

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No. 153 of 2012.

Date of decision: 18.12.2014.

Badri Nath

..... Appellant

Vs.

H.P. State Forest Corporation Ltd.

..... Respondent

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting? Yes

For the appellants : Mr. Sunil Mohan Goel, Advocate.

For the respondent: Mr. Bhupinder Pathania, Advocate.

Tarlok Singh Chauhan, Judge (Oral).

This appeal is directed against the judgement and decree passed by the learned District Judge, Kangra at Dharamshala whereby the suit filed by the plaintiff- respondent has been decreed, while the counter-claim filed by the appellant- defendant has been dismissed.

2. The facts in brief may be noticed. The respondent herein filed a suit for recovery of Rs.6,17,599/- on account of loss suffered by the plaintiff due to breach of contract. The suit admittedly was instituted on 10.12.2004 and the agreement in question had been entered into on 28.6.1997 and the cause of action, if any, accrued to the plaintiff on 8.12.1997. A specific issue regarding limitation was framed to the following effect:-

“Whether suit is within time? OPP”

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

The learned trial court answered the issue in the following manner:-

“21. Submission of Id. Advocate appearing on behalf of plaintiff that suit is within time is also accepted for the reasons hereinafter mentioned. It is proved on record that written agreement Ex. PW 1/D was executed interse parties on dated 28.6.1997. It is also proved on record that HPFC is owned by Himachal Pradesh State Government. Court is of the view that any suit filed by State Forest Corporation owned by H.P. State Government is covered under Art.112 of the limitation Act. As per Art. 112 of the Limitation Act any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central government or any State Government including the Government of the State of Jammu & Kashmir, can be filed within thirty years when the period of limitation would begin to run. Present suit was filed on dated 10.12.2004. Hence it is held that present suit is governed under Art. 112 of the limitation Act 1963 because HPFC is owned by H.P. Government and any suit filed by Corporation owned by Government is governed by Art. 112 of Limitation Act 1963. Hence it is held that present suit is within time. Issue No. 10 is decided in favour of plaintiff.”

The suit was decreed. However, the counter claim preferred by the defendant- appellant was ordered to be dismissed.

Hence, this appeal.

3. The question which arises for consideration is as to whether the suit and the counter claim can be held to be within time.

Article 112 of Limitation Act, 1963 which has been relied upon by the learned trial court to decree the suit of the plaintiff- respondent reads as follows:

	Description of appeal	Period of limitation.	Time from which period begins to run.
112	Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government,	Thirty years	When the period of limitation would begin to run under this Act against a like suit by a private person.

	or any State Government including the Government of the State of Jammu and Kashmir.		
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4. Therefore, the moot question required to be answered is as to whether recourse to Article 112 of the Limitation Act can be taken by the plaintiff- corporation to claim that the suit is within limitation. It cannot be disputed that a particular period of limitation for filing a suit by a Central government or State government or as the case may be has been provided for under Article 112. The State Government has been provided for in the statute of Limitation for a purpose and object. Prior to Article 112 of 1963 Act, the paramateria provision was Article 149. While noticing the purpose and object of Article 149 of the Limitation Act, the Hon'ble Supreme Court in **Nav Rattanmal and others vs. State of Rajasthan AIR 1961 SC 1704** held as follows:-

“10. First and foremost there is this feature that the Limitation Act, though a statute of repose and intended for quieting titles, and in that sense looks at the problem from the point of view of the defendant with a view to provide for him a security against stale claims, addresses itself at the same time also to the position of the plaintiff. Thus, for instance where the plaintiff is under a legal disability to institute a suit by reason of his being a minor or being insane or an idiot, it makes provisions for the extension of the period taking into account that disability. Similarly, public interest in a claim being protected is taken into account by S. 10 of the Act by providing that there shall be no period of limitation in the case of express trusts. It is not necessary to go into the details of these provisions but it is sufficient to state that the approach here is from the point of view of protecting the enforceability of claims which, if the ordinary rules applied, would become barred by limitation. It is in great part on this principle that it is said that subject to statutory provision, while the maxim vigilantibus et non dormientibus jura Subveniunt is a rule for the subject, the maxim nullum tempus occurit regi is in general applicable to the Crown. The reason assigned was, the quote Coke, that the State ought not to suffer for the negligence of its officers or for their fraudulent collusion with the

adverse party. It is with this background that the question of the special provision contained in Art. 149 of the Act has to be viewed. First we have the fact that in the case of the Government if a claim becomes barred by limitation, the loss falls on the public, i.e., on the community in general and to the benefit of the private individual who derives advantage by the lapse of time. This itself would appear to indicate a sufficient ground for differentiating between the claims of an individual and the claims of the community at large. Next, it may be mentioned that in the case of governmental machinery, it is a known fact that it does not move as quickly as in the case of individuals. Apart from the delay occurring in the proper officers ascertaining that a cause of action has accrued-Government being an impersonal body, before a claim is launched there has to be inter-departmental correspondence, consultations, sanctions obtained according to the rules. These necessarily take time and it is because of these features which are sometimes characterised as re-tape that there is delay in the functioning of Government officers....."

5. The words "Central Government" or "State Government" have not been defined in Limitation Act, 1963. The "Government" has been defined in section 3(23) of the General Clauses Act, 1897 in the following words:-

"23. "Government" or "the Government" shall include both the Central Government and any State Government."

6. The word "State" has been defined under Article 12 of the Constitution of India to mean:-

"12. Definition.- In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

An analysis of the aforesaid definition of word "State" would show that the same is an inclusive definition which includes the Government, Parliament of India and the Government and Legislature of each

States and all local or other authorities within the territory of India or under the control of the Government of India. The definition of word “State” as contained in Part-II of Constitution of India is for the purpose of Part-III and Part-IV of the Constitution of India. Article 12 itself indicates that the words “the State” is a word of wider definition and it encompasses in it other authorities, which may be controlled by Government of India.

7. No doubt, the plaintiff- corporation may be an authority within the meaning of Article 12 of the Constitution of India, but the question is as to whether the words “Central Government” and “State Government” used in Article 112 of the Limitation Act, 1963 should be read as the word “State”.

8. When the Limitation Act, 1963 was enacted, the Parliament was well aware of the concept of Central Government, State Government and concept of “State”. The Limitation Act, 1963 itself indicates that the word “Local Authority” is not included within the meaning of Central Government or State Government, which is apparent from the fact that a separate limitation period has been provided for Local Authority in the limitation Act under Article 111, which reads as follows:-

	<i>Description of appeal</i>	<i>Period of limitation.</i>	<i>Time from which period begins to run.</i>
111.	By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.	Thirty years	The date of the dispossession or discontinuance.

9. Therefore, had the Legislature intended to include local authority within the meaning of State Government or Central Government under Article 112 of the Limitation Act, there was no occasion to provide for a separate limitation period for local authority. It is thus clear that the local authority and other authorities which may fall within the definition of "State" under Article 12 of the Constitution of India were never intended to be included in the words "Central Government" or "State Government". Thus any authority/ corporation, which may be State within the meaning of Article 12 does not *ipso facto* become entitled to be treated as Central Government or State Government within the meaning of Article 112 of the Limitation Act. Accordingly, the plaintiff-appellant is not entitled to the extended period of limitation as provided for under Article 112 of the Limitation Act.

10. Indisputably the agreement in this case was entered into between the parties on 28.6.1997. The appellant- defendant had completed the rope way work and floating the timber in ravi river. On 18.12.1997, there was obstruction in the river and consequently a large quantity of timber was washed away. The total timber received by the corporation at road side depot was 1433.662 M³ and there was short fall of 187.572 M³ of timber. Therefore, the entitlement of the plaintiff- respondent to recover the amount towards balance timber arose on 18.12.1997 itself and the suit for recovery of money in terms of Article 113 of the Act is within three years.

11. The plaintiff has examined PW 1 B.S. Datwalia, who had been serving the department and had retired in 1989 as Divisional

Manager, Forest Corporation. In the years 1994 to 1998, he had been posted as Divisional Manager, H.P. Forest Corporation, Dharamshala and he proved on record the bid given by the defendant and thereafter the agreement Ex. PW 1/D entered into between plaintiff and the defendant. The details of timber handed over to the defendant Ex. PW 1/E was also duly proved on record. The witness thereafter has only stated that some of the timber has been washed away and report to this effect had been lodged at P.P. Holi. PW 2 on the other hand has only stated about filing of the present suit under his signature.

12. The plaintiff has led no evidence whatsoever to show and prove that the suit has been filed within three years of the alleged cause of action. A perusal of the statement shows that cause of action as per plaintiff arose on 8.12.1997 when some of the timber was washed away, recovery whereof in fact had been sought by the plaintiff. In case the limitation is computed from such period, then same admittedly expired on 7.12.2000, while the present suit came to be instituted only on 10.12.2004 and the same is apparently barred by limitation. Once the suit by the plaintiff- respondent is held to be not maintainable, then the counter claim preferred by the defendant for withholding his amount for the very transaction and based on same cause of action has also been filed beyond the prescribed period of three years of cause of action and is thus required to be dismissed on the ground of limitation.

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13. Having held so, the other questions need not be gone into since neither the suit nor the counter-claim is maintainable having been filed beyond the period of limitation.

14. Accordingly, the appeal is partly allowed. Resultantly, the suit filed by the plaintiff- respondent and the counter claim preferred by defendant- appellant are both dismissed as being time barred, so also the pending application(s) if any.

December 18, 2014.
(Hem)

(Tarlok Singh Chauhan),
Judge.