

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 20TH DAY OF FEBRUARY, 2026

BEFORE



THE HON'BLE DR. JUSTICE K.MANMADHA RAO

CIVIL REVISION PETITION NO.100020 OF 2022

BETWEEN:

M/S SHYAMARAJU & COMPANY (INDIA) LTD.,
A PRIVATE COMPANY INCORPORATED
UNDER THE INDIAN COMPANIES ACT, 1955
CORPORATE OFFICE AT DHIVYASHREE CHAMBERS,
A WING, #11 O' SHAUGENSSY ROAD,
BENGALURU-560 025.
REPRESENTED BY ITS AUTHORIZED SIGNATORY
MR. V.M. MATHEW

...PETITIONER

(BY SRI. CHETAN MUNNOLI, ADVOCATE)

AND:

1. THE MUNICIPAL COMMISSIONER,
CITY MUNICIPAL COUNCIL ILKAL,
TALUKA HUNGUND
BAGALKOT DISTRICT-587125.
2. THE MANAGING DIRECTOR,
KARNATAKA URBAN INFRASTRUCTURE
DEVELOPMENT AND
FINANCE CORPORATION (KUIDFC),
NAGARABHIVRUDDHI BHAVAN,
#22, 17 F CROSS,
BINAMANGAL 2ND STAGE,
OLD MADRAS ROAD,
INDIRA NAGAR,
BENGALURU-560 038.

3. THE PROJECT MANAGER,
KARNATAKA URBAN INFRASTRUCTURE
DEVELOPMENT AND
FINANCE CORPORATION,
NORTH KARNATAKA URBAN SECTOR
INVESTMENT PROGRAMME
KUIDFC-NKUSIP,
DIVISIONAL OFFICE,
PROJECT IMPLEMENTATION UNIT
1ST FLOOR, CORPORATION SHOPPING COMPLEX,
GOAVES, HINDWADI, BELAGAVI-590 011.

...RESPONDENTS

(BY SRI. NARAYAN G. RASALKAR, ADVOCATE FOR R1 TO R3)

THIS CIVIL REVISION PETITION IS FILED UNDER SECTION 115 OF CPC., PRAYING TO SET ASIDE THE ORDER DATED 26.10.2021 PASSED ON IA NO.V IN OS NO.95/2016 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, HUNGUND AND CONSEQUENTLY DISMISS THE SUIT IN THE INTEREST OF JUSTICE AND EQUITY.

THIS CRP HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 04.02.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: THE HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV ORDER

1. The petitioner has filed this Civil Revision Petition calling in question the order dated 26.10.2021 passed by the Senior Civil Judge and JMFC, Hungund, rejecting I.A. No.V filed under Order VII Rule 11(d) read with Section 151 of Civil Procedure Code, 1908('the CPC' for short) seeking rejection of the plaint in O.S.No.95/2016 on the ground of limitation.

2. The facts leading to the filing of the petition are that:-

The petitioner and the respondents entered into a contract on 18.10.2010 for execution of sewerage works. The said contract came to be terminated by the respondents on 26.04.2012. The petitioner challenged the termination before this Court by filing a writ petition, which came to be dismissed on 11.01.2013. The writ appeal filed thereafter was also dismissed on 15.02.2013.

3. Thereafter, the petitioner instituted O.S.No.130/2013 before the competent Civil Court seeking declaration and injunction in respect of the termination order. During the

pendency of the said suit, liberty was granted by this Court to file a separate suit for damages after disposal of the said suit.

4. After termination of the contract, the respondents undertook measurement of the work already executed, prepared estimates for the balance work, obtained approval from the competent authority and got the balance work executed through another contractor at the risk and cost of the petitioner. Based on such exercise, damages were quantified. On 09.11.2016, the respondents filed O.S.No.95/2016 before the Senior Civil Judge, Hungund, seeking recovery of damages and cost of balance work.

5. After appearance in the said suit, the petitioner filed I.A.No.V under Order VII Rule 11(d) read with Section 151 of the CPC contending that the suit is barred by limitation, as according to the petitioner the cause of action arose on 26.04.2012 itself, the date of termination of contract. The Trial Court, by order dated 26.10.2021, rejected I.A.No.V holding that the issue of limitation is a mixed question of law and fact and cannot be decided at the threshold under Order VII Rule 11(d) of the CPC.

6. Being aggrieved by the said order passed on I.A.No.V, the petitioner has approached this Court by filing the present Civil Revision Petition.

7. The learned counsel for the petitioner contends that Article 55 of the Limitation Act squarely applies to the case. It is submitted that the breach occurred on 26.04.2012 when the contract was terminated and limitation commenced from that date. It is argued that the suit filed on 09.11.2016 is ex facie barred by limitation. Reliance is placed on the decisions in ***Dahiben v. Arvindbhai Kalyanji Bhanusali*** reported in ***(2020) 7 SCC 366***, and ***Raghwendra Sharan Singh v. Ram Prasanna Singh*** reported in ***(2020) 16 SCC 601***, to contend that where the plaint itself discloses that the suit is barred by limitation, it must be rejected under Order VII Rule 11(d) of the CPC. Reliance is also placed on judgments holding that unilateral quantification of damages does not extend the period of limitation and that clever drafting cannot circumvent the law of limitation.

8. In support of the contentions, learned counsel appearing for the petitioner has placed reliance on the following judgments:-

- ***Shri Mukund Bhavan Trust and others v. Shrimant Chhatrapati Udayan Raje Pratapdin Maharaj Bhonsle and another reported in (2024) 15 SCC 675;***
- ***M/s.Delta Founation and Constructions, Kochi and others v. Kerala State Construction, Corporation Ltd., Ernakulam, reported in AIR 2003 KERALA 201.***

9. *Per contra*, the learned counsel for the respondents contends that the plaint discloses a continuing cause of action. It is submitted that under the terms of the contract, the respondents were required to measure the executed work, estimate the balance work, obtain approval from the competent authority and then execute the balance work at the risk and cost of the contractor. It is argued that damages could be determined only after completion of these steps.

10. It is submitted that the petitioner has challenged the order dated 26.10.2021 passed by the learned Senior Civil Judge and JMFC, Hungund, in O.S.No.95/2016, whereby his application under Order VII Rule 11(d) read with Section 151 of the CPC came to be rejected. The respondent No.1, being the Employer—City Municipal Commissioner, CMC Ilkal along with respondent

No.2, a Government Company and respondent No.3, its supervisory representative, were vested with supervisory and financial control over the project funded under the loan conditions of the Asian Development Bank, Manila, with participation of the Central and State Governments. The work under Agreement dated 18.10.2010 for supplying and laying sewerage network and construction of FAL type STP of 8.0 MLD capacity at Ilkal, valued at Rs.35,87,07,060/-, was to be completed within 18 months from the date of handing over of site, i.e., on or before 17.04.2012.

11. It is contended that the petitioner failed to complete the work within the stipulated period and committed fundamental breaches of contract despite repeated opportunities. Consequently, after following due procedure and in public interest, Respondent No.1 terminated the contract by proceedings dated 26.04.2012. The W.P.No.14760/2012 filed by the petitioner challenging the termination was dismissed on 11.01.2013, and W.A.No.30106/2013 was also dismissed on 15.02.2013 by the Co-ordinate bench of this Court. Thereafter, the petitioner instituted O.S.No.130/2013 and pursued multiple interlocutory proceedings and writ petitions, including

W.P.No.81897/2013, which was disposed of on 24.07.2014 granting liberty to file a separate suit for damages after disposal of the pending suit, and W.P.No.105613/2014, disposed of on 10.02.2015 with directions regarding preliminary issues. Thus, the litigation initiated by the petitioner continued, and the consequences arising out of the termination order dated 26.04.2012 remained *sub judice*.

12. It is further submitted that upon abandonment of the work by the petitioner at the time of termination, the Employer was compelled to undertake damage control measures and subsequently assess the balance work in accordance with contractual clauses, including GCC Clause 51.1 and PCC Clause 69.1, which permitted completion at the risk and cost of the defaulting contractor. The assessment of the balance work, undertaken with technical and financial assistance of respondents No.2 and 3, and approved at various levels during the period 2012 to 2014, revealed that against the original contract value of Rs.35,87,07,060/-, and after deducting RA-2 and Final Bill amounts of Rs.4,07,91,737/-, the balance amount available was Rs.31,79,15,323/-.

13. However, it is argued that the actual cost incurred for completion through a fresh contract with M/s UPL Environmental Engineers Limited, Vadodara, in joint venture with M/s Gharpure Engineering and Constructions (P) Ltd., Pune, amounted to Rs.42,71,42,307/-, resulting in an excess expenditure of Rs.10,92,26,984/- and additional administrative cost at 20% amounting to Rs.2,18,45,397/-, totaling Rs.13,10,72,381/-. The process of evaluation, preparation of estimates, sanction and calling of fresh tenders was necessarily time-consuming and could not have been finalized on the date of termination itself. Hence, the cause of action for recovery of risk and cost amount arose only upon ascertainment and approval of the actual expenditure, and the question of limitation is a mixed question of fact and law requiring evidence and trial.

14. It is submitted that pursuant to evaluation of fresh tenders, the Joint Venture of M/s UPL Environmental Engineers Limited, Vadodara, Gujarat with M/s Gharpure Engineering and Constructions (P) Ltd., Pune, Maharashtra, was found to be competitive and was accordingly recommended by the expert committee. The respondent No.1 accepted the said bid with technical support of respondents No.2 and 3, and a fresh

Agreement dated 24.03.2014 was executed for completion of the balance work at a tender price of Rs.42,71,42,307/-, preceded by Letter of Acceptance dated 05.02.2014 and Notice to Proceed dated 25.03.2014. As per the terms of the original Agreement dated 18.10.2010 and the termination proceedings dated 26.04.2012, the Employer reserved the right under Clause PCC 69(1)(ii) and (iii) to complete the unexecuted work at the risk and cost of the defaulting contractor. After assessment of the balance work and upon finalization of the excess cost, notice dated 18.03.2015 was issued to the petitioner intimating the proposed recovery. Thereafter, by Order dated 09.06.2015, the damages and interest were determined at Rs.14,44,78,730/-, and the same was communicated by notice served on 13.06.2016, directing payment within 15 days.

15. It is further submitted that upon failure of the petitioner to comply with the said demand within 15 days of service, it was specifically pleaded that the cause of action arose on 28.06.2015 and continued thereafter. The suit in O.S.No.95/2016 was instituted on 09.11.2016 before the Senior Civil Judge, Hungund, seeking recovery of Rs.14,44,78,730/- with interest at 18% per annum, which is well within three years

from the pleaded date of cause of action. The plaint clearly discloses the material facts, including the determination of damages on 09.06.2015, service of notice on 13.06.2016, failure to pay within 15 days, and the continuing nature of the cause of action arising out of termination dated 26.04.2012 and subsequent completion of balance work at enhanced rates. Therefore, limitation cannot be reckoned from the date of termination alone, as the right to sue accrued only upon ascertainment and demand of the quantified amount.

16. It is also submitted that the scope of Order VII Rule 11(d) of the CPC is confined strictly to the averments in the plaint, and in the present case, the plaint does not disclose that the suit is barred by any law. Even assuming applicability of Article 55 of the Limitation Act, 1963, the question as to when the right to sue accrued whether on the date of termination of the contract or upon ascertainment and quantification of the excess expenditure incurred in completing the balance work depends upon interpretation of the contractual clauses and the factual matrix pleaded. Such determination cannot be undertaken without evidence. Therefore, the issue of limitation constitutes a mixed question of law and fact which cannot be

adjudicated at the stage of considering an application under Order VII Rule 11(d) of the CPC. Hence, the order of the Trial Court rejecting I.A. No.V does not call for interference in exercise of revisional jurisdiction under Section 115 of the CPC.

17. In support of the contentions, learned counsel for the respondents has placed reliance on the judgment of the Apex Court in the case of **Mukesh Kumar v. Harbans Warraich** reported in **AIR 2000 SC 172**; wherein it has been held that the defendants not refusing either to execute the conveyance or to perform their part, held that cause of action is continuing.

18. Reliance is also placed on decisions recognizing that limitation can be a mixed question of law and fact and that where determination of limitation depends upon factual adjudication and examination of contractual terms, rejection of the plaint at the threshold is impermissible under Order VII Rule 11(d) of the CPC.

19. Heard learned counsel appearing on either side and perused the material on record.

20. Having given anxious consideration to the rival contentions, it is not in dispute that O.S.No.130/2013,

O.S.No.16/2015 and O.S.No.95/2016 arise out of the same contractual transaction and are presently pending before the Commercial Court for adjudication. However, while considering an application under Order VII Rule 11(d) of the CPC, the Court is required to confine its examination strictly to the averments made in the plaint in the suit sought to be rejected. The existence or pendency of other proceedings between the parties cannot, by itself, be a determinative factor for rejecting or sustaining the plaint. The question that requires consideration is whether, on a plain reading of the plaint in O.S.No.95/2016 alone, the suit appears to be barred by limitation. Therefore, this Court proceeds to examine whether from the statements made in the plaint in O.S.No.95/2016, the bar of limitation is apparent so as to warrant rejection under Order VII Rule 11(d) of the CPC.

21. Further, the plea of limitation raised by the petitioner is not one that can be determined solely on a bare reading of the plaint. The question as to when the right to sue accrued, whether the breach was complete on the date of termination or continued until ascertainment of damages, and whether exclusion of time or other statutory provisions are attracted, are matters which require factual determination. It is well settled that limitation, in

such circumstances, constitutes a mixed question of law and fact. In ***Sangramappa v. S. Gangamma***, reported in **2019 (1) KLR 81 (DB)**, it has been held that where adjudication of limitation depends upon evidence and disputed facts, rejection of the plaint under Order VII Rule 11 of the CPC is impermissible. The present case squarely falls within the said principle and therefore cannot be decided at the threshold stage.

22. This Court has also perused the citations relied upon by the learned counsel for the parties, wherein it is observed that the scope of an application under Order VII Rule 11(d) of the CPC is well settled. The Court is required to look only at the averments in the plaint. If from the plaint itself it is clear that the suit is barred by any law, the plaint must be rejected. However, where determination of limitation depends upon disputed facts or requires evidence, the plaint cannot be rejected at the threshold.

23. The legal principles laid down in the judgments relied upon by the learned counsel for the petitioner are not in dispute. The Apex Court has clearly held that if a suit is *ex facie* barred by limitation on the basis of plaint averments alone, rejection of plaint is mandatory and that clever drafting cannot create an artificial cause of action.

24. At the same time, the very same line of authorities also makes it clear that rejection of plaint is permissible only when the bar of limitation is apparent on the face of the plaint and does not require factual adjudication.

25. In the present case, the plaint does not merely rely upon the date of termination of the contract. It specifically pleads that the respondents were contractually required to complete measurement, estimation, approval and execution of balance work and that damages were quantified only thereafter. The plaint further pleads that the cause of action arose after completion of these steps.

26. Whether Article 55 of the Limitation Act governs the case and whether the right to sue accrued on the date of termination of the contract or on the date of ascertainment and quantification of the excess expenditure incurred in completing the balance work are matters which requires examination of the contractual terms and factual matrix. Such determination cannot be undertaken without evidence. At this stage, it cannot be conclusively held that the suit is barred by limitation on the face of the plaint.

27. Therefore, on a plain reading of the plaint, it cannot be said that the suit is clearly barred by limitation. The issue requires adjudication after trial. The authorities relied upon by the respondents squarely apply to the present facts, whereas the authorities relied upon by the petitioner would apply only if the bar of limitation was apparent on the face of the plaint, which is not the case here.

28. The Trial Court has rightly held that the issue of limitation is a mixed question of law and fact and that the plaint cannot be rejected under Order VII Rule 11(d) of the CPC at this stage. No perversity or jurisdictional error is found in the impugned order.

29. In view of the fact that the suits arise out of a contract of the year 2010 and are presently pending before the Commercial Court, and having regard to the nature of the dispute and the pendency of interconnected proceedings between the parties, the Commercial Court is directed to expedite the trial and dispose of O.S.No.130/2013, O.S.No.16/2015 and O.S.No.95/2016, on the merits of the case in accordance with law, as expeditiously as possible and in any event within a period of eight months from the date of receipt of

a copy of this order, without being influenced by any observations made in this order.

30. Accordingly, the present petition is ***dismissed***. The order dated 26.10.2021 passed on I.A.No.V in O.S.No.95/2016 by the Senior Civil Judge and JMFC, Hungund, is affirmed. All contentions of the parties on merits, including limitation, are kept open to be urged before the Trial Court.

No order as to costs.

**Sd/-
(DR. K.MANMADHA RAO)
JUDGE**

RSH, CT:VP