

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.627 of 2023

In

Civil Writ Jurisdiction Case No.2718 of 2023

CNR No. BRHC010378082023

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Binod Kumar Mishra S/o Shri Paras Mishra, Resident of Vill and P.O.-
Durgadih, P.S.-Bikramganj, Dist-Rohtas (Sasaram), Bihar-802212.

... .. Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Urban Development and Housing Department, Govt. of Bihar.
2. The Executive Engineer cum Project Director District Urban Development Agency under the Department of Urban Development and Housing, (Duda) Rohtas, Govt. of Bihar.
3. The Executive Engineer, Bihar Urban Infrastructure Development Corporation Ltd. Rohtas, Sasaram.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Deo Prakash Singh, Adv.
For the State	:	Mr. Yogendra Prasad Sinha, AAG-7
		Mr. Rajeev Kumar Sinha, AC to AAG-7
For the BUIDCO	:	Mr. Lalit Kishore, Sr. Adv.
		Mr. Rabindra Kumar Priyadarshi, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE SOURENDRA PANDEY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date : 30-10-2026

The present appeal has been filed against the order dated 29.03.2023, passed by the Ld. Single Judge of this Court in CWJC No. 2718 of 2023, whereby and whereunder the writ petition has been dismissed as not maintainable on the ground



that in view of the provisions contained in the Commercial Court Act, 2015, the petitioner is having an alternative and efficacious remedy under the law.

2. The brief facts of the case, according to the appellant are that the Respondents had published E-Tender bearing No. 02/2014-15/DUDA/Rohtas in the newspaper and on the website, pursuant where to the appellant had participated in the tender and was declared L-1, leading to allotment of work orders dated 14.11.2014 bearing nos. 2, 9 & 11, pertaining to construction of PCC Road under Ward No. 16, Nagar Panchayat, Vikramganj, Rohtas for the year, 2013-14, construction of PCC road and drain under Ward No. 16, Nagar Panchayat, Vikramganj, Rohtas & construction of Ghat at Kesath Rajwaha No. 1 under Ward No. 16, Nagar Panchayat, Vikramganj, Rohtas. The appellant had then entered into three agreements bearing Agreement No. 37/2014-15, 39/2014-15 and 42/2014-15, all dt. 27.12.2014 with the Executive Engineer, District Urban Development Agency (hereinafter referred to as "the DUDA"), Rohtas, Sasaram. Thereafter, the appellant is stated to have commenced the work and completed the same successfully within time, whereafter measurement and physical verification was undertaken by the competent authority and work bills were generated.



3. It is the case of the appellant that though the value of work done with respect to agreement no. 37/2014-15, agreement no. 39/2014-15 and agreement no. 42/2014-15 were claimed by him to be a sum of Rs. 7,53,525/- (work done value as per Pg. No. 126 of the writ petition is Rs. 6,71,700/-), Rs. 76,863 (work done value as per Pg. No. 133 of the writ petition is Rs. 71,852/) and Rs. 17,38,103/- (work done value as per Pg. No. 109 of the writ petition is Rs. 12,46,723/-) respectively, however part payment to the tune of Rs. 3,80,000/, Rs. 38,000/- and Rs. 8,55,000/- was sanctioned, whereupon payment was made after statutory deductions, in the year 2015. The appellant had then, vide letters dt. 29.8.2017, 12.9.2017, 10.11.2022 & 23.12.2022, requested the Executive Engineer/Project Director, DUDA, Rohtas at Sasaram for making payment of the balance outstanding dues, however to no avail. In fact, an FIR was lodged against all the contractors including the appellant bearing Sasaram Nagar P.S. Case No. 1326/2015 under Sections 419/420/409/467/468/47 of the Indian Penal Code, wherein the police has already submitted its investigation report stating therein that in publication of fake tenders, there is no complicity of the contractors. The appellant herein being aggrieved by non-payment of the outstanding dues had filed a writ petition bearing



CWJC No. 2718 of 2023, however the same has stood dismissed being not maintainable in view of the fact that the appellant is having an alternative and efficacious remedy under the law.

4. The learned counsel for the appellant has submitted that the appellant has completed the entire work under the aforesaid three agreements to the satisfaction of all concerned, whereafter work completion certificate has also been issued and part payment has also been made but the balance amount of outstanding dues for the work completed by the appellant as per the agreements in question has not been paid. In this connection, the learned counsel for the appellant has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***ABL International Ltd. & Anr. vs Export Credit Guarantee Corporation of India Ltd. & Ors.***, reported in ***(2004) 3 SCC 553***, paras no. 19, 27 and 52 whereof are reproduced herein below:-

“19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur [(1969) 3 SCC 769] this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ



petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.

27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

*52. On the basis of the above conclusion of ours, the question still remains why should we grant the reliefs sought for by the appellants in a writ petition when a suitable efficacious alternate remedy is available by way of a suit. The answer to this question, in our opinion, lies squarely in the decision of this Court in the case of *Shrilekha Vidyarthi* [(1991) 1 SCC 212] wherein this Court held: (SCC pp. 235-37, paras 20-22 & 24)*

The requirement of Article 14 should extend even in the sphere of contractual matters for regulating the conduct of the State activity. Applicability of Article 14 to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, the State cannot thereafter cast off its personality and exercise unbridled power unfettered by the requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without



anything more. The personality of the State, requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article 14 and contractual obligations are alien concepts, which cannot coexist. The Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the preamble. Therefore, total exclusion of Article 14 — non-arbitrariness which is basic to rule of law — from State actions in contractual field is not justified. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

Unlike the private parties the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in



doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.”

5. The learned counsel for the appellant has next relied on a judgment rendered by the Hon'ble Apex Court in the case of ***Surya Constructions vs. State of Uttar Pradesh & Others***, reported in ***(2019) 16 SCC 794*** to submit that in case there is no dispute with regard to the amount to be paid, the High Court should intervene under Article 226 of the Constitution of India. The learned counsel for the appellant has also relied on a judgment rendered by a coordinate Bench of this Court in the case of ***Fulena Construction Pvt. Ltd. vs. State of Bihar***, reported in ***2022 (3) PLJR 717***, paragraphs no. 19 to 21 whereof are reproduced herein below:-

19. In the present case, no validity of any proceeding in the legislature of a State has been called in question on the ground of any alleged irregularity of procedure. The



petitioner's claim is against the State Government of Bihar for payment of dues arising out of a contract, which is admitted. Admittedly the State Government has made a request for deletion of clause 2.2.3 of CAG report. After having admitted these facts, the State Government cannot deny its liability to pay. The State-respondent cannot be allowed to approbate and reprobate in the same transaction. The doctrine of approbate and reprobate has been lucidly summarized by the Supreme Court in a recent decision in case of Union of India and Ors. vs. N. Murugesan and Ors. reported in (2022) 2 SCC 25 paragraph 26 of which reads thus:-

"The phrases "approbate and "reprobate" are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. The principle has to be applied with more vigour as a common law principle if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in its principle. It is also a species of estoppel dealing with the conduct of a party."

20. While laying down the law, the Supreme Court in case of N. Murugesan (supra) has noticed various previous decisions rendered by the Supreme Court including the one in case of Rajasthan Industrial Development and Investment Corporation and Anr. vs. Diamond and Gem



Development Corporation Ltd. & Anr. reported in (2013) 5 SCC 470, wherein the Supreme Court has laid down that a party cannot be permitted to "blow hot-blow cold", "fast & loose" or "approbate & reprobate". The Supreme Court has held that where one knowingly accepts the benefits of a contract, he is estopped from denying the validity of, or binding the effect of such contract.

21. We need not reiterate the settled legal position that even in contractual matters, the public authorities have a duty to act fairly, justly & reasonably, which is requirement of Article 14 of the Constitution of India. In the present case, the respondent-State of Bihar appears to have denied payment to the petitioner even after having utilized its services for the purpose of execution of work on a ground, not germane for denial of the petitioner's claim."

6. Thus, it is submitted by the Ld. counsel for the appellant that the Respondents ought to be directed to make payment of the balance outstanding dues of the appellant in view of the law laid down by the Hon'ble Apex Court and this Court.

7. *Per contra*, the Ld. Senior Counsel for the Respondents, Sri Lalit Kishore, assisted by Sri Rabindra Kumar Priyadarshi, Advocate has at the outset submitted that though the work was completed and admissible amount of payment due was made to the appellant in the year 2015, however he filed the connected writ petition belatedly only in the year 2023, i.e. after lapse of more than seven years, thus on the ground of delay itself, the writ petition was liable to be dismissed. It is submitted that complaints were received regarding the notice inviting tenders



issued by the Respondents to the effect that the same were published and decided in a collusive manner as also the same were stage managed since its inception to cause financial loss to the Government. Thereafter, an enquiry was made and then FIR was instituted against the officials of the Respondents and the contractors as also it was directed that there shall be a complete ban in making any further payment to any contractor in connection with NIT No. 2/2014-15 and 3/2014-15. In fact, departmental proceedings were also initiated against various Engineers of the State Government, thus huge irregularities and illegalities were prevailing in issuance of the aforesaid NITs and award of contracts.

8. The Ld. Senior Counsel for the Respondents has relied on a judgment rendered by the Ld. Single Judge dated 13.09.2019, passed in CWJC No. 10710 of 2016 (*M/s Ankuj Construction vs. The State of Bihar & Ors.*) to submit that in similar matter, the writ petitioner of the said case was granted liberty to seek his remedy, if so advised, before the Arbitration Tribunal constituted under the Bihar Public Works Contract Arbitration Tribunal Act, 2008. It would be relevant to reproduce the relevant paragraphs of the said judgment rendered in the case of *M/s Ankuj Construction* (supra) herein below:-



“It further appears that a supplementary counter affidavit has also been filed on behalf of the respondent no. 3 to 5. In the said counter affidavit also much emphasis has been given on the facts which are already taken note of hereinabove. The supplementary counter affidavit has brought on record a letter dated 05.10.2015 written by the Principal Secretary, Urban Development Department to the District Magistrate, Rohtas in which it is stated that the Information and Public Relation Department has submitted a report that the tenders issued were fake and the then Executive Engineer was involved in the matter.

It is submitted that a perusal of the letter as contained in Annexure ‘F’ to the supplementary counter affidavit would show that it nowhere refers the NITs with reference to which the work were allotted to this petitioner. It is a general kind of letter advising the District Magistrate to get examined the tenders which have been published by DUDA, Rohtas during the last three years.

After the directions issued by this court, a counter affidavit has been filed on behalf of the DUDA through it's Executive Engineer. In it's counter affidavit once again the aforesaid facts have been repeated and the fact that F.I.R. has been lodged against the then Executive Engineer has been highlighted. It is submitted by learned counsel for the petitioner that this affidavit also nowhere discloses that the NIT under which the work were allotted to the petitioner have been specifically verified and have been found to be forged.

After imposition of a cost of Rs. 2000/- the State Urban Development Department has filed a counter affidavit. The counter affidavit of the department is no better than but have been stated in the counter affidavit of the aforesaid respondents. The departmental affidavit takes note of the Three Men Committee constituted by the District Magistrate vide letter no. 432 dated 06.11.2015.

The affidavit is although silent about the report of the



Three Men Committee, but learned counsel for the DUDA has brought to the notice of this court letter bearing no. 613 dated 30th April, 2015 written by the Executive Engineer, DUDA Rohtas to Deputy Development Commissioner, Rohtas in which he has doubted the manner in which the E-Tender were sanctioned by the then Executive Engineer. He has also brought to the notice of this court the Three Men Committee's report as contained in Annexure '2' to the supplementary counter affidavit. The 3 Men Committee in his report has submitted that they were not made available the documents relating to 62 schemes which included the scheme in which tenders were allegedly floated by the then Executive Engineer under the financial year 2013-14.

Learned counsel for the DUDA as well as the State has submitted before this court that in the nature of controversy it would only be just and proper that the matter be considered after looking into various materials and evidences by the arbitration tribunal constituted under the Bihar Public Works Contract Arbitration Tribunal Act, 2008, in fact a stand to this effect has been taken in their counter affidavit that the writ application be not entertained and the petitioner be relegated to the alternative remedy of arbitration.

In the given facts and circumstances of the case after noticing the facts and the kind of controversy which have been raised before this court, the court deems it just and proper not to entertain the writ application and leave it open for the petitioner to seek his remedy, if so advised, before the Arbitration Tribunal constituted under the Bihar Public Works Contract Arbitration Tribunal Act, 2008.

The Writ Application stands disposed of with the aforesaid liberty to the petitioner."

9. The Ld. Senior Counsel for the respondents has next



submitted that it is a well-settled law that if a writ petition is filed after inordinate delay and especially after expiry of the period of limitation prescribed for a civil action by way of filing suit before a competent Civil Court or where the period of limitation prescribed for availing the alternative and efficacious remedy is over, the Court ought not to ordinarily lend its aid to a party by the extraordinary remedy under Article 226 of the Constitution of India and it would be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action. In this regard, the Ld. Senior Counsel for the Respondents has referred to a Constitution Bench judgment rendered by the Hon'ble Apex Court in the case of ***State of Madhya Pradesh & Anr. vs. Bhailal Bhai & Others***, reported in ***AIR 1964 SC 1006***, para nos. 14 to 17 and 21 whereof are reproduced herein below:-

“14. A portion of the tax thus assessed has been already paid by the petitioners. It cannot now be disputed that this payment was made under a mistake within S. 72 of the Indian Contract Act and so the Government to whom the payment has been made by mistake must in law repay it. The question is: whether the relief of repayment has to be sought by the tax-payer by an action in civil court or whether such an order can be made by the High Court in exercise of its jurisdiction under Art. 226 of the Constitution. The jurisdiction conferred by Art. 226 is in very wide terms. This Article empowers the High Court to give relief by way of enforcement of fundamental rights



and other rights by issuing directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. According to the petitioners a writ in the nature of mandamus can be appropriately used where money has been paid to the Government by mistake to give relief by commanding re payment of the same. That in a number of cases the High Courts have used the writ of mandamus to enforce such repayment is not disputed. In a recent case in AIR 1963 SC 925 this Court made in a petition under Art. 32 an order for refund of tax illegally collected from the petitioner under Rule 16 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. The question whether the Court has this power to order refund was not however raised there. In Sales Tax Officer, Banaras v. Kanhaiya Lal Mukundlal Saraf, 1959 SCR 1350 (AIR 1959 SC 135) the appellants disputed the correctness of the High Court's order made in an application under Art. 226 of the Constitution directing refund of taxes that had been paid under the U.P. Sales Tax Act on the respondent's forward transactions in silver bullion. After the levy of sales tax on such transactions was held to be ultra vires by the High Court of Allahabad the respondent asked for refund of the tax paid and when that was refused he applied to the High Court under Art. 226 of the Constitution for a writ of certiorari for quashing the assessment orders and a writ of mandamus requiring the appellants to refund the amount illegally collected. The order made in this case by the High Court for refund was affirmed by this Court in appeal. In this case also the power of the High Court to order such refund was not challenged either before the High Court or before this Court.

15. *We see no reason to think that the High Courts have not got this power. If a right has been infringed-whether a fundamental right or a statutory right and the aggrieved party comes to the court for enforcement of the right it will not be giving complete relief if the court merely*



declares the existence of such right or the fact that existing right has been infringed. Where there has been only a threat to infringe the right, an order commanding the Government or other statutory authority not to take the action contemplated would be sufficient. It has been held by this Court that where there has been a threat only and the right has not been actually infringed an application under Art. 226 would lie and the courts would give necessary relief by making an order in the nature of in-junction. It will hardly be reasonable to say that while the court will grant relief by such command in the nature of an order of injunction where the invasion of a right has been merely threatened the court must still refuse, where the right has been actually invaded, to give the consequential relief and content itself with merely a declaration that the right exists and has been invaded or with merely quashing the illegal order made.

16. For the reasons given above, we are clearly of opinion that the High Courts have power for the purpose of enforcement of fundamental rights and statutory rights to give consequential relief by ordering repayment of money realised by the Govt. without the authority of law.

17. At the same time we cannot lose sight of the fact that the special remedy provided in Art. 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defences legitimately open in such actions. It has been made clear more than once that the power to give relief under [Art. 226](#) is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it. Another is the nature of controversy of facts and law that may have to be decided as regards the availability of consequential relief. Thus, where, as in these cases, a person comes to the Court for relief under Art. 226 on the allegation that he



has been assessed to tax under a void legislation and having paid it under a mistake is entitled to get it back, the court, if it finds that the assessment was void, being made under a void provision of law, and the payment was made by mistake, is still not bound to exercise its discretion directing repayment. Whether repayment should be ordered in the exercise of this discretion will depend in each case on its own facts and circumstances. It is not easy nor is it desirable to lay down any rule for universal application. It may however be stated as a general rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. Again, where even if there is no such delay the Government or the statutory authority against whom the consequential relief is prayed for raises a prima facie triable issue as regards the availability of such relief on the merits on the grounds like limitation the Court should ordinarily refuse to issue the writ of mandamus for such payment. In both these kinds of cases it will be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a civil court and to refuse to exercise in his favour the extraordinary remedy under Art. 226 of the Constitution.

21. The learned Judges appear to have failed to notice that the delay in these petitions was more than the delay in the petition made in Bhailal Bhai's case, 1960 M.P.C. 304 out of which Civil Appeal No. 362 of 62 has arisen. On behalf of the respondents-petitioners in these appeals (C. A. Nos. 861 to 867 of 1962) Mr. Andley has argued that the delay in these cases even is not such as would justify refusal of the order for refund. We argued that assuming that the remedy of recovery by action in a civil court stood barred on the date these applications were made that would be no reason to refuse relief under Art. 226 of the Constitution. Learned Counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art. 226.



It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable. The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act is three years from the date when the mistake is known. If the mistake was known in these cases on or shortly after January 17, 1956 the delay in making these applications should be considered un-reasonable. If, on the other hand, as Mr. Andley seems to argue, that the mistake discovered much later this would be a controversial tact which cannot conveniently be decided in writ proceedings. In either view of the matter we are of opinion the orders for refund made by the High Court in these seven cases cannot be sustained.”

“Underlining mine”

10. Having heard the learned counsel for the parties and having perused the materials on record, we find that the facts of the present case lies in a narrow encompass, inasmuch as the work orders dated 14.11.2014, pertaining to construction of PCC road, drain and Ghat under Ward No. 16, Nagar Panchayat, Vikramganj, Rohtas, for the year 2013-14 were issued to the appellant, leading to the appellant having entered into three agreements dated 27.12.2014 with the Executive Engineer, DUDA, Rohtas at Sasaram. The appellant is stated to have



completed the work in time, whereafter bills were raised by the appellant and part payment was made in the year, 2015 itself, however, the appellant had filed the connected writ petition, *inter alia* praying therein for directing the Respondents to pay the admitted outstanding amount with interest pertaining to the aforesaid three agreements, after a huge delay of about eight years but without assigning any satisfactory, bonafide, convincing much less plausible reason for filing the said writ petition after an inordinate delay of about eight years.

11. At this juncture, we would like to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Joshi Technologies International Inc. vs. Union of India & Others***, reported in ***(2015) 7 SCC 728***, paragraphs no. 70.8, 70.9, 70.10, 70.11 and 71 whereof are reproduced herein below:-

“70.8. If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

70.9. The distinction between public law and private law element in the contract with the State is getting blurred.



However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.

70.10. *Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.*

70.11. *The scope of judicial review in respect of disputes falling within the domain of contractual obligations may*



be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes.

71. Keeping in mind the aforesaid principles and after considering the arguments of the respective parties, we are of the view that on the facts of the present case, it is not a fit case where the High Court should have exercised discretionary jurisdiction under Article 226 of the Constitution. First, the matter is in the realm of pure contract. It is not a case where any statutory contract is awarded.”

12. Now coming back to the present case, we find that one of the issues, which arises for consideration is as to whether delay and laches on the part of the appellant in approaching the Writ Court can be a valid ground for refusing writ relief. It is a well-settled law that if a writ petitioner wants to invoke jurisdiction of a Writ Court, he should come to the Court at the earliest reasonably possible opportunity and inordinate delay in making the motion for a writ is a good ground for refusing to exercise such discretionary jurisdiction. The underlining object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime. There is no upper limit and there is no lower limit as



to when a person can approach a Court, however the question is one of discretion and has to be decided on the basis of facts before the Court, depending on and varying from case to case. In this regard, we may refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Tridip Kumar Dingal & Others vs. State of West Bengal & Others*** & other analogous cases, reported in ***(2009) 1 SCC 768***. It is equally a well-settled law, as has been held by the Hon'ble Apex Court in a catena of judgments that while exercising extraordinary and equitable jurisdiction under Article 226 of the Constitution of India, the Constitutional Court, while protecting the rights of citizens, should simultaneously keep itself alive to primary principle that when an aggrieved person, without adequate reason, approaches the Court belatedly, at his own leisure or pleasure, the writ Court is not required to grant any indulgence to such indolent person and on the ground of delay and laches alone, the writ Court ought to throw the petition overboard at the very threshold. In this regard, reference be had to the following judgments:-

“(i) State of Tamil Nadu vs. Seshachalam, reported in (2007) 10 SCC 137;

(ii) C. Jacob vs. Director of Geology & Mining & Anr., reported in AIR 2009 SC 264;

(iii) State of Uttranchal & Anr. vs. Shiv Charan Singh



Bhandari & Ors., reported in 2013 AIR SCW 6627;

(iv) Chennai Metropolitan Water Supply & Sewerage Board & Others vs. T.T. Murali Babu, reported in (2014) 4 SCC 108;

(v) State of Jammu & Kashmir vs. R.K. Zalpuri & Others, reported in AIR 2016 SC 3006;

(vi) Union of India v. C. Girija, reported in (2019) 15 SCC 633”

13. It would be apposite to refer to yet another judgment rendered by the Hon’ble Apex Court in the case of ***Mrinmoy Maity vs. Chanda Koley & Others***, reported in ***(2024) 15 SCC 215***, paragraphs no. 9, 11, 13 and 14 whereof are reproduced herein below:-

“9. Having heard rival contentions raised and on perusal of the facts obtained in the present case, we are of the considered view that the writ petitioner ought to have been non-suited or in other words the writ petition ought to have been dismissed on the ground of delay and laches itself. An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or laches is one of the factors which should be borne in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High



Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.

11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, inasmuch as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court.

13. It is apposite to take note of the dicta laid down by this Court in Karnataka Power Corpn. Ltd. v. K. Thangappan [(2006) 4 SCC 322] whereunder it has been held that the High Court may refuse to exercise extraordinary jurisdiction if there is negligence or



omissions on the part of the applicant to assert his right. It has been further held thereunder:

“6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad v. Controller of Imports and Exports [(1969) 1 SCC 185]. Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd [(1874) LR 5 PC 221 : 22 WR 492] (LR PC at p. 239) was approved by this Court in Moon Mills Ltd. v. Industrial Court [1967 SCC OnLine SC 117 : AIR 1967 SC 1450] and Maharashtra SRTC v. Balwant Regular Motor Service [1968 SCC OnLine SC 54 : (1969) 1 SCR 808 : AIR 1969 SC 329]. Sir Barnes had stated: (Lindsay Petroleum case, LR pp. 239-40)

‘Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might



fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy.'

8. *It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in Rabindranath Bose v. Union of India [(1970) 1 SCC 84] that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the*



Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

9. It was stated in State of M.P. v. Nandlal Jaiswal [(1986) 4 SCC 566] that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.”

14. Reiterating the aspect of delay and laches would disentitle the discretionary relief being granted, this Court in Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu [(2014) 4 SCC 108] has held: (SCC p. 117, para 16)

“16. Thus, the doctrine of delay and laches should not



be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”

14. Considering the facts and averments made in the writ petition, we may reiterate that the appellant has assigned no convincing or plausible reason for filing the writ petition after inordinate delay of about 8 years, although a suit for recovery of money has to be filed within three years from the date when the cause of action arises. The extra-ordinary jurisdiction, under



Article 226 of the Constitution of India, has to be exercised to enforce the law and not to defeat the same. In other words, the power under Article 226 of the Constitution has to be exercised to effectuate the rule of law and not to abrogate or defeat it. Even while acting in exercise of the said constitutional power, the High Court cannot ignore the law nor can it override the law. The power, under Article 226 of the Constitution of India, is conceived to serve the ends of law and not to transgress them. Reference in this regard be had to the judgment rendered by the Hon'ble Apex Court in the case of *Mafatlal Industries Ltd. v. Union of India*, reported in (1997) 5 SCC 536.

15. Thus, we find that there has been unreasonable delay on the part of the appellant in approaching the Writ Court, hence this Court is not required to lend its aid by its extraordinary remedy of mandamus, therefore the Writ Court has rightly refused to exercise the extraordinary remedy under Article 226 of the Constitution of India, leaving the appellant to seek his remedy by the ordinary mode of action, as is otherwise available under the law.

16. Yet another aspect of the matter is as to whether a time-barred debt can be recovered by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution



of India. In this regard, we would refer to a judgment rendered by a Constitution Bench of the Hon'ble Apex Court in the case of **Bhailal Bhai** (supra), wherein it has been held- "that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured". Thus, the Court may consider the delay to be unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will always be proper for the Court to hold that it is unreasonable.

17. In light of the law laid down by the Constitution Bench of the Hon'ble Apex Court in the case of **Bhailal Bhai** (supra), we are now required to appraise the present case. Admittedly, the period of limitation prescribed for recovery of money due on a contract is three years from the date when the payment becomes due. In the present case, therefore the onus was on the writ petitioner / appellant herein to show that when his dues had otherwise become time-barred, as to why he had not approached the Writ Court before the dues became time-barred. The writ petition was filed after an inordinate delay of about eight years and this delay having not been appropriately explained, we find



that the writ petition was not maintainable on this ground alone, inasmuch as delay in filing the writ petition is unreasonable and moreover, the said delay is more than the period of limitation prescribed for a civil action for the remedy, as available to the writ petitioner / appellant. Hence, considering the law laid down by the Constitution Bench of the Hon’ble Apex Court in the case of ***Bhailal Bhai*** (supra), we find that the writ petition filed by the writ petitioner / appellant, itself was not liable to be entertained under Article 226 of the Constitution of India being marred by the principles of delay and laches, thus the present appeal is sans merit, accordingly the same stands dismissed.

(Mohit Kumar Shah, J)

(Sourendra Pandey, J)

Ajay/-

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