

(1999) 12 BOM CK 0084

Bombay High Court

Case No: Suit No.1313 of 1981 with Suit No. 1315 of 1981

Arun Construction Co.

APPELLANT

Vs

The Bombay Housing and Area  
Development Board and another

RESPONDENT

**Date of Decision:** Dec. 4, 1999

**Acts Referred:**

- Bombay Port Trust Act, 1879 - Section 87
- Civil Procedure Code, 1908 (CPC) - Section 9
- Contract Act, 1872 - Section 73
- Limitation Act, 1963 - Section 3
- Maharashtra Housing and Area Development Act, 1976 - Section 173

**Citation:** (2000) 1 ALLMR 3 : (2000) 2 BomCR 450 : (2000) 1 BOMLR 509 : (2000) 2 MhLj 239

**Hon'ble Judges:** D.K. Deshmukh, J

**Bench:** Single Bench

**Advocate:** Nitin Vhatkar instructed by T.N. Tripathi, for the Appellant; Behram Shroff, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

D.K. Deshmukh, J.

Both the suits are filed by the same plaintiffs, defendants are also common, the question that arises for decision is also the same. Therefore, both the suits can be conveniently disposed of by a common order.

2. In both the suits, issue of limitation has been framed i.e. Issue No. 7 which reads as under :-

"Whether the suit filed by the plaintiffs is within limitation?"

Both the parties have agreed to try this issue as preliminary issue. The learned Counsel for the defendants made a statement that he accepts for the purpose of decision of this issue, averments in paragraph 16 of the plaint in both the suits. Both the suits have been filed by the plaintiffs for a decree of damages against the defendant No. 1. According to the plaintiffs, tenders were invited by the defendants for some work to be carried out. The plaintiffs submitted the tender. According to the plaintiffs, tender of the plaintiffs was accepted. However, the work was not commenced. According to the plaintiffs, as a result of acceptance of the tender, a binding contract between the parties has come into existence. According to the plaintiffs, - the defendants have committed breach of that contract and therefore, these suits have been filed for damages suffered by the plaintiffs for the breach of the contract committed by the defendants. The averments in paragraph 16 of these suits are relevant for deciding the issue of limitation. Paragraph 16 of Suit No. 1313 of 1981 reads as under :-

"16. That the defendants created their liability by issue of letters dated 19th July 1978 and 14th September 1978, which are the root cause for the cause of action of the subject matter of the present suit. The plaintiffs are filing the suit for the damages and or compensation or loss of profit within three years from the date when the cause of action arose. The plaintiffs' suit is therefore not barred by the law of limitation."

Paragraph 16 of Suit No. 1315 of 1981 reads as under :-

"16. That the defendants created their liability by issue of letters dated 19th July 1978 and 14th September 1978, which are the root cause for the cause of action of the subject matter of the present suit. The plaintiffs are filing the suit for the damages and or compensation or loss of profits within three years from the date when the cause of action arose. The plaintiffs' suit is therefore not barred by the laws of limitation."

3. Both the suits have been filed on the same day in this Court i.e. 10th July 1981. Perusal of paragraph 16 of both the suits quoted above shows that according to the plaintiffs themselves, the cause of action for filing of these suits arose in the month of July 1978. The suits have been filed in July 1981. The learned Counsel for the defendants relies on the provision of section 173 of Maharashtra Housing and Area Development Act, 1976. He submits that the limitation that is provided by this section for filing of the suit claiming damages against the authority constituted under the Act is six months from the date of accrual of the cause of action. In support of this submission, he relied on the judgment of the Supreme Court in the case of [The Trustees of Port of Bombay Vs. The Premier Automobiles Ltd. and Another](#), .

4. The learned Counsel appearing for the plaintiffs submits that the period of six months mentioned in section 173 is a period for issuing notice of two months. In the

submission of the learned Counsel. Section 173 does not lay down any period of limitation for institution of a suit. In the submission of the learned Counsel, a suit cannot be instituted against the authority under the Act without giving that authority a notice of two months and that notice has to be issued within a period of six months from the date of the accrual of the cause of action.

5. Now, if in the light of these rival submissions section 173 is perused, to my mind, it is clear that once section 173 lays down two requirements for valid institution of a suit against the authority viz(1) service of two months" notice on the authority and (2) institution of the suit within six months from the accrual of the cause of action. Perusal of the judgment of the Supreme Court in the case of the Trustees of Port of Bombay referred to above shows that in that case the Supreme Court was construing the provisions of section 87 of the Bombay Port Trust Act. Section 87 of the Bombay Port Trust Act, which is quoted in paragraph 8 of the judgment of the Supreme Court reads as under :-

"87. No suit or other proceeding shall be commenced against any person for any thing done, or purporting to have been done, in pursuance of this Act, without giving to such person one month"s previous notice in writing of the intended suit or other proceeding and of the cause thereof, nor after six months from the accrual of the cause of such suit or other proceeding ....."

A comparison of provisions of section 87 of the Bombay Port Trust Act and section 173 of the Act shows that the provisions are of para materia. Perusal of the judgment of the Supreme Court has considered the provisions of section 87 in detail and has held that section 87 deals with limitation for institution of a suit. To my mind, it is clear that section 173 does not deal with merely with the period within which notice is to be given, but it clearly lays down the period of limitation for institution of a suit. Placing any other interpretation on the provisions of section 173 would amount to doing violence to the language in which the section is couched. It is thus clear that when the section lays down the period of six months it is referring to the commencing of the suit and not to the giving of the notice. It is clear that the said section in clear terms lays down that two months previous notice has to be given to the authority who would be a party of the intended suit and the cause thereof and the suit has to be instituted within six months of the cause of action. In the present case, it is clear that both the suits have not been instituted within a period of six months from the date on which according to the plaintiffs themselves, the cause of action arises. It has therefore to be held that both the suits have not been instituted within a period of six months as contemplated by provisions of section 173 and therefore, both the suits are barred by limitation. Issue No. 7 in both the suits is therefore answered accordingly. In view of the finding recorded on issue of limitation, the suits do not survive and the same are dismissed with costs.

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6. Suits dismissed.