payment falling due sixty days thereafter.

6. In pursuance of the said purchase order, the Appellant effected supplies from time to time. The Appellant’s case is that the RMC supplies conformed in all respects to the agreed specifications; that the Respondent accepted every delivery without any contemporaneous protest as to quality; and that the Appellant maintained a running account in the name of the Respondent reflecting the accumulated dues.

7. The Respondent, per contra, contends that the material supplied was sub–standard, that a majority of the lots were rejected at site, and that by a letter dated 02.03.2017 it had drawn attention to the defects in the material and called upon the Appellant to furnish laboratory test reports, which the Appellant failed to furnish.

8. The Appellant asserts that a principal sum of Rs.69,72,422/- remains outstanding, together with interest at the contractual rate of 18% per annum from the respective due dates. The Respondent denies the claim in its entirety.

9. According to the Respondent, it has paid in full for all goods which conformed to the agreed specifications. It relies upon a payment of Rs. 21,19,596/– made vide cheque no. 265934 drawn on the Oriental Bank of Commerce (now Punjab National Bank) on 06.03.2018, and a further payment of Rs. 8,00,000/– vide cheque no.

305339 dated 24.02.2021 drawn on the same bank, as constituting full and final settlement of all supplies made until that date. It is not in dispute that the payment of 06.03.2018 is the last entry pertaining to the supplies reflected in the running account maintained by the Appellant.

10. On 18.12.2021, the Appellant caused a legal notice to be issued to the Respondent calling upon it to clear the outstanding amount. The Respondent replied by a communication dated 30.12.2021. It is the Appellant's case that it was by this reply, and for the first time, that the Respondent raised a dispute alleging that the material supplied was of inferior quality or poor grade.

11. Thereafter, in conformity with Section 12A of the Commercial Courts Act, the Appellant approached the District State Legal Services Authority, South District, Delhi, and initiated pre–institution mediation on 21.12.2021. Despite due service of notice, the Respondent failed to appear in the said proceeding, resulting in the issuance of a Non–Starter Report dated 14.02.2022.

12. The Appellant instituted a commercial suit by way of e–filing on 13.10.2023, registered as CS (COMM) 576/2023. Notice was issued to the Respondent on 20.10.2023. The Respondent filed its written statement within the period prescribed. Thereafter, on 04.04.2024, the Respondent moved an application under Order VII Rule 11 read with Section 151 of the CPC before the learned Trial Court.

13. The Appellant states that on 19.04.2024, being the date fixed for hearing of the said application, it was not afforded an opportunity to file a reply thereto. By the Impugned Judgment of even date, the learned Trial Court allowed the application and rejected the plaint as being barred by limitation. Aggrieved thereby, the Appellant has preferred the present appeal.

PARTIES' CONTENTIONS

Contentions on behalf of the Appellant

14. Learned counsel appearing for the Appellant, has assailed the Impugned Judgment on the following grounds:

i. Suit not barred by limitation - It is submitted that the learned Trial Court proceeded in haste and erred in holding the suit to be time–barred. The cause of action for the suit arose on 30.12.2021, when the Respondent, by its reply to the legal notice dated 18.12.2021, refused for the first time to clear the outstanding dues of the Appellant. Until that refusal, there was no denial of liability and therefore no accrual of the right to sue.

ii. Continuing cause of action - The supplies were made under a running account. Non–payment of the sums standing to the debit of that account is a continuing wrong which subsists from day to day, and gives rise to a cause of action which continues so long as the debt remains unpaid.

iii. Protection under the COVID–19 orders - The Appellant is in any event protected by the directions of the Hon'ble

Supreme Court in In Re: Cognizance for Extension of Limitation, whereby the period from 15.03.2020 to 28.02.2022 stands excluded from the computation of limitation in all judicial and quasi–judicial proceedings. If that period is excluded, the suit is well within time.

iv. Limitation is a mixed question of fact and law - Placing reliance upon ***Shakti Bhog Food Industries Limited v. Central Bank of India***[1], it is urged that the question whether a suit is barred by limitation ordinarily involves a mixed question of fact and law which cannot be determined summarily at the threshold, and that recourse to Order VII Rule 11(d) of the CPC was therefore impermissible.

v. Violation of natural justice - The learned Trial Court decided the application under Order VII Rule 11 of the CPC on the very date on which it was listed for hearing, without granting the Appellant an opportunity to file a reply. The Impugned Judgment is, on this ground alone, liable to be set aside and the matter remanded.

Contentions on behalf of the Respondent

15. *Per contra*, Respondent, supported the Impugned Judgment and contended as follows:

i. Suit barred by limitation - The suit is squarely governed by Article 15 of the Schedule to the Limitation Act, 1963

[1] (2020) 17 SCC 260

[hereinafter, "the Limitation Act"]. On the Appellant's own documents, payment was to be made upon the expiry of a fixed period of credit reckoned from delivery, and limitation commenced from the due date of each such payment. The last transaction between the parties referable to the supplies having taken place on 06.03.2018, the claim stood barred long before the institution of the suit on 13.10.2023.

ii. No continuing wrong - Non–payment of an ascertained debt is a completed wrong. What continues is the loss occasioned by the wrong and not the wrong itself. At its highest, the Appellant's case discloses a series of recurring causes of action, each of which was barred by the time the suit was instituted.

iii. Notice does not revive a dead claim - A unilateral legal notice issued years after the debt fell due cannot set the clock of limitation running afresh, nor can a reply refusing to pay operate as an acknowledgement of liability under Section 18 of the Limitation Act, the said reply having in any event been issued after the prescribed period had run out.

iv. COVID–19 orders afford no assistance - Even upon exclusion of the period between 15.03.2020 and 28.02.2022, and even upon the further indulgence of ninety days granted with effect from 01.03.2022, the suit filed in October 2023 is beyond time.

ANALYSIS AND FINDINGS

16. We have heard learned counsel for the parties at length and have perused the record, including the plaint, the documents filed therewith and the Impugned Judgment.

17. The integral question before this Court is whether the suit instituted by the Appellant was within the prescribed period of limitation, or whether it was barred thereby. That question resolves itself into the following sub–issues:

i. What is the true scope of the power conferred by Order VII Rule 11(d) of the CPC, and was its exercise warranted in the present case?

ii. Which Article of the Schedule to the Limitation Act governs the Appellant's claim, and when did limitation commence to run?

iii. Does the non–payment of contractual dues under a running account constitute a continuing wrong, or does it give rise to recurring causes of action?

iv. Does the legal notice dated 18.12.2021, or the reply thereto dated 30.12.2021, furnish a fresh point of commencement for the period of limitation?

v. Does the reply dated 30.12.2021 amount to an acknowledgement of liability within the meaning of Section 18 of the Limitation Act?

vi. What is the effect of the orders of the Hon'ble Supreme Court excluding the pandemic period, read with the exclusion available in respect of pre–institution mediation under the Commercial Courts Act?

We propose to address these questions in the order set out above.

I. The scope of Order VII Rule 11(d) of the CPC

18. Order VII Rule 11(d) of the CPC mandates that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. It is settled beyond controversy that the law of limitation is a "law" within the meaning of the said provision. In ***Shakti Bhog*** *(supra)*- a decision pressed into service by the Appellant – the Hon'ble Supreme Court itself observed that Order VII Rule 11 of the CPC confers ample power upon the Court to reject a plaint if, from the averments therein, it is evident that the suit is barred by any law including the law of limitation, and that this position is no more res integra.

19. Equally settled are the limits of the power. For the purposes of an application under clauses (a) and (d) of Order VII Rule 11, it is the averments in the plaint and the documents filed therewith that are germane; the pleas taken in the written statement are wholly irrelevant at that stage (***Saleem Bhai v. State of Maharashtra***[2]). The plaint must be read as a whole and in a meaningful manner, and the power must

[2] (2003) 1 SCC 557

be exercised strictly within the four corners of the Rule (***Dahiben v. Arvindbhai Kalyanji Bhanusali***[3]).

20. The Appellant's reliance upon ***Shakti Bhog*** *(supra)* for the broader proposition that limitation is invariably a mixed question of fact and law, and can therefore never be determined under Order VII Rule 11, is misplaced. We say so for two reasons.

21. First, ***Shakti Bhog*** *(supra)* was a suit for rendition of accounts governed by Article 113 of the Schedule to the Limitation Act – the residuary Article – under which limitation runs from the date on which "the right to sue accrues". That Article fixes no objective trigger. It was precisely because the point of accrual there depended upon when the Bank's response hardened into a firm denial – a matter incapable of determination without evidence – that the Hon'ble Supreme Court held the plaint to have been prematurely rejected. The present case, is governed by Article 15, which fixes the starting point by reference to an event stipulated in the contract itself. Where the parties have themselves fixed the trigger, there is nothing left to be discovered at trial.

22. Secondly, the observation that limitation is "ordinarily" a mixed question of fact and law is not a talisman. Where the plaint and the documents annexed to it disclose an unimpeachable chronology from which the bar of limitation is manifest, the Court is not obliged to put the parties through the expense and delay of a trial which can have but one outcome (see ***Raghwendra Sharan Singh v. Ram Prasanna***

[3] (2020) 7 SCC 366

Singh*[4]**). The principle in ***Shakti Bhog *(supra)* protects a plaintiff whose starting point is genuinely in dispute; it does not arm a plaintiff whose own pleading discloses the fatal dates. Clever drafting cannot create an illusion of a cause of action where none survives.

23. In the present case, every date material to the question of limitation is drawn from the Appellant's own plaint and the documents filed therewith: the purchase order dated 02.03.2017 stipulating a sixty–day credit period; the last transaction referable to the supplies, dated 06.03.2018; the legal notice dated 18.12.2021; the reply dated 30.12.2021; and the institution of the suit on 13.10.2023. Not one of these dates is in dispute, and none of them requires evidence to establish. The question of limitation is therefore capable of being answered, and was rightly answered, upon a demurrer.

II. Article 15 of the Schedule and the commencement of limitation

24. Article 15 of the Schedule to the Limitation Act prescribes a period of three years for a suit "for the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit", the time from which the period begins to run being the date on which the period of credit expires. The Article is attracted in terms. The parties agreed by clause 8 of the purchase order dated 02.03.2017 upon "60 days credit and weekly billing". The learned counsel for the Respondent placed some reliance upon a stipulation of forty–five days appearing in the Appellant's own documents; whether the credit period be reckoned at forty–five days or sixty days is, on the facts of

[4] (2020) 16 SCC 601

this case, wholly immaterial, and we proceed on the basis of the sixty–day period pleaded in the plaint, that being the reckoning most favourable to the Appellant.

25. The consequence of Article 15 is that limitation does not await a demand, a denial, or a quarrel. It runs from the expiry of the credit period referable to each delivery. The right to sue arises upon the accrual of a cause of action, and every cause of action carries its own period of limitation attached to it. Where a claim does not fall within that period, it cannot be instituted, however meritorious it may be in substance.

26. The expression "cause of action", though not amenable to exhaustive definition, is well settled in law. In its most comprehensive sense it denotes the bundle of essential facts which a plaintiff must prove in order to entitle itself to a judgment of the Court. In a suit of the present description, that bundle consists of the supply, the invoice, the expiry of the credit period and the failure to pay. The bundle is complete on the sixty–first day. Nothing further is required to enable the seller to sue.

III. Continuing wrong or recurring cause of action

27. The Appellant's principal answer to the bar of limitation is that non–payment of the dues under a running account is a continuing wrong, so that a fresh cause of action arises with every passing day for so long as the debt remains unpaid. The submission requires us to distinguish between a continuing cause of action and a recurring one, a distinction of the first importance in the computation of limitation.

28. The distinction was drawn with precision by the Hon'ble Supreme Court in ***Union of India v. Tarsem Singh***[5]:

> *"A 'continuing wrong' refers to a single wrongful act which causes a continuing injury. 'Recurring/successive wrongs' are those which occur periodically, each wrong giving rise to a distinct and separate cause of action."*

29. To the same effect is the classic exposition in ***Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan***[6]**,** where the Hon'ble Supreme Court held:

> *"It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."*

30. The test propounded in ***Balakrishna Waghmare*** *(supra)* is decisive of the Appellant's submission. The wrongful act complained of is the failure to pay a sum which fell due upon the expiry of a defined credit period. That failure is complete on the day the credit period expires. What persists thereafter is not the injury but its effect – the Appellant remains out of its money, and its books continue to reflect a debit. The Appellant confuses the wound with the scar. A litmus test of a continuing wrong is whether the wrongful act itself

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[5] (2008) 8 SCC 648
[6] AIR 1959 SC 798

continues from day to day; the withholding of a debt already due does not answer that description.

31. The point is placed beyond doubt by ***M.R. Gupta v. Union of India***[7], where the Hon'ble Supreme Court considered whether the incorrect fixation of pay gave rise to a continuing or a recurring cause of action, and observed:

> *"The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules."*

32. It is instructive that even in that case, where the underlying grievance was described as a continuing wrong, the Hon'ble Supreme Court held the cause of action to recur, and expressly recorded that arrears falling outside the period of limitation would not be recoverable. The violation of the legal right occurred once a month; the cause of action was correspondingly confined to once a month, as opposed to an indefinite and uninterrupted violation of the kind exemplified by a trespass.

33. We may add that Section 22 of the Limitation Act, which provides that in the case of a continuing breach of contract a fresh period of limitation begins to run at every moment of the time during which the breach continues, affords the Appellant no assistance. That provision postulates a breach which is itself continuous. The

[7] (1995) 5 SCC 628

obligation to pay for goods delivered is discharged, if at all, once and for all. Its non–discharge on the appointed day is a single and completed breach, not a breach renewed from hour to hour.

34. Applying these principles, the transactions between the parties, and the defaults in payment arising thereunder, give rise to recurring and not continuing causes of action. Under the payment terms agreed in the purchase order, every supply carried its own sixty–day credit period, and every expiry of that period without payment was a fresh strike upon the clock of limitation, complete and separate in itself.

35. The consequence follows inexorably. On the Appellant's own pleading, the last transaction referable to the supplies reflected in the running account is dated 06.03.2018, being the date on which the Respondent paid a sum of Rs. 21,19,596/–. No supply, invoice or billing subsequent to that date is pleaded. The latest date, therefore, upon which any credit period referable to any supply could have expired is 05.05.2018. The period of three years prescribed by Article 15 expired, at the latest, on 05.05.2021 – nearly two and a half years before the suit was instituted.

IV. Whether a unilateral legal notice extends the period of limitation

36. The Appellant's alternative case is that the cause of action arose only on 30.12.2021, when the Respondent, by its reply to the legal notice dated 18.12.2021, refused for the first time to pay. The submission is that limitation must be computed from the date of that refusal.

37. The proposition is untenable. In ***M/s J.M. Construction Pvt. Ltd. v. Smt. Krishna Sachdev & Ors***[8], a Coordinate Bench of this Court held as follows:

> *"The issuance of repeated legal notices/public notices does not extend the period of limitation. The effort of the Plaintiff to bring the present suit within the period of limitation on the basis of its legal notice dated 8th July, 2005 and the reply by the Defendant Nos.1 to 9 dated 20th July, 2005 is totally untenable under law, unlawful and the same does not lead to the extension of limitation period under Article 54 of the Limitation Act, as once the suit is already barred by limitation in the year 2002, either by the service of notice or any admission in reply after the expiry of limitation, no benefit can be derived by the Plaintiff under Section 18 of the Limitation Act, 1963."*

38. The Appellant sought to rely upon the decision of a learned Single Judge of this Court in ***Fortune Builders (P) Ltd. v. Blue Star Ltd.***[9], wherein the legal notice and the reply thereto were held to constitute the "breaking point", and therefore the point of commencement of limitation. That decision is distinguishable, and was so distinguished by a Division Bench of this Court in ***Greatech Fashions v. S.K. Industries***[10], decided on 27.05.2025. In ***Fortune Builders*** *(supra)*, the work from which the dispute arose was still pending; the project stood abandoned and unfinished; and the parties had raised competing claims through their respective notices and replies. It was in that setting that the notice was held to have crystallised a dispute which had not previously assumed definite shape.

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[8] CS(OS) 1409/2007
[9] 2022 SCC OnLine Del 975
[10] RFA(COMM) 323/2025

39. No such situation obtains here. The supplies had long since ceased. The invoices had been raised. The credit periods had expired. The dues, on the Appellant's own case, stood ascertained in a running account. The legal notice of 18.12.2021 crystallised nothing; it merely reiterated a claim that had matured, and become actionable, years earlier. It was not a "point of no return" in the dealings between the parties, for the parties had long since passed that point.

40. The position was authoritatively restated by the Division Bench in ***Greatech Fashions*** *(supra)* in the following terms:

> *"The period of limitation can be extended only under certain circumstances as mentioned in the Limitation Act, 1963, one of them being a written acknowledgment of the debt or a part payment made within the period of limitation. None of those circumstances are made out by the appellant in the present case. Equally, the issuance of a legal notice does not lead to the commencement of a fresh period of limitation."*

41. If a legal notice could dictate the commencement of limitation, a plaintiff could indefinitely postpone the institution of a suit by the simple expedient of waiting several years and then despatching a notice. Such a result would defeat the very purpose of the Limitation Act, which is founded on the maxim vigilantibus non dormientibus jura subveniunt – the law assists the vigilant, and not those who slumber over their rights. Once a plaintiff knows, whether through conduct, conversation or a prior document, that the defendant will not perform, the clock begins to run. A fresh notice for the same breach, despatched years later, does not reset it. Indeed, Section 9 of the Limitation Act embodies the same principle in statutory form: where once time has begun to run, no subsequent disability or inability to

institute a suit stops it. Still less can it be stopped by the unilateral act of the party in whose favour it is running out.

42. It is true, and well trodden, that limitation is ordinarily a mixed question of fact and law. But that principle cannot be pressed into service to circumvent the mandate of Order VII Rule 11 of the CPC where the facts are stark and the delay is manifest. The mere issuance of a legal notice does not, by some process of legal alchemy, transmute a time–barred claim into a live one.

V. Whether the reply dated 30.12.2021 constitutes an acknowledgement under Section 18

43. Section 18 of the Limitation Act provides that where, before the expiration of the prescribed period for a suit, an acknowledgement of liability in respect of the right claimed has been made in writing, signed by the party against whom such right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed. The provision therefore admits of four requisites: *(i)* an acknowledgement of liability in respect of the right claimed; *(ii)* in writing; *(iii)* signed by the party against whom the right is claimed; and *(iv)* made before the expiration of the prescribed period.

44. The fourth requisite is a condition precedent, and it is fatal to the Appellant. We have held above that the prescribed period expired, at the latest, on 05.05.2021. The Respondent's reply is dated 30.12.2021. An acknowledgement made after the period of limitation has run out cannot resurrect a claim which has already died. Section

18 renews a subsisting debt; it does not exhume a barred one. That is precisely what was held in ***J.M. Construction*** *(supra),* where the Coordinate Bench recorded that once the suit is already barred, no benefit can be derived under Section 18 from any admission contained in a reply issued after the expiry of limitation.

45. Even assuming, without accepting, that the reply had been issued within the prescribed period, it would not answer the description of an acknowledgement. In ***Khan Bahadur Shapoor Fredoom Mazda v. Durga Prasad Chamaria***[11], the Hon'ble Supreme Court explained the requirements of an acknowledgement thus:

> *"The statement on which a plea of acknowledgment is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgment must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship."*

46. It is no doubt correct, as ***Shapoor Fredoom Mazda*** *(supra)* itself records, that an acknowledgement is not vitiated merely because it is accompanied by a refusal to pay, or is coupled with a claim to a set–off. But that indulgence presupposes an admitted jural relationship of debtor and creditor, to which the refusal or the set–off is superadded. The Respondent's reply dated 30.12.2021 is of an entirely different character. It asserts that the goods supplied were of inferior quality and poor grade, that the majority of the lots were rejected, and that the amounts already paid constituted full and final settlement. That is not a conditional acknowledgement co–existing with an

[11] AIR 1961 SC 1236

admitted debt. It is a denial, at the root, of the payment obligation itself. No intention to admit a subsisting liability can be inferred from a document whose whole burden is that nothing is owed.

VI. The effect of the pandemic exclusion and of pre–institution mediation

47. The Appellant lastly invokes the directions issued by the Hon'ble Supreme Court in In Re: Cognizance for Extension of Limitation, *Suo Motu* Writ Petition (C) No. 3 of 2020. By its order dated 10.01.2022, the Hon'ble Supreme Court directed that the period from 15.03.2020 until 28.02.2022 shall stand excluded in computing the period of limitation prescribed under any general or special law in respect of all judicial and quasi–judicial proceedings; that the balance period of limitation remaining, if any, shall become available with effect from 01.03.2022; and that where such balance period was less than ninety days, a period of ninety days from 01.03.2022 would be available to the litigant.

48. Applying that dispensation at its most generous, the Appellant's position is as follows. The period of three years under Article 15 would have expired on 05.05.2021, which date falls within the excluded window. The balance of limitation available to the Appellant as on 01.03.2022 was therefore nil, and it became entitled to the benefit of the outer limit of ninety days reckoned from 01.03.2022. The Appellant was thus required to institute its suit by the end of May 2022. The suit was instituted on 13.10.2023, nearly seventeen months

thereafter, and more than five years after the accrual of the last cause of action.

49. Nor does the pre–institution mediation under Section 12A of the Commercial Courts Act carry the Appellant any further. The proviso to Section 12A(3) directs that the period during which the parties remained occupied with the pre–institution mediation shall not be computed for the purpose of limitation under the Limitation Act. Here, mediation was initiated on 21.12.2021 and culminated in a Non–Starter Report dated 14.02.2022. That entire period lies within the window already excluded by the orders of the Hon'ble Supreme Court, and no further exclusion can be claimed in respect of it. Time cannot be excluded twice over.

50. We may observe, in passing, that the Appellant's recourse to the pandemic orders sits uneasily with its own case on the merits of limitation. If, as the Appellant contends, its cause of action arose only on 30.12.2021, it needed no exclusion at all. That the Appellant should invoke the exclusion is itself an implicit recognition that its claim had matured, and its limitation had commenced, well before the pandemic.

VII. The grievance regarding the opportunity to file a reply

51. There remains the Appellant's procedural grievance that the learned Trial Court decided the application under Order VII Rule 11 of the CPC on 19.04.2024 without granting it an opportunity to file a reply. We are unable to accept that the Impugned Judgment is vitiated on that account.

52. An application under Order VII Rule 11(d) of the CPC is decided upon a demurrer. As held in ***Saleem Bhai*** *(supra)*, the only relevant material is the averments in the plaint and the documents filed with it. A reply to such an application could not have introduced new facts, nor could it have altered the dates disclosed by the Appellant's own pleading. Significantly, the Appellant has not indicated, either before the learned Trial Court or before us, what material it would have placed on record in such a reply which was capable of displacing the chronology set out in the plaint. The Appellant has, moreover, been heard at length before us upon every aspect of the question of limitation.

53. Procedural irregularity unaccompanied by prejudice does not vitiate a decision. A remand in these circumstances would be an empty formality, prolonging litigation which the law of limitation is designed to bring to an end. We accordingly decline to interfere on this ground.

CONCLUSION

54. To summarise our conclusions:

i. The suit is governed by Article 15 of the Schedule to the Limitation Act, which fixes the commencement of limitation at the expiry of the stipulated period of credit. The starting point being fixed by the contract itself, no question of fact arose which required the matter to be sent to trial.

ii. The non–payment of contractual dues gives rise to recurring, and not continuing, causes of action. The last such cause of action accrued, at the latest, on 05.05.2018, and the period of three years expired on 05.05.2021.

iii. Neither the legal notice dated 18.12.2021 nor the reply dated 30.12.2021 furnishes a fresh point of commencement. A unilateral notice cannot set the clock of limitation running afresh.

iv. The reply dated 30.12.2021 is not an acknowledgement of liability under Section 18 of the Limitation Act, both because it postdates the expiry of the prescribed period and because it denies the debt at its root.

v. Upon the fullest application of the orders of the Hon'ble Supreme Court excluding the pandemic period, together with the exclusion available in respect of pre–institution mediation, the suit ought to have been instituted by the end of May 2022. It was instituted on 13.10.2023.

vi. The learned Trial Court committed no error in deciding the application under Order VII Rule 11 of the CPC upon the averments in the plaint, and no prejudice has been demonstrated to have resulted from the absence of a written reply.

55. Considering the above, we find that the learned Trial Court has not erred in rejecting the plaint on the ground of limitation. The incorrect computation of the period of limitation, coupled with the Appellant's failure to institute the suit within the outer limit fixed by

the orders of the Hon'ble Supreme Court, necessitates the dismissal of this appeal.

56. Consequently, the appeal is dismissed and the Impugned Judgment and decree dated 19.04.2024 is upheld. Pending applications, if any, stand disposed of.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

JULY 16, 2026
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