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	Registered on	:	15.06.2015		
	Decided on	:	25.06.2026		
	Duration	:	11	00	10
			Years	Month	Days

**IN THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE
HIMMATNAGAR, DIST. SABARKANTHA.**

Presided Over by **A. B. Mamtora**

Special Civil Suit No. 16 / 2015

Exh. : 52

Plaintiff : Popatlal Natvarlal Suthar

Age : 74 years, Occupation : Contractor,

Resi. Of : 38, Goldan park society, opp. English
School, Mahavirnagar, Himmatnagar,

Dist. Sabarkantha.

// VERSUS //

Defendant: Reliance Infocomm Engineering Pvt. Ltd.

C/o Reliance Infocomm Ltd.

Dhirubhai Ambani knowledge city

Project Office, C. P. Ware house,

building-T, New Mumbai – 400 709.

:: Suit for recovery of Rs.5,87,000/- ::

Appearance :

Mr. R. N. Pandya, learned advocate for the plaintiff.

Mr. C. B. Kaushal, learned advocate for the defendant.

:: J U D G M E N T ::

01. The plaintiff has filed the present suit to recover **Rs.5,87,000/-**
(Rupees Five Lakh Eighty Seven Thousand Only) from the
defendant either jointly or severally.

02. Factual matrix

Pleading of the parties

The foundation of civil case is based on the pleading. The parties of proceeding can not travel beyond their pleadings and parties have led their evidence in light of their pleadings. If any evidence is brought before this court beyond their pleadings, it cannot be look out. The definition of pleading as defined under Order VI Rule 1 of the Code i.e. pleadings includes plaint and written statement. In this background, nutshell of pleadings stated are as follows:

Pleading of the plaintiff

2.1 As per the pleadings, the plaintiff is engaged in the business of

building construction and other types of construction contractors. The defendant herein is a company incorporated under the Companies Act of India, and is mainly engaged in erecting mobile towers for the transmission of signals required for the use of mobile phones for a company named Reliance Infocomm Limited, which is a service provider for mobile phones etc. The plaintiff was awarded contracts vide Work Order No. RGC/15586027, dated 10.06.2007 for Rs.6,74,110=80 paisa and Work Order No. RGC/15586580, dated 12.06.2007 for Rs.6,69,147=50 paisa and Work Order No. RGC/15571674, dated 20.04.2007 for Rs.6,41,147=50 paisa totaling Rs.19,85,405=30 paisa. These contracts were for completing the work, including providing construction materials for erecting a mobile tower, and the work was completed satisfactorily within one month from the date of the work orders.

- 2.2** As per the pleadings, the defendant had deducted the deposit (retention money) as per the work order from the stage-wise running bill of the work done by the plaintiff as per the stipulated schedule. The deposit amount was to be paid to the plaintiff after one month of completion of the work. The total

amount of such deposit (retention money) is Rs.2,43,166/-, which the defendant is obliged to pay to the plaintiff. Thus, as the plaintiff did not get the deposit amount back from the defendant, the plaintiff gave a notice to get the deposit back through his advocate on 15.06.2012, although the defendant had received it, the defendant had not paid the said amount to the plaintiff. Therefore, the plaintiff has filed the present suit to recover that amount along with interest at the rate of 18% from the defendant.

2.3 It is the say of the plaintiff that, the due amount was not paid by the defendant. On basis of this, the plaintiff has made following prayer.

- (a) To pass a decree in favour of plaintiff and against the defendant that, the defendant shall pay the deposit amount (retention money) of Rs.2,43,166/- with interest of 18% per annum, i.e. Rs.5,87,000/- to the plaintiff from the date of giving notice on 15.06.2012.
- (b) Any other relief which Hon'ble Court deems fit.
- (c) Cost of the suit.

03. The summons of the plaint are duly served upon the defendants as per the provisions of Order V of the Code of Civil Procedure,

1908 (in short “**Code**”). Upon service of summons the defendant has appeared through his learned advocate before the Court, however, the defendant has failed to file his written statement against the allegation raised by the plaintiff, therefore, the right to file written statement has been closed by this Court on **19.08.2017**.

Pleading of defendant

- 04.** Furthermore, the defendant has filed an application under Order VII, rule 11 of the Code of Civil Procedure, vide **Exh. 16**, regarding rejection of the plaintiff's suit, wherein the Court has passed an order and rejected the said application on **27.03.2017**. Thereafter, the learned advocate for the defendant has filed an application regarding re-open the right to file written statement vide **Exh. 24**, which was granted by the Court on 19.02.2018. Therefore, the learned advocate for the defendant has filed a pursis vide **Exh. 25** and submitted that to adoption of the averments / submissions / objections as raised in application under Order VII, rule 11 filed by the defendant at **Exh. 16** to be treated as written statement of the defendant in the present suit. Therefore, on perusing the application at Exh.

16, wherein, the defendant has submitted that the plaintiff has filed the present suit for recovery of Retention Money being Rs.2,43,166/- along with 18% interest accrued thereupon as mentioned in para 3 of the suit. The recovery of the aforesaid Retention Money / Deposit has been claimed on the basis of the deduction of the said deposit amount by the defendant company from the running bill of the three work order being (i) Order No. RGC/15586027, dated 10.06.2007, (ii) Work Order No. RGC/1558658, dated 12.06.2007 and (iii) Work Order No. RGC/15571674, dated 20.04.2007 and the plaintiff had satisfactorily completed the said work within one month of the aforesaid work order. So that, the cause of action for receiving and / or to file the present suit for recovery of the aforesaid Retention Money / Deposit has arisen for the first time from the month of August 2007. The defendant has further submitted that the plaintiff has not produced any documentary evidence to show that the plaintiff had ever made any demand in writing to the defendant company for payment of the aforesaid Retention Money / deposit within three years of the completion of the aforesaid Work Order from the month of June 2007 upto 2010. Further stated that, the plaintiff had issued a demand

notice upon the defendant company through his learned advocate on dated 15.06.2012 for the payment of the aforesaid alleged Retention Money / Deposit money, but the said notice was issued by the plaintiff almost after lapse of five years from the date of completion of the aforesaid Work order, which itself is issued beyond Limitation period of three years from the year 2007, the plaintiff has failed to issue demand notice to the defendant company within three years from the date of the completion of the aforesaid work order with regards to payment of alleged Retention money / Deposit as well as has also failed to file the suit within three years from the date of completion of the aforesaid work order, for obtaining the alleged Retention money / Deposit from the defendant company before the Court. The plaintiff has not come before the Court with clean hands. At the end of his written statement he has stated that the suit of the plaintiff is purely barred by Law of Limitation, therefore, it is required to be rejected / dismissed by awarding compensatory cost.

- 05.** In support of his case, the plaintiff has produced following oral as well as documentary evidence.

ORAL EVIDENCE :

Sr. No.	Name of evidence	Exhibit No.
01.	Deposition in form of affidavit of plaintiff – Popatlal Natvarlal Suthar	42

DOCUMENTARY EVIDENCE :

Sr. No.	Name of evidence	Exhibit No.
01.	Work Order No. RGC/15571674 dated 27.04.2007	44
02.	Work Order No. RGC/15586027 dated 10.06.2007	45
03.	Work Order No. RGC/15586580 dated 12.06.2007	46
04.	O/c copy of notice dated 15.06.2012	47
05.	Original receipt of Mahavir Courier services	48

Thereafter, the learned advocate for the plaintiff has tendered the closing pursis at **Exh.50**.

- 06.** *Per contra*, neither oral nor documentary evidence have been produced by the defendant, therefore, the learned advocate for the plaintiff has filed an application vide Exh. 51 in regard to close the right of defendant to produce the evidence, which was granted by this Court on **15.04.2026**.

07. From the available pleadings and the documents on record, for just decision of the case, my learned predecessor has framed the following issues in vernacular language vide **Exh. 22**.

:: I S S U E S ::

૦૧. શું વાદી પુરવાર કરે છે કે, તેઓએ વર્ક ઓર્ડર નં.આર.જી.સી./૧૫૫૮૭૦૨૭ તા. ૧૦.૦૬.૨૦૦૭ તથા વર્ક ઓર્ડર નં. આર.જી.સી./૧૫૫૮૬૫૮૦ તા. ૧૨.૦૬.૨૦૦૭ તથા વર્ક ઓર્ડર નં. આર.જી.સી./૧૫૫૭૧૬૭૪ તા. ૨૦.૦૪.૨૦૦૭ એમ કુલ રૂ.૧૯,૮૫,૪૮૫-૩૦ પૈસા નું મોબાઈલ ટાવર ઉભા કરવા માટેનું બાંધકામ વર્ક ઓર્ડરની તારીખથી એક માસમાં જરૂરીયાત મુજબ પુરૂ કરેલ?
૦૨. શું વાદી પુરવાર કરે છે કે, પ્રતિવાદીઓ રીટેન્શન મની કુલ રૂ.૨,૪૩,૧૬૬/- ચુકવવા જવાબદાર છે?
૦૩. શું પ્રતિવાદી પુરવાર કરે છે કે, વાદીના દાવાને સમય મર્યાદાનો બાધ હોઈ ચાલવા પાત્ર નથી?
૦૪. શું વાદી દાવામાં માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે?
૦૫. શું હુકમ તથા હુકમનામું?

08. My answer of the above issues are as under :

01. In negative.
02. In negative
03. In affirmative
04. In negative
05. As per final order.

:: REASONS / DISCUSSIONS ::

ARGUMENT OF THE LEARNED ADVOCATES OF THE PARTIES :-

09. After closure of evidence, I have heard the argument of Ld. Advocate Mr. N. P. Gor on behalf of the plaintiff and have prayed for the grant of relief mentioned in the plaint at Exh. 1. Also have argued that, the defendant has not produced any kind of evidence and also not examined any witness to prove his case and indirectly have accepted the claim of the plaintiff. Hence, the suit should be decreed. *Per contra*, although providing ample opportunity by the Court, neither defendant nor his learned advocate was remained present before the Court for argument, therefore, the right of argument of the defendant has been closed by the Court on 08.06.2026.

Issue Nos. 1 to 4 :

10. All the issues are inter linked and thus are discussed together in order to avoid repetition and ambiguity. I have carefully gone through the entire evidence on record, in the light of the submissions made by the learned advocate of plaintiff.

11. Appreciation of evidence and burden of Proof

At this juncture, it would be apposite to refer **Section 101 and**

102 of the Indian Evidence Act, 1872 and relevant proposition of appreciation of evidence, which read as follows:

“101. Burden of proof. —

Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

102. On whom burden of proof lies. —

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

11.1 It's require to be noted that The Indian Evidence Act does not define the term "burden of proof". However, in simple terms, the burden of proof refers to the legal requirement or responsibility of the parties to establish the facts that will assist the court in reaching a decision in their favor. Therefore, the duty to prove a fact in a suit is known as the Burden of Proof.

The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. The term preponderance of probabilities has not defined under Indian Evidence Act. In legal

terminology, preponderance generally signifies that satisfy the conscious and carries to conviction in intelligent mind. This is for the reason that under the Evidence Act, section 3, provided that a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

In appreciating evidence by applying the provisions of evidence Act, the Courts either believed that certain facts exist, or it consider it existence so probable that a prudent man ought, under the circumstances of the particular case to act upon the proposition that be exist, so, the Court have to test the evidence on the basis of probabilities. Furthermore, plaintiff has to prove his case on his own strength and can not take advantage of weakness of the opposite party.

As far as appreciation of evidence, there are no set of hard and fast rules. It is the Court, who is to sieve the evidence, so as to separate chaff from the grain and should consider such evidence to be relevant, probable, trustworthy consisting to the facts under consideration and surrounding circumstances thereto.

So, in the light of aforesaid settled principles, this Court scrutinized the entire pleading, oral as well as documentary evidence with microscopic view.

12. In prove the issues, the plaintiff has produced his affidavit of examination-in-chief vide **Exh.42**, wherein he reiterated the facts of plaint, and fully supported to the plaint, hence, it is not required to repeat here. In support of his case, plaintiff has produced documentary evidence vide Exh. 44 to Exh. 48.

On the other side, the defendant has choose to remain absent before the Court and despite being given ample opportunity by the Court, the defendant did not cross-examine the plaintiff. Therefore, his right to cross-examination of the plaintiff has been closed by the Court on **10.03.2026**.

13. Now, on perusing the plaint and documents produced on record, the plaintiff has instituted the present suit against the defendant for the recovery of an outstanding retention money / deposit amount of Rs.5,87,000/- along with interest. According to the plaintiff's case, the defendant had issued various work orders in favour of the plaintiff and the last work order was issued on dated 12.06.2007, and the said work was satisfactorily completed by the plaintiff, within one month from

the date of the work order. As per the conditions of the work order, the Retention money / Deposit was deducted by the defendant from the running bills, which was refundable to the plaintiff in one month after the completion of the work. The above stated dues amount was not paid by the defendant to the plaintiff yet. *Per contra*, The principle legal defense raised by the defendant is that the plaintiff's suit is patently barred by the Law of Limitation and is, therefore, liable to be rejected.

13.1 Accrual of Cause of Action and Chronological Calculation:

In the present case, this Court must primarily ascertain as to when the legal right to sue, i.e., the 'Cause of Action', accrued to the plaintiff. As per the plaintiff's own pleadings and the evidence on record, the work was completed within one month from the date of work order 12.06.2007, i.e., in July 2007. In accordance with the terms of the work order, the said deposit amount became refundable to the plaintiff one month after the completion of work, which computes to August 2007. The defendant has also admitted in their written statement that the plaintiff became entitled to receive this amount by August 2007. Consequently, the legal right of the plaintiff to recover

the said amount had matured in August 2007, and the cause of action is deemed to have arisen at that specific point in time.

13.2 At this juncture, it would be apposite to refer **Article 19, and 21 of the Limitation Act, 1963** and relevant proposition of appreciation of evidence, which read as follows:

“Article 19.

For money payable for money lent.

Three years.

When the loan is made.

Article 21

For money lent under an agreement that it shall be payable on demand.

Three years.

When the loan is made.”

13.3 Evaluation of Statutory Provisions under the Limitation Act:

"Under the Limitation Act, 1963, a statutory period of 3 years is prescribed for filing suits concerning the recovery of money or deposits. In terms of legal computation, since the cause of action accrued in August 2007, it was imperative for the plaintiff to institute the suit before a competent Court within the statutory limitation period, i.e., by August 2010. However, a perusal of the record reveals that the present suit was instituted by the plaintiff on 15.06.2015. This demonstrates that the suit has been filed after an egregious delay of approximately 4 years

and 10 months (nearly 5 years) beyond the expiration of the prescribed period of limitation (August 2010).

13.4 Plaintiff's Inaction and Lack of Evidence:

It has been rightly pointed out by the defendant in his written statement at Exh. 16 that the plaintiff failed to take any legal recourse or steps for recovery against the defendant during the statutory period from August 2007 to August 2010, or even for a considerable period thereafter. The plaintiff has failed to produce any documentary evidence on record to establish that any Legal Notice was served upon the defendant demanding the outstanding dues within the limitation period, or that there was any written acknowledgment of debt by the defendant which could extend the limitation under Section 18 of the Limitation Act. Furthermore, the provisions of Section 5 of the Limitation Act (Condonation of Delay) do not apply to original civil suits; hence, the benefit of condonation of delay cannot be extended to an original suit.

13.5 Legal Principle and Conclusion:

The Hon'ble Supreme Court has settled through various judicial precedents that the law aids the vigilant and not those who slumber over their rights (*Vigilantibus non dormientibus jura*

subveniunt). The provisions of Section 3 of the Limitation Act are mandatory in nature. If a suit is brought before the court beyond the prescribed period of limitation, the Court is left with no option but to dismiss it, irrespective of whether the defense of limitation has been set up or not.

Therefore, upon a holistic consideration of the facts, the chronological timeline, and the statutory provisions, this Court arrives at a firm conclusion that the present suit of the plaintiff is explicitly barred by the law of limitation. Thus, when the plaintiff's suit is not maintainable due to barred by any law, there is no need to discuss any other issues of the suit. Furthermore, in support of his case, the plaintiff has produced only work orders on record, but he has not produced completion certificate, receipt of deposited amount etc. on the record. He has also not produced the acknowledgment receipt of notice issued by his learned advocate, in regard to notice served or not to the defendant. Consequently, the plaintiff has failed to prove his facts stated in the pleadings by producing cogent evidence and by examining any witness.

14. In this background, the issue for determination No. 1, 2 and 4 are held in negative, and the issue for determination No. 3 is

held in affirmative, whereas, the last one is held as per the final order;

:: FINAL ORDER ::

01. The suit of the plaintiff is hereby rejected in toto.
02. The parties shall bear their own costs.
03. The suit stands disposed off accordingly.
04. Decree be drawn accordingly.

**Signed & pronounced in the Open Court today on 25th
day of June, 2026.**

Place : Himmatnagar
Date : 25.06.2026

(Amit Bipinchandra Mamtora)
Additional Senior Civil Judge,
Sabarkantha @ Himmatnagar.
Judge Code: GJ01059

*PARJITSINH