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

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Judgment reserved on: 02.09.2025***Judgment pronounced on: 17.09.2025***+ **FAO (COMM) 14/2023****LATE SH PRAMOD KUMAR JAIN PROPRIETOR OF MS
JAIN ENTERPRISES THROUGH HIS LEGAL HEIRS ORS
& ORS.Appellants****Through: Dr. Amit George, Mr. Rajeev
Kumar, Mr. Kartikay Puneesh,
Mr. Adhishwar Suri,
Mr. Dushyant Kishan Kaul,
Ms. Rupam Jha, Ms. Ibansara
and Ms. Medhavi Bhatia,
Advocates.**

versus

MUNICIPAL CORPORATION OF DELHI & ANR.**.....Respondents****Through: Mr. Siddhant Nath (Standing
Counsel), Mr. Bhavishya
Makhija and Mr. Amaan Khan,
Advocates.****CORAM:****HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR****J U D G E M E N T****HARISH VAIDYANATHAN SHANKAR, J.**

1. The present Appeal, under Section 37(1)(c) of the **Arbitration and Conciliation Act, 1996¹**, has been filed to assail the **Judgement**

¹ A&C Act



dated **15.10.2022**² passed in Arbitration No. 84197/2015 titled “*Late Sh. Pramod Kumar Jain & Ors. (through legal heirs) v. North Delhi Municipal Corporation & Anr.*” by the learned **Additional District Judge–8, Tis Hazari Courts (Central), Delhi**³.

2. The **Arbitral Award dated 30.03.2012**⁴, passed by the learned Sole Arbitrator, was challenged by the Appellants by filing a petition under Section 34 of the A&C Act. However, the learned Commercial Court, *vide* the Impugned Judgment, dismissed the said petition and upheld the Arbitral Award.

3. The dispute arises out of a contract between the Appellants and the Respondents concerning three work orders for road-raising and allied works, **two dated 17.11.2000 and one dated 02.01.2001**⁵. The General Terms and Conditions applicable to the work orders envisage resolution of the disputes by arbitration. The relevant Arbitration Clause in the General Terms and Conditions is reproduced as under:-

“Clause 25

Settlement of Disputes & Arbitration

Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in-before mentioned and as to the quality of workmanship or materials as used-on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:

- (i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge on any matter in connection with or

² Impugned Judgement

³ Commercial Court

⁴ Arbitral Award

⁵ Work Orders



arising out of the contract of carrying out of the work, to be unacceptable, he shall promptly within 15 days request the Superintending Engineer in writing, for written instruction or decision. Thereupon, the Superintending Engineer shall give his written instructions or decision within a period of one month from the receipt of the contractor's letter.

If the Superintending Engineer fails to give his instructions or decision in writing within the aforesaid period or if the contractor is dissatisfied with the instructions or decision of the Superintending Engineer, the contractor may, within 15 days of the receipt of Superintending Engineer's decision, appeal to the Chief Engineer who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chief Engineer shall give his decision within 30 days of receipt of contractor's appeal. If the contractor is dissatisfied with this decision, the contractor shall within a period of 30 days. from receipt of the decision, give notice to the Commissioner M.C.D. for appointment of arbitrator failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

- (ii) Except where the decision has become final, binding and conclusive in terms of Sub Para (i) above disputes or difference shall be referred for adjudication through arbitration a sole arbitrator appointed by the Commissioner M.C.D. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Chief Engineer of the appeal.

It is also a term of this contract that no person other than a person appointed by such Commissioner M.C.D. as aforesaid should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-Charge that the final bill is ready



for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the M.C.D. shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/- the arbitrator shall give reasons for the award.

It is also a term of the contract that if any fees are payable to the arbitrator these shall be paid equally by both the parties.

It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid.”

BRIEF FACTS:

4. At the outset, it is necessary to set out a brief factual history of this matter. The Appellants are the legal representatives of **Late Shri Pramod Kumar Jain**⁶, a government-approved Contractor and Builder, who was awarded the aforesaid Work Orders, by the Respondents. Admittedly, the contractually stipulated period for completion of the work was 4 months. Shri Pramod Kumar Jain unfortunately passed away on 08.05.2001. Thereafter, the Appellants, being his legal representatives, sought to execute the awarded works.

⁶ Contractor



5. Work in respect of only two of the three work orders dated 17.11.2000 and 02.01.2001 were executed till October 2001. The third work order remained unexecuted due to the non-availability of the site.
6. Post October 2001, there appears to have been no correspondence and it is the assertion of the Appellant that he met with the officials of the Respondent. There appears to be nothing on record to substantiate this claim.
7. After a period of almost a year and 7 months, the Appellant appears to have corresponded *vide* letter dated 20.06.2003, which reads as follows:-

“Sub: - Work done in WAZIRPUR, WORK ORDER NO. E.E XVI/TC/2000-2001/536, 426, 427. **Till not get PAYMENT.**”

Sir,

My Father was Running the firm JAIN ENTERPRISE approved as a class I Contractor. He take a tender in your division. Work order no above. My father expired on 8th May 2001 in the between of work. I son of Mr. Late Shri Pramod Kumar Jain, **completed this work.** At The time of work my site JE was Mr. Garg. After completed work Mr. Garg was transfer, This I go to new JE Mr. P.K. Jindle. He said to me that he don't know any thing. I go to office many time and assistant Mr. Jintender said me to go out meet with Gurmeet for your M.B. I come and meet with Gurmeet and he **found my name in M.B.** Today I meet with Mr. Garg and he told me that he hand over 24 MB to Mr. P.K. Jindal and **in that MB your Bill is there but P.K. Jindal did not summit this MB in the office.**

So kindly **see to this case as a very important and Solve my problem.**

Thanking you

Your faithfully,
SACHIN JAIN
S/d”

(emphasis Supplied)



8. By the letter dated 20.06.2003, the Appellants raised a formal grievance regarding non-receipt of payment for the work done.

9. Post this correspondence, there was a prolonged silence for almost four years, broken by a series of letters dated 16.05.2007, 12.07.2007, and 11.12.2007. This was followed by representations addressed to the Superintendent Engineer on 28.12.2007 and to the Chief Engineer on 14.01.2008.

10. The Appellants invoked the arbitration clause *vide* letter dated 18.02.2008 and thereafter, filed a petition under Section 11 of the A&C Act before this Court. By order dated 02.04.2009, a learned Single Judge appointed the learned Sole Arbitrator to adjudicate the disputes, *inter se* the parties.

11. The learned Sole Arbitrator, *vide* Arbitral Award dated 30.03.2012, rejected the monetary claims of the Appellants, holding them to be barred by limitation. Aggrieved, the Appellants filed a petition under Section 34 of the A&C Act before the learned Commercial Court, seeking to set aside the Arbitral Award. The learned Court, however, dismissed the petition *vide* the Impugned Judgment, upholding the learned Sole Arbitrator's reasoning.

12. The Appellants, being dissatisfied with the dismissal of their Section 34 petition, have preferred the present appeal under Section 37 of the A&C Act.

CONTENTIONS OF THE APPELLANTS:

13. Learned Counsel for the Appellants would contend that both the learned Sole Arbitrator and the learned Commercial Court erred in holding that the claims were barred by limitation.



14. It would be submitted that the Judgment in *Major (Retd.) Inder Singh Rekhi v. Delhi Development Authority*⁷ has been wrongly applied in the facts and circumstances of the present case.

15. It would also be submitted that limitation begins only when a dispute actually arises, that is, upon assertion and denial of a claim, and not merely on completion of the work and since no final bill was ever prepared or intimated and only entries were made in the Measurement Book, which cannot be treated as final bills, limitation had not commenced.

16. In support, reliance would further be placed on *Ram Ditta Mal v. Food Corporation of India*⁸ and *Oriental Building and Furnishing Co. Ltd. v. Union of India*⁹, where this Court held that limitation commences only on preparation or intimation of the final bill and that a dispute arises only when a claim is expressly refuted, and that these principles squarely apply to the present case.

17. Learned Counsel would submit that the letter dated 20.06.2003 was merely an enquiry about the Measurement Book and not a claim for payment, and that the first assertion of claim was made only on 16.05.2007, followed by a detailed representation on 11.12.2007 and further letters to the Superintendent Engineer on 28.12.2007 and to the Chief Engineer on 14.01.2008, and since arbitration was invoked thereafter on 18.02.2008, it was in strict compliance with the pre-reference procedure under Clause 25 of the General Terms and Conditions. Learned Counsel for the Appellant would also place reliance on the judgement of this Court in *Welspun Enterprises Ltd.*

⁷ (1988) 2 SCC 338

⁸ 1985 SCC OnLine Del 589

⁹ 1981 SCC OnLine Del 140



*v. NCC Ltd.*¹⁰ to contend that the limitation cannot commence until the contractual procedure had been completed.

18. It would further be urged that the Respondents themselves acknowledged their liability in their reply letter dated 30.07.2008 to the query of the Appellant under the **Right to Information**¹¹ Act, by admitting that sums of Rs. 2,84,214/- and Rs. 2,66,565/- were payable, and such acknowledgment extended limitation under Section 18 of the **Limitation Act, 1963**¹².

19. It would be submitted that moreover, the Appellants disputed the quantified amounts by their reply dated 24.07.2009, which further demonstrated that disputes were alive and resultantly not barred by limitation.

20. Learned Counsel would further argue that both the learned Sole Arbitrator and the learned Commercial Court misapplied *Major (Retd.) Inder Singh Rekhi (supra)* by treating silence after assertion as denial, whereas the law, as clarified in *State of Orissa v. Damodar Das*¹³, requires unequivocal denial or repudiation for limitation to commence, and since no such denial occurred and, on the contrary, there was acknowledgment of liability, the period of limitation could not have been said to commence. Learned Counsel would place reliance on *Sham Sunder v. MCD & Ors*¹⁴ to contend that the cause of action arose only upon invocation of Clause 25 and that limitation does not run where the final bill was not prepared.

¹⁰ 2022 SCC OnLine Del 3296

¹¹ RTI

¹² Limitation Act

¹³ (1996) 2 SCC 216

¹⁴ 133 (2006) DLT 540



21. Further reliance would be placed on *Avinash Sharma v. MCD*¹⁵, where this Court held that under Clause 25, a communication that the final bill is ready for payment is a *sine qua non* for limitation to begin or for waiver to apply, and since in the present case no such communication was ever issued and even later, the department admitted that bills were pending with the accounts section, limitation had not commenced; and therefore, the claims cannot be treated as time-barred.

22. It would also be submitted that the delay in execution was entirely attributable to the Respondents, since sites were not made available and materials were delayed, and one site was never handed over at all; yet, despite accepting several claims on merits, the learned Sole Arbitrator denied relief solely on the ground of limitation, which, it would be urged, was manifestly unjust.

23. Learned Counsel would further urge that Section 28(3) of the A&C Act required the learned Sole Arbitrator to decide disputes in accordance with the terms of the contract and trade usage, and Clause 25 made it incumbent upon Respondent No. 2 to notify preparation of the final bill, which was admittedly not done, and this fact was confirmed by the Respondents' own witness in cross-examination; therefore, the finding of limitation was erroneous.

24. Lastly, it would be contended that the learned Commercial Court contradicted itself, for while it treated the letters of 2003, 2007, and 2008 as assertions of claim for limitation purposes, it simultaneously held, when dealing with interest, that there was no record of any approach by the Appellants for verification of the

¹⁵ 2007 SCC OnLine Del 797



Measurement Book, and such inconsistency undermines the conclusion on limitation.

CONTENTIONS OF THE RESPONDENTS:

25. *Per contra*, learned Counsel for the Respondents would support the concurrent findings of the learned Sole Arbitrator and the learned Commercial Court and would submit that the claims were hopelessly barred by limitation, as running bills had been prepared in November 2001 for two work orders sanctioning sums of Rs. 2,84,214/- and Rs. 2,66,565/-, but arbitration was invoked only in February 2008, more than six years later, well beyond the three-year period under Article 137 of the Limitation Act.

26. It would further be argued that the Appellants' letter dated 20.06.2003 constituted assertion of a claim, and silence thereafter amounted to denial; therefore, the limitation commenced in 2003 and expired long before arbitration was invoked in 2008.

27. Learned Counsel for the Respondents would deny the allegation of non-availability of sites and submit that site changes were reflected in the work orders themselves, and that the plea of non-availability was a fabricated excuse to justify non-performance; since the work orders were required to be completed within four months and the Appellants failed to adhere to contractual timelines, their attempt to reopen concurrent findings of fact amounts to an abuse of process of law and an effort to revive stale claims.

28. It would finally be urged that the scope of interference under Section 37 of the A&C Act is very limited, for unless an award is contrary to the fundamental policy of Indian law, in conflict with basic notions of justice and morality, or suffers from patent illegality on the



face of the record, the appellate court cannot reappreciate evidence or disturb concurrent findings; reliance was placed on *MMTC Ltd. v. Vedanta Ltd.*¹⁶ to buttress this submission.

ANALYSIS:

29. Having heard the submissions advanced by learned Counsel for both parties, and upon a careful consideration of the pleadings, documents, and the impugned findings, this Court now proceeds to address the questions arising for determination.

30. The foremost issue that arises is whether the claims raised by the Appellants before the learned Sole Arbitrator were within the statutory period of limitation, and if not, whether the concurrent findings of the learned Sole Arbitrator and the learned Commercial Court, which held the claims to be barred by limitation, warrant interference by this Court in its appellate jurisdiction.

31. It is not in dispute that the claims raised relate to work carried out under two work orders till October 2001. Admittedly the Appellants addressed a communication dated 20.06.2003, though the significance of the contents therein, according to the Appellants, should only be read as an attempt on the part of the Appellants to try and reconcile the accounts by attempting to get the correct measurements in the Measurement Book and no further significance should be ascribed to the same.

32. Both the Learned Sole Arbitrator, as well as the Learned Commercial Court, have examined this letter and appreciated the same to hold that the said communication was the point at which limitation would commence since the same clearly raised the issue of non-

¹⁶ (2019) 4 SCC 163



payment of the dues for the work that was done and would thereby constitute the “claim”. On this basis, they go on to hold that, the Respondents’ subsequent inaction would, in law, constitute “denial”, giving birth thereby to the “Dispute”.

33. This Court finds merit in the reasoning adopted by both the learned Sole Arbitrator and the learned Commercial Court in treating the Appellants’ communication dated 20.06.2003 as the first written demand. The contents of the said letter have been extracted earlier and are not being reiterated herein for the sake of brevity. A reading of the letter dated 20.06.2003 makes it apparent that:-

- (i). The letter of the Appellant makes a categorical assertion that payment had not been received.
- (ii). The pending payment was in respect of three work orders that had been completed.
- (iii). The Appellant’s bill was in the Measurement Book; and
- (iv). The same had not been processed by the office.

34. The concluding request to the authorities to “*see to this case as very important and solve my problem*” can only be understood as a demand for release of pending dues, which, quite evidently, was the subject matter of the communication. As we view it, the problem as existing and which formed the basis for the communication was clearly the non-receipt of payment despite the completion of work.

35. It is settled law that limitation commences from the point when a claim is first asserted in writing, capable of being denied by the opposite party. It is not necessary that the same needs to be expressly set out in unequivocal terms by making an assertion in a particular form or by using words of exactitude to that effect. What needs to be



seen is the substantive message that was being sought to be conveyed by the concerned communication, in this case, the letter dated 20.06.2003.

36. The Appellant, given his limited vocabulary, has expressed his heartfelt difficulty in respect of the payments. The attempt on the part of the Appellant to portray that the said communication was not in respect of a demand for payment, but was one relating to clarification/request for reconciliation of measurements, is clearly incorrect and merits rejection. Accordingly, the limitation must be held to have commenced on 20.06.2003, and not on 16.05.2007 as sought to be urged by the Appellants.

37. At this juncture, it is apposite to reproduce the relevant paragraphs of the findings of the learned Commercial Court in the Impugned Judgement, which read as follows:-

“ISSUE No.1:

**Whether the claims of the claimant are within the limitations?
OPC.**

19. The learned Arbitrator held that the various letters written by the claimants for the payment collectively marked as Ex.CW1/9 would show that the first letter was dated 20.06.2003. The assertion of the claim was made by the claimants for the first time on 20.06.2003 vide aforesaid letter. Ld. Arbitrator further held that the limitation would therefore, start running from the date of the repudiation. of the claim by the respondents and the non-payment after the assertion of the claim is itself a denial and gave rise to cause of action and the claimant invoking the arbitration for the first time vide letter dated 18.02.2008 Ex.CW1/14 i.e. after four years and eight months from the date of assertion of the claim was clearly beyond time.

20. The learned counsel for the petitioner challenged the findings of the learned Arbitrator on the ground that the petitioners asked the payment from the respondent only on 16.05.2007 and thereafter, the MCD acknowledging the payment being due gives rise to the cause of action and thus the arbitration proceedings were in the limit of three years.



21. The letter dated 20.06.2003 would show that the petitioner had mentioned the subject under the heading "work done in Wazirpur, work order No.-536, 426, 427. **Till not get payment.**" Therefore, this letter clearly shows that the petitioner has sought the payments for the work done by the petitioner. The letter dated 16.05.2007 shows the same heading with the words "payments of this work not received till date". The letter dated 11.12.2007 also shows that the petitioner demanded various payments lying under the aforesaid work orders from the respondent.

22. Therefore, a careful perusal of the letters dated 20.06.2003, 16.05.2007 and 11.12.2007 would show that petitioner mentioned that non-payment of the work done by the respondent in all the aforesaid letters. In all the letters, petitioner claimed the payment for work done by it from the respondent. They would show that there is no remarkable difference between the letter dated 20.06.2003 and the other letters. The letter dated 20.06.2003 clearly shows that the petitioner demanded payment from the respondent. However, the respondent did not reply to the aforesaid letter nor any payment was made to the petitioner. It can be said that the respondent denied the claim of the petitioner after receiving of the said letter. In my opinion the cause of action arose from the said date and not later on. I am in the agreement with the findings of the Ld. Arbitrator that non- payment after the assertion of the claim by the petitioner is itself a denial and gives rise to cause of action. The limitation started to run from 20.06.2003. The petitioner invoked the arbitration vide letter dated 18.02.2008 Ex.CW1/14. In view of the section 43 of Arbitration & Conciliation Act, and Article 137 of the Limitation Act, which provide the limitation of three years to start the arbitration from the date of the cause of action. Thus, the arbitration proceedings were clearly barred by law of limitation.

23. The Ld. Counsel for the petitioner further argued that the respondent was not replying to the letters of the petitioner which compelled the petitioner to resort to the remedy under RTI Act. It is only on response to his applications whereby the petitioner came to know that certain unverified bills were pending and was not paid as no legal heirs approached the respondent for the payment. Hence, the limitation was available with the petitioner to commence the arbitration. Ld. Counsel further argued that as per the agreement between the parties, the respondent after the preparation of the final bill was supposed to inform the petitioner and after such intimation only the petitioner could invoke the arbitration clause under the agreement.

24. In my opinion, the petitioner is approbating and reprobating at the same time. It is an admitted fact on the record that no final bill was prepared by the respondent and no intimation was given to the petitioner about the same. The relevant clause of the agreement



provided that the petitioner could have invoked the arbitration within 120 days from the intimation from the respondent. If the petitioner is relying upon the relevant clause in the agreement then the claims were essentially premature as no final bills were ever prepared by the respondent. Hence, in my considered opinion the petitioner cannot rely upon the arbitration clause thereto. Hence, once the petitioner has filed the claims then the cause of action has to be ascertained. I have found myself in agreement with the Ld. Arbitrator that the cause of action arose on 20.6.2003 as the said representation has not been replied by the respondent. The petitioner has raised a claim by such letter and by not responding to the same the respondent can be said to have denied the same. In my considered opinion, the cause of action arose for the petitioner on 20.06.2003 when it wrote to respondent for the payment of dues for the work done by it. Therefore, I do not find any infirmity in the findings of the Ld. Arbitrator on the point of limitation. I hold that the claim of the petitioner was barred by limitation.”

38. This Court is of the considered view that the reasoning adopted by the learned Sole Arbitrator, and affirmed by the learned Commercial Court, is firmly grounded in the settled principle embodied in Section 9 of the Limitation Act, which mandates that once limitation begins to run, it cannot thereafter be interrupted or suspended by subsequent correspondence, reminders, or even by the inaction of the opposite party; therefore, once the cause of action had arisen, no later exchanges could revive or extend the period prescribed by law.

39. Both the learned Sole Arbitrator and the learned Commercial Court rightly noted that the Appellants had first raised their demand through the communication dated 20.06.2003, wherein under the heading “*work done in Wazirpur, work order No. 536, 426, 427 – Till not get payment*”, they clearly sought release of dues, and such demand was nothing other than an assertion of claim; the Respondents’ failure to either reply or make payment thereafter amounted, in law, to a denial, thereby crystallising the cause of action.



40. As the learned Commercial Court correctly observed, there was no material distinction between the letter of 2003 and the subsequent letters of 2007, for all of them reiterated the same grievance of non-payment, and hence, limitation had already commenced in June 2003, obliging the Appellants to pursue remedies within three years thereof. Their attempt to contend that later reminders or departmental silence postponed or extended limitation is contrary not only to Section 9 of the Limitation Act but also to the consistent pronouncements of the Hon'ble Supreme Court, for to accept such a plea would render the law of limitation meaningless and defeat its very object of ensuring certainty and finality in legal claims.

41. In *Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd.*¹⁷, the Hon'ble Supreme Court held that once a claim has been asserted and remains unanswered, the silence of the other party is deemed to constitute a denial, which gives rise to a cause of action, and that a claimant cannot indefinitely postpone the commencement of limitation by issuing repeated reminders or further representations. The relevant paragraphs of *Geo Miller & Co. (P) Ltd. (supra)* are extracted hereinbelow:-

“29. Moreover, in a commercial dispute, while mere failure to pay may not give rise to a cause of action, once the applicant has asserted their claim and the respondent fails to respond to such claim, such failure will be treated as a denial of the applicant's claim giving rise to a dispute, and therefore the cause of action for reference to arbitration. It does not lie to the applicant to plead that it waited for an unreasonably long period to refer the dispute to arbitration merely on account of the respondent's failure to settle their claim and because they were writing representations and reminders to the respondent in the meanwhile.”

¹⁷ (2020) 14 SCC 643



32. Hence, in the absence of specific pleadings and evidence placed on record by the appellant with respect to the parties' negotiation history, this Court cannot accept the appellant's contention that it was only after the respondent's letter dated 18-12-1999 that the appellant could have contemplated arbitration in relation to the outstanding amounts. Even if we were to include the time spent proceeding before the Settlement Committee, the limitation period, at the latest, would have started running from 4-10-1997 which is when the appellant made a representation to the Settlement Committee and the Committee failed to respond to the same.

33. It is further relevant to note that even the respondent's letter dated 18-12-1999 does not completely repudiate the appellant's claims but requests the submission of certain documents for verification. Hence it was not so radical a departure from the prevailing situation at that time so as to give a finding that the appellant could not have contemplated arbitration prior to the aforesaid letter.

34. We also find it pertinent to add that the appellant's own default in sleeping over his right for 14 years will not constitute a case of "undue hardship" justifying extension of time under Section 43(3) of the 1996 Act or show "sufficient cause" for condonation of delay under Section 5 of the Limitation Act. The appellant should have approached the court for appointment of an arbitrator under Section 8(2) of the 1940 Act within the appropriate limitation period. We agree with the High Court's observation that the entire dispute seems concocted so as to pursue a monetary claim against the respondents, taking advantage of the provisions of the 1996 Act.

35. Hence the appeals are dismissed and the impugned judgment [*Geo Miller & Co. v. Rajasthan Vidyut Utpadan Nigam Ltd.*, 2007 SCC OnLine Raj 97: (2008) 1 RLW 429] and order is confirmed, in the above terms."

(emphasis supplied)

42. The principle laid down squarely applies to the present case. The Appellants, having asserted their claim in June 2003, could not indefinitely postpone limitation by waiting for the Respondents to respond or by issuing reminders.

43. The Appellants' reliance on *Major (Retd.) Inder Singh Rekhi (supra)*, and *Damodar Das (supra)* is misconceived. Both decisions laid down that the limitation commences when a claim is first asserted



and is either denied or left unanswered. On the facts here, the Appellants themselves asserted their claim through the letter dated 20.06.2003, wherein they recorded that the works had been completed, their bill was entered in the Measurement Book, and yet payment had not been processed. The request to “solve the problem” was nothing but a demand for the release of pending dues. The Respondents’ silence thereafter operated as constructive denial in law. Thus, unlike in *Major (Retd.) Inder Singh Rekhi (supra)*, where the contractor had not yet raised any demand, here the demand was raised in June 2003.

44. Once this demand was made, and no reply was forthcoming, the inexorable and consistent march of limitation commenced and the Appellants were required to pursue remedies within three years thereof and could not postpone limitation merely by contending that, the communication dated 20.06.2003 was not a demand and that the denial was not “express”.

45. Similarly, the reliance placed on *Ram Ditta Mal (supra)*, *Oriental Building & Furnishing (supra)*, and *Sham Sunder (supra)*, and *Avinash Sharma (supra)* is also misplaced. Each of these authorities was decided in the context of distinct factual situations, which are materially different from the present case, and therefore, those precedents are distinguishable on several counts.

46. In the present matter, on 20.06.2003, the Appellant raised a grievance by writing a letter expressly, in respect of non-payment of the dues, despite completion of work, stating that their bill had been recorded in the Measurement Book, complaining about the department’s failure to process it, and seeking resolution of the payment issue. The Appellants’ contention that since there was no



final bill that was in existence, a dispute could not have been stated to have commenced is contrary to the Judgments mentioned *supra* and reliance on authorities premised upon the absence of a final bill is clearly incorrect. In fact, the non-finalisation of the final bill and non-payment themselves constitute a dispute.

47. Clause 25 does not stipulate that disputes can be raised only after the finalisation of the final bill, nor does it prohibit the raising of grievances prior to such finalisation. On the contrary, Clause 25 is a broad-based, umbrella clause encompassing all categories of disputes arising under the contract. Accordingly, disputes may be raised at any point of time, so long as they fall within the scope of Clause 25.

48. The reliance on *Welspun (supra)* is also inapposite. That case involved an ongoing pre-reference procedure under the contract, which meant limitation could not start until such procedure was exhausted. In the present matter, the claim was raised by the correspondence dated 20.6.2003, denied by the continued silence and thereby gave rise to a dispute in 2003 itself. Even assuming that the date of 20.6.2003 is not to be construed as the exact date of commencement of the dispute, and we account for the three months period as provided under Clause 25, admittedly the Arbitration proceedings were invoked by the letter dated 18.2.2008 and would clearly fall outside the three-year embargo of limitation. The Appellant did not enforce his rights till 2007-08. The Appellants' repeated reminders since 2007 only underscore their awareness that the claim had already been raised, and by settled law, such reminders cannot extend or revive limitation. Accordingly, all the judgments cited by the Appellants are factually distinguishable and would not aid their case.



49. At this juncture, this Court also notices the Judgment of the Hon'ble Supreme Court in *B & T AG v. Union of India*¹⁸, the relevant paragraphs of which read as follows:-

“65. Cause of action becomes important for the purposes of calculating the limitation period for bringing an action. It is imperative that a party realises when a cause of action arises. If a party simply delays sending a notice seeking reference under the 1996 Act because they are unclear of when the cause of action arose, the claim can become time-barred even before the party realises the same.

66. *Russell on Arbitration* by Anthony Walton (19th Edn.) at pp. 4-5 states that the period of limitation for commencing an arbitration runs from the date on which the “cause of arbitration” accrued, that is to say, from the date when the claimant first acquired either a right of action or a right to require that an arbitration take place upon the dispute concerned. The period of limitation for the commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued:

“Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date on which the cause of action accrued, so in the case of arbitrations, the claim is not to be put forward after the expiration of the specified number of years from the date when the claim accrued.”

Even if the arbitration clause contains a provision that no cause of action shall accrue in respect of any matter agreed to be referred to until an award is made, time still runs from the normal date when the cause of action would have accrued if there had been no arbitration clause.

67. In *Law of Arbitration* by Justice Bachawat at p. 549, commenting on Section 37, it is stated that subject to the 1963 Act, every arbitration must be commenced within the prescribed period. Just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date when the cause of action accrues, so in the case of arbitrations the claim is not to be put forward after the expiration of a specified number of years from the date when the claim accrues. For the purpose of Section 37(1) “action” and “cause of arbitration” should be construed as arbitration and cause of arbitration. The cause of arbitration arises when the claimant becomes entitled to raise the question, that is, when the claimant acquires the right to require arbitration. An application under Section 11 of the 1996 Act is

¹⁸ (2024) 5 SCC 358



governed by Article 137 of the Schedule to the 1963 Act and must be made within 3 years from the date when the right to apply first accrues. There is no right to apply until there is a clear and unequivocal denial of that right by the respondent. It must, therefore, be clear that the claim for arbitration must be raised as soon as the cause for arbitration arises as in the case of cause of action arisen in a civil action.”

(emphasis supplied)

50. The broader rationale is explained in *N. Balakrishnan v. M. Krishnamurthy*¹⁹, where the Hon’ble Supreme Court held that rules of limitation are not meant to destroy rights but to ensure that parties do not resort to dilatory tactics and that every legal remedy is pursued within a legislatively fixed period. The law of limitation, being founded on public policy, seeks to prevent uncertainty and anarchy in legal relations. The relevant passage of the said judgement is reproduced herein below:-

“11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finislitium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

(emphasis supplied)

¹⁹ (1998) 7 SCC 123



51. Applying the aforesaid principles to the present case, this Court finds that the Appellants have failed to establish any *bona fide* justification for their inaction in waiting nearly five years after June 2003 to invoke arbitration.

52. It is evident that the Appellants, having completed the work orders in October 2001, made their unequivocal claim by way of their letter dated 20.06.2003, which, in law, constituted a demand for payment; the Respondents' failure to act upon or respond to the said demand must, as per settled law, be construed as denial, thereby giving rise to a dispute, yet arbitration was invoked only on 18.02.2008, well beyond the three-year limitation period prescribed under Article 137 of the Limitation Act.

53. The Appellants' reliance on subsequent reminders or on RTI correspondence of 2008 cannot revive or extend a cause of action, that had already become barred by limitation, for once the invocation of arbitration itself was beyond limitation, the learned Sole Arbitrator was justified in concluding that no relief could be granted, and the learned Commercial Court rightly endorsed and upheld such conclusion.

54. The question of whether or not, the said correspondence dated 20.06.2003 would constitute the tipping point setting in motion the ball of limitation is, in any event, a matter which is purely based on an appreciation of the evidence, which is, the contents of the letter itself. It is well settled that the contours in which this Court can exercise its jurisdiction under Section 37 of the A&C Act are extremely limited and for that reason too, it is not considered appropriate for this Court to interfere with the concurrent decisions rendered prior to the present *lis*.



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CONCLUSION:

55. This Court finds no infirmity, perversity or error of law in the Impugned Judgment dated 15.10.2022 that would warrant interference.

56. Accordingly, the appeal is devoid of merit and is dismissed.

57. The Present appeal, along with pending application(s), if any, is disposed of in the aforesaid terms.

58. No order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
SEPTEMBER 17, 2025/sm/RN