

A M/S. DISHA CONSTRUCTIONS AND ORS.

v.

STATE OF GOA AND ANR.
(Civil Appeal No. 10763 of 2011)

B DECEMBER 9, 2011

**[ASOK KUMAR GANGULY AND JAGDISH SINGH
KHEHAR, JJ.]**

C *Limitation Act, 1963: s.15(2) – Period of limitation under – Computation of – Notice u/s.80, CPC given before expiry of limitation – Held: In computing the period of limitation, the period of notice would be mandatorily excluded since the notice was given within the limitation period – Code of Civil Procedure, 1908 – s.80.*

D **The appellants-plaintiffs entered into an agreement with respondent no.1 for construction of a school. On competition of work on 30th September, 2006, defendant no.2 issued a certificate of completion dated 3rd October, 2006. According to the appellant, the entire payment due to the appellant was alleged to have not been made and the balance amount remained unpaid from 30th September, 2006. A recovery suit was filed on 24th October, 2009. The trial court dismissed the suit holding that the plaint could not be registered as it was barred by limitation as also in view of the fact that there was no compliance with Section 80, CPC. On appeal, the High Court held that the suit was barred by limitation but held that notice was duly served on respondent no.1 on 27th February, 2009 and two months from date of receipt expired on 27th April, 2009. It held that the period of limitation expired on 30th September, 2009, and, therefore, the suit which was filed on 24th October, 2009 was barred by limitation. The instant appeal was filed challenging the order of the High Court.**

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Allowing the appeal, the Court

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HELD: 1.1. In the facts and circumstances of this case, the notice under Section 80 was admittedly given on 19th February, 2009 which was within the period of limitation and the same was received on 27th February, 2009 and two months from the date of receipt expired on 27th April, 2009. The High Court has held, erroneously, that since the suit was filed on 24th October, 2009, which was beyond 30th September, 2009, the plaintiffs/appellants were not entitled to the benefit of exclusion statutorily provided under Section 15(2) of the Limitation Act, 1963 and the suit is barred by limitation. The said interpretation of the High Court was erroneous in view of the fact that if the notice under Section 80 had been given, say, on 29th September, 2009, in that case the appellants according to High Court's interpretation, would have been given the benefit of exclusion of time after 30th September, 2009. Just because the appellants gave the notice before the expiry of the period of limitation, the benefit which is given under Section 15(2) of the Act cannot be taken away. The said period of two months must be computed and benefit of exclusion of the said two months must be given to the appellants even if they had given the said notice within the period of limitation. If the appellants had given the notice after the expiry of period of limitation, say, after 30th September, 2009, then possibly they could not have been given the benefit. [Paras 12-14] [502-D-H; 503-A]

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Union of India & Ors. v. West Coast Paper Mills Ltd. & Anr. (2004)3 SCC 458: 2004 (2) SCR 642 – relied on.

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1.2. Under Section 2(j) of the Act, the "period of limitation" means the period prescribed for any suit, or other proceeding by the Schedule and the "prescribed period" means the period of limitation computed in accordance with the provisions of the Act. Following the

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A said principles, the erroneous interpretation which has been given by the High Court will have the effect of denying the appellants the benefit of Section 15(2) which is not permissible in the eye of law. Proper interpretation of Section 15(2) of the Act would be that in computing the period of limitation, the period of notice, provided notice is given within the limitation period, would be mandatorily excluded. That would mean a suit, for which period of limitation is three years, would be within limitation even if it is filed within two months after three years, provided notice has been given within the limitation period. In such a case, the period of notice cannot be counted concurrently with the period of limitation. If it is done, then period of notice is not excluded. Any other interpretation would be contrary to the express mandate of Section 15(2) of the Act. [Paras 15, 16] [503-D-H; 504-A]

3. The order of the High Court is set aside and the suit is held to be within the period of limitation. Since, on the question of notice, the finding of the trial Court was overruled by the High Court and the High Court held that the notice was served on defendant No. 1 and against such finding there was no cross objection, the notice in this case was served. [Para 17] [504-B]

Case Law Reference:

F 2004 (2) SCR 642 relied on Para 14

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G From the Judgment and Order dated 17.09.2010 of the High Court of Bombay at Panaji in FA No. 13 of 2010.

Arun R. Padnekar and V.N. Raghupathy for the Appellants.

H Siddharth Bhatnagar, Pawan Kr. Bansal and T. Mahipal for the Respondents.

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The Judgment of the Court was delivered by A

GANGULY, J. 1. Heard learned counsel for the parties.

2. Leave granted.

3. A suit was filed by the appellants praying for payment B
of money which according to the appellants was due to them
for undertaking the construction work on behalf of the
defendants. The suit was dismissed by a judgment and order
dated 12th November, 2009 by the District Judge, North Goa,
Panaji, inter alia, holding that the plaint cannot be registered as C
it was barred by limitation as also in view of the fact that there
was no compliance with Section 80 of the Civil Procedure Code
insofar as notice on defendant No. 2 is concerned.

4. On an appeal before the High Court, the High Court was D
pleased to hold that the suit is barred by limitation but on the
question of notice, the High Court came to a different finding
and came to the conclusion that notice was served. The material
facts of the case are as follows:

5. The appellants-plaintiffs entered into an agreement with E
respondent No. 1 for construction of a school auditorium for Fr.
Agnelo High School under M.P. L.A.D. scheme. On completion
of the work on 30th September, 2006 defendant No. 2 issued
a certificate of completion dated 3rd October, 2006. Out of the
total amount of Rs.24,26,000/- the appellants plaintiffs were F
paid only Rs.18,12,000/- and therefore, there was a balance
amount to be paid. The appellants plaintiffs prayed for the
payment of the balance amount but it was denied and the same
remained unpaid from 30th September, 2006 and a suit was
filed on 24th October, 2009 for recovery of a sum of G
Rs.9,15,550/- with interest at 18%.

6. The first question, which was examined by the High
Court, was whether notice under Section 80, CPC was required
to be given to defendant No. 2? The High Court came to the H

A conclusion that such notice was necessary. The High Court observed as follows:

B “Since the suit was filed by the plaintiffs against defendant No. 2 in his official capacity, in my opinion, the defendant No. 2 was certainly required to be given a notice, as required under Section 80 of the Civil Procedure Code and in absence of the same, the suit filed against him had to be necessarily considered as bad in law for want of notice. However, that cannot be said to be fatal to the entire case of the plaintiff because the plaintiff’s suit was essentially for recovery of money and as could be seen from the prayer clause (a) it was filed against defendant No.1. A similar view was held by the Apex Court in *Ram Kumar Vs. State of Rajasthan*, AIR 2008 (10) SCC 73.”

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D 7. It is a common ground that High Court correctly noted the relevant facts, which are as under:

E “...according to the plaintiff, the cause of action had arisen, as pleaded by the plaintiff, on 30/09/2006 and being so, the suit against defendant No. 1 had to be filed before 30/9/2009 that is to say before the expiry of three years, that being the period prescribed, for filing a suit for recovery of money. There is no dispute that the suit was in fact filed on 24/10/2009. There is also no dispute that the plaintiff had sent notice to defendant No. 1 on 19/02/2009 which was received by defendant No. 1 on 27/02/2009. If two months are computed from 27/02/2009, the plaintiffs were required to file the suit on 27/04/2009.”

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G 8. Upon setting out the aforesaid fact, the High Court has noted that the notice under Section 80 was served on Defendant No. 1 on 27th February, 2009 and the period of two months had expired on 27th April, 2009. According to the High Court, the period of limitation expired on 30th September, 2009 and therefore, the suit which was filed on 24th October, 2009, H was barred by limitation.

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9. Assailing the aforesaid finding, learned counsel for the appellants has drawn our notice to the provision of Section 15(2) of the Limitation Act which is contained under Part III of the Limitation Act, 1963 (hereinafter referred to as 'the Act'). Part III is under the heading "Computation of period of limitation" and Section 15 deals with "Exclusion of time in certain other cases". Sections 12, 13 and 14 also deal with exclusion of time in different situations such as "Exclusion of time in legal proceedings", "Exclusion of time in cases where leave to sue or appeal as a pauper is applied for" and "Exclusion of time of proceeding bona fide in Court without jurisdiction" respectively.

10. Section 15(2) which is relevant for our consideration deals with exclusion of time which is required to be given for a notice and there is also an explanation which is appended to Section 15. The said Section 15(2) reads as follows:

15. Exclusion of time in certain other cases.—

(1) ...

(2) In computign the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation.—In excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted.

11. It may be noted that the present Section 15(2) is a little

A more comprehensive than the previous Section 15(2) of the Limitation Act, 1908 which reads as follows:

15. Exclusion of time during which proceedings are suspended.-

B (1) ...

(2) In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.

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12. We are of the view that in the facts and circumstances of this case, the notice under Section 80 was admittedly given on 19th February, 2009 which is within the period of limitation and the same was received on 27th February, 2009 and two months from the date of receipt expired on 27th April, 2009.

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13. The High Court has held, in our view erroneously, that since the suit was filed on 24th October, 2009, which is beyond 30th September, 2009, the plaintiffs appellants are not entitled to the benefit of exclusion statutorily provided under Section 15(2) of the Act and the suit is barred by limitation.

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14. The said interpretation of the High Court is erroneous in view of the fact that if the notice under Section 80 had been given, say, on 29th September, 2009, in that case the appellants according to High Court's interpretation, would have been given the benefit of exclusion of time after 30th September, 2009. Just because the appellants gave the notice before the expiry of the period of limitation, the benefit which is given under Section 15(2) of the Act cannot be taken away.

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We are of the view that the said period of two months must be computed and benefit of exclusion of the said two months must be given to the appellants even if they had given the said notice within the period of limitation. If the appellants had given the notice after the expiry of period of limitation, say, after 30th

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September, 2009, then possibly they could not have been given the benefit. In this connection, we may refer to the decision of this Court in *Union of India & Ors. Vs. West Coast Paper Mills Ltd. & Anr.* (2004) 3 SCC 458, where in a somewhat similar situation, this Court has held as follows:

“Any circumstance, legal or factual, which inhibits entertainment or consideration by the Court of the dispute on the merits comes within the scope of the Section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has a right”.

15. We are in respectful agreement with the aforesaid principles laid down by this Court though in the context of considering Section 14 of the Limitation Act. We are of the view that the same principles should be applied while considering the provision of Section 15(2) of the Limitation Act. The statutory provision in this connection is very clear and in the definition clause also it has been made clear in Section 2(j) of the Act. Under Section 2(j) of the Act, the “period of limitation” means the period prescribed for any suit, or other proceeding by the Schedule and the “prescribed period” means the period of limitation computed in accordance with the provisions of the Act. If we follow the aforesaid principles, as we must, we find that the erroneous interpretation which has been given by the High Court will have the effect of denying the appellants the benefit of Section 15(2) which is not permissible in the eye of law.

16. In our view, proper interpretation of Section 15(2) of the Act would be that in computing the period of limitation, the period of notice, provided notice is given within the limitation period, would be mandatorily excluded. That would mean a suit, for which period of limitation is three years, would be within limitation even if it is filed within two months after three years, provided notice has been given within the limitation period. In such a case, the period of notice cannot be counted

A concurrently with the period of limitation. If it is done, then period of notice is not excluded. Any other interpretation would be contrary to the express mandate of Section 15(2) of the Act.

B 17. We, therefore, set aside the order of the High Court and we hold that the suit is within the period of limitation. Since, on the question of notice, the finding of the trial Court has been overruled by the High Court and the High Court has held that the notice has been served on defendant No. 1 and against such finding there is no cross objection, we are of the view that the notice in this case has been served.

C 18. Therefore, we direct that the suit may be heard out now on merits by the trial Court as early as possible. We, however, do not make any observation on the merits of the controversy between the parties.

D 19. The appeal is accordingly allowed. No costs.

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Appeal allowed.