



Article 9 of the subject contract was issued for referring the matter to arbitrator subsequently followed by a notice for recovery of Rs.1,383,000/- dated 13.3.2006. It is contended that in the letter 13.3.2006 it is claimed that there was intention or willingness for amicable settlement yet it was vehemently denied in pursuance of a reply dated 14.4.2006 that any amicable settlement was ever agreed upon. It is claimed that once the period of limitation is exhausted, it cannot be revived by sending a legal notice.

4. On the other hand learned Counsel for the respondent submitted that it would be incorrect to apply Article 115 of the Limitation Act to oust the respondent from claiming their legitimate dues as the residuary Article 120 is applicable which provides period of six years to file a suit for recovery. Learned Counsel further submitted that it is not purely a contract to render services but it is also to provide equipments and articles which services cannot be subjected to Article 115 of the Limitation Act.

5. I have heard the learned Counsels and perused the material available on record.

6. Limitation no doubt at times is considered a mixed question of law and facts but not always as it depends and vary case to case. In the instant case the pleadings of the case are very relevant. In para-7 of the plaint the respondent has admitted that they have received a letter dated 01.3.2001 whereby the alleged claim of respondent was specifically denied. In para-13 which is in fact cause of action, the respondent pleaded that it accrued on 01.3.2001 when the appellant refused to make payment and in the same breath they stated that it arose on 06.2.2006 and 13.3.2006 when notice of appointment of arbitrator and notice of demand respectively were issued to the appellant.

7. Taking the first count in the plaint, it seems that the claim of respondent was declined on 01.3.2001, if any cause was matured, it was within statutory period thereafter when respondent could prefer a claim for recovery of alleged amount. The correspondence after denial of claim is absolutely silent until 06.2.2006.

8. The first point that requires consideration is, could there be a revival of a cause of action, to be computed afresh? The answer is 'No'. It could only be revived once the alleged claim is admitted within the period of limitation which commenced on 01.3.2001. Section 19 of the Limitation Act provides that where before expiration of the period prescribed for filing of a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.

9. Respondent has relied upon a letter dated 13.3.2006 which was issued with reference to their own letter dated 06.2.2006. It is "claimed" that the appellant express desire and willingness to amicably settle the matter with the respondent and demanded copies of the relevant documents including agreement and invoices. This can hardly be an acknowledgment in terms of Section 19 *ibid* since by that time the prescribed period of limitation exhausted/expired and the period of limitation is not required to be computed afresh from the date as mentioned in the subject subsequent letters. Applicant has not conceded to such an extent that they have ever agreed to settle it amicably yet even if that is considered a fact then by applying section 19 of the Limitation Act the limitation cannot be computed from 06.2.2006 or any date thereafter. The claim had already been denied on 01.3.2001.

10. Similarly if a suit for recovery of an amount is barred by time then no provision of the Arbitration Act could enable the respondent to refer it to an arbitrator, recovery of which was already barred by time. Reliance is placed on the case of Pakistan Refinery Limited vs. Pakistan National Shipping Corporation (1986 CLC 2555). The relevant part is reproduced as under:

*“---the Court is to see whether the dispute is real or a mere pretence. If it is real, then it can be a proper subject of arbitration, but if one party to the arbitration agreement sleeps over its right and the statutory period of limitation prescribed for filing the suit is allowed to expire, its claim is liable to be defeated as time-barred, and as no suit can be instituted in respect thereof, there remains no real dispute enforceable by arbitration. In other words, if the claim is clearly time-barred, there is no arbitration clause subsisting in the eye of law and thus there is no jurisdiction of the arbitrators to enter on the preference. I am in respectful agreement with the view expressed in the above-cited two decisions and hold that second objection as without force.---”*

11. Reliance is also placed on the case M/s Awan Industries Ltd. vs. The Executive Engineer, Lined Channel Division & another reported in 1992 SCMR 65. Relevant part is reproduced as under:

*“---It is obvious that the claim before the arbitrator was barred by time. It was also barred by time when Suit No. 15 of 1969 was filed. It was hopelessly barred by time when reference to the arbitrator was made on 27-4-1978. Now, under section 37 of the Arbitration Act, all provisions of the Limitation Act, 1908 are, made applicable to arbitration as they apply to proceedings in Court. Under Section 3 of the Limitation Act, it is duty of the Court to see that the claim is within limitation period. Accordingly, it was also the duty of the Arbitrator to see that the claim before it was within the period of limitation, notwithstanding whether such a plea was taken or not.”*

12. The case of respondent is based on a contract, breach of which is claimed by the respondent and hence they preferred a claim for recovery. Article 120 will only be made applicable when no Article prescribes the limitation to file a suit for recovery as claimed by the respondent. Perusal of Article 115 shows that it is for the recovery/compensation for breach of any contract either express or implied. Respondent has claimed nothing but a breach of contract in respect of service which was allegedly rendered by it as it is claimed that they have failed, refused and neglected to make payment which is breach of a contract.

13. In the case of *Saudagar Mai vs. Bahadur Chand Hari Chand* (AIR 1928 Lah 442) learned single Judge held that Article 115 is a general provision applying all actions ex-contractu not specifically provided for otherwise. The word “compensation” in that Article as well as in Article 116 has the same meaning as it has in S. 73 Contract Act, and denotes a sum of money payable to a person on account of loss or damages caused to him by the breach of contract whereas in terms of judgment in the case of *Sat Narain & others vs. Union of India reported as AIR 1961 Punjab 314* it is only relationship of the parties, which is not ex-contractu the residuary Article 120 was made applicable which is not the case here. Respondent claimed in para-8 that had the amount been paid they would not have suffered losses and hence claimed profit of 14% per annum.

14. In the case of *D.B. Walker & Co. Ltd Karachi vs. Noor Ellahi & another* reported as PLD 1974 Karachi 50 a Davison Bench of this Court held that since suit for damages for breach of contract which is not a registered one, is governed by Article 115 of the Limitation Act, 1908. The said Article prescribes a period of limitation of three years commencing from the date of breach of contract and in the case of successive breaches, the limitation is to commence from the date of the

last breach. Ex-contractu are actions arising out of breaches of contract express or implied whereas an express article is available in the Limitation Act, residuary article would not be made applicable.

15. Reliance is placed on the case of Faizullah vs. Ghulam Sarwar & others reported in 1981 SCMR 765. Reliance is also placed on the case of Abdul Aleem Butt vs. Messrs Behrai Foundation through Managing Director & another reported in PLD 2008 Karachi 25. Relevant part of the judgment is reproduced herein below:

*“---Regarding contention of the learned Counsel for the plaintiff that Article 120 of the Limitation Act will apply, it is suffice to say that from bare reading of Article 120 it is clear that the Article will be applicable to the cases/suits which do not fall under any specific category and where another specific Article applies this Article will not apply.”*

16. Reliance is placed on the case of PLD 1993 SC 147, relevant parts of which is reproduced as under:

*“---There is no principle known to law whereunder on expiry of full available period of limitation revival of cause of action afresh and running of the limitation period over again could take place either from the date of knowledge or the attornment of the tenants or on obtaining of possession.”*

17. The cumulative fact and the aforesaid judgment and pleadings of the parties, it is apparently not a mixed question of law and fact and as admitted by the respondent in their pleadings that the claim of respondent was declined on 01.3.2001 and there cannot be any question of its revival in terms of letters dated 06.2.2006 and 13.3.2006 as the limitation period had already been exhausted to apply the provisions of Section 19 of the Limitation Act.

18. In view of the above, the suit of the respondent for recovery of amount as claimed in the suit was barred by limitation and hence this second appeal is allowed with no order as to costs.

Dated:

**Judge**