

DHARMARTH TRUST J & K JAMMU & ORS.

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v.

DINESH CHANDER NANDA
(Civil Appeal No. 7465 of 2010)

SEPTEMBER 08, 2010

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[P. SATHASIVAM AND ANIL R. DAVE, JJ.]

Jammu and Kashmir Limitation Act, 1995 – Articles 56 and 119 – Suit by architect against trust claiming certain amount towards professional charges – Issue as regards maintainability/limitation – Contention by the trust that suit is governed by Article 56 and was barred by limitation on the date of its institution – Courts below holding that suit is governed by Article 119 and not Article 56 – Interference with – Held: Not called for – Services provided by architect are taxable under the Service Tax laws – Term ‘work done’ as appearing in Article 56 does not apply to architect providing services for a fee, thus Article 56 not applicable.

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Words and Phrases: Terms ‘price’ and ‘work done’ – Meaning of – In the context of Article 56 of the Jammu and Kashmir Limitation Act, 1995.

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The respondent-architect filed a suit against the appellant-trust claiming certain amount towards professional charges including interest for various projects. During the pendency of the suit, the respondent filed application for the amendment of the plaint. The issue was raised regarding the maintainability/limitation of the application. The trial court held that the case was governed by Article 119 and not by Article 56 of the Jammu and Kashmir Limitation Act, 1995 and allowed the amendment to the plaint. The appellant-trust filed a revision petition. The appellant-trust contended that the suit was governed by Article 56 of the Act and the same

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A was barred by limitation on the date of its institution. The High Court upheld the order passed by the trial court. Therefore, the appellant-trust filed the instant appeal.

Dismissing the appeal, the Court

B HELD: 1.1 The term ‘work done’ as appearing in Article 56 of the Jammu and Kashmir Limitation Act, 1995 does not apply to the respondent, who is an architect providing services for a fee. [Para 12] [1110-F-G]

C 1.2 The term ‘price’, as appearing in Article 56 of the Act, is to be understood in common parlance/ordinary or normal sense. It takes its colour from the meaning attached to the term ‘price’ in the Articles immediately preceding ‘Articles 52 to 55’. ‘Price’ does not cover the services provided by the professionals such as architect, lawyer, doctor etc., as professionals charge a ‘fee’. Also, the term ‘work done’ in Article 56 will not be applicable to professionals such as architect, lawyer, doctor etc. as these professionals render services to their clients. The remuneration of a professional is in the form of a ‘fee’ and, therefore, it cannot be said that the professional earns a ‘price’. In common usage, the term ‘price’ refers to goods sold. The term ‘price’ is used in Articles 52 to 55 in correlation to goods delivered, goods sold and delivered and trees or growing crops sold. In the said way, ‘price’ would take a similar meaning when used in Article 56. [Paras 8 and 9] [1110-F-G]

G *Websters Encyclopedic Unabridged Dictionary; “Chambers Twentieth Century Dictionary; Law Lexicon by P. Ramanatha Iyer 2nd Edn. 1997 – referred to.*

H 1.3 The specific treatment of attorneys/vakils who provide professional services is a reflection of the intention of the Legislature to treat the services provided

by professionals differently from work done by others. A
The word 'price' was never intended to be used
synonymously with the word 'fee' and, therefore, the fee
charged by an architect for services rendered by him
would not be covered under Article 56 of the Act. In the
instant case, the trial court as well as the High Court B
made a clear distinction between the terms 'work done'
and 'services'. The 'work done' would refer work done by
masons such as land filling or engineering projects etc.
[Para 11] [1109-F-H; 1110-A]

1.4 The services provided by an architect are taxable C.
under the Service Tax law. Whereunder the architects are
considered as persons providing a service and are liable
to pay service tax. The term 'work done' has not been
defined anywhere. [Para 12] [1110-D]

1.5 The claim of the respondent that the profession D
of an Architect is one such service, hence Article 56 is
not applicable, is accepted. There is no error in the
conclusion arrived at by the trial court and upheld by the
High Court. [Para 16] [1112-E-F] E

*Kaviraj Baroda Kant Sen vs. Court of Wards in Charge
of Baraon Estate AIR 1931 All. 752; Kakodonga Tea Estate
vs. J.N. Saikia AIR 1973 Gau. 27 – approved.*

Case Law Reference: F

AIR 1931 All. 752 Approved. Para 14

AIR 1973 Gau. 27 Approved. Para 15

CIVIL APPELLATE JURISDICTION : Civil Appeal No. G
7465 of 2010.

From the Judgment & Order dated 18.10.2007 of the High
Court of Jammu & Kashmir at Jammu in Civil Revision Petition
bearing C. Rev. No. 177 of 2005.

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- A Ashok Mathur, Anshul Narayan for the Appellants.
V. Giri, Rohit Bhat, Vikas Mehta for the Respondent.

The Judgment of the Court was delivered by

- B **P. SATHASIVAM, J.** 1. Leave granted.

2. This appeal is directed against the judgment and order dated 18.10.2007 passed by the High Court of Jammu & Kashmir at Jammu in Civil Revision No. 177 of 2005 whereby the High Court dismissed the revision filed by the Dharmarth Trust (hereinafter referred to as "the Trust")-appellants herein.

3. **Brief facts:**

- (a) The Respondent, a qualified, registered and licensed Architect, is engaged in his professional business in the name of M/s Nanda Designers Consortium having its office at 60 Purani Mandi, Jammu. On 19.10.1992, he was engaged by the Trust for the purpose of providing professional consultancy services as an architect for various projects at different sites in Jammu. As per the terms of the said contract, a fee of 2.5% of the total project cost was fixed for providing such services.

- (b) On 14.12.1993, the appellants-Trust telephonically communicated the respondent not to work further for their projects and terminated his services as an Architect. A formal communication was also served on 16.01.1994 regarding the termination of his services.

- (c) On 16.10.1996, the Respondent served a legal notice to the Trust claiming compensation amounting to Rs. 38,77,263.75 towards professional charges including interest thereon for various projects. After not getting any reply from the Trust, after a gap of four years, on 29.01.1998, a suit was filed by the Respondent in the Court of the 1st Additional District Judge, Jammu, claiming an amount of Rs. 43,30,797/-. During

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the pendency of the suit, on 08.02.1999, the Respondent filed an application under Order VI Rule 17 of the Code of Civil Procedure for amendment in the Plaint. On 22.09.1999, the Trust filed their reply objecting to the maintainability of the application. By order dated 08.10.1999, the trial Court allowed the application. Challenging the said order, the Trust filed Civil Revision No. 162 of 1999 before the High Court praying that the trial Court had committed an error in law by allowing the amendment in the plaint without addressing the legal issue regarding its maintainability. The High Court, vide order dated 19.07.2001, disposed of the civil revision petition filed by the Trust and remanded the matter back to the trial Court to address the legal issue regarding maintainability/limitation. Thereafter, on 27.09.2005, 1st Additional District Judge framed the issue and passed an order holding that the case is governed by Article 119 and not by Article 56 of the Jammu & Kashmir Limitation Act, 1995 (hereinafter referred to as "the Act") and consequently, allowed the amendment to the Plaint.

(d) Challenging the said order, the Trust filed Civil Revision No. 177 of 2005 before the High Court. Vide order dated 18.10.2007, the High Court dismissed the revision and upheld the order dated 27.09.2005, passed by the 1st Additional District Judge. Aggrieved by the said order, the Trust has filed this appeal by way of special leave before this Court.

4. Heard Mr. Ashok Mathur, learned counsel for the appellants and Mr. V. Giri, learned senior counsel for the respondent.

5. The short question that arises for consideration in this appeal is whether the suit filed by the respondent-Architect is covered under Article 56 of the Act or whether the said suit is covered under Article 119 of the Act.

6. The Trial Court and the High Court have held that the suit is covered by Article 119 of the Act. According to the appellants, the suit filed by the respondent-Architect is governed

- A by Article 56 of the said Act and the same was barred by limitation on the date of its institution. On the other hand, the submission of the respondent is that the same was covered by the residuary Article 119 which provides for a period of 6 years on the ground that the nature of services provided was
- B professional services and the remuneration for the same being termed as 'fee' and the same does not fall within the expression 'price' for 'work done'.

7. Article 56 and Article 119 of the Schedule to the Jammu and Kashmir Limitation Act, 1995 provides as follows:-

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Article 56	For the price of work done by the Plaintiff for the Defendant at his request, where no time has been fixed for payment.	Three Years	When the work is done.
Article 119	Suit for which no period of limitation provided elsewhere in the Scheduel.	Six Years	When the right to sue accrues.

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8. The term 'price', as appearing in Article 56, is to be understood in common parlance/ordinary or normal sense. It takes its colour from the meaning attached to the term 'price' in the Articles immediately preceding 'Articles 52 to 55'. 'Price' does not cover the services provided by the professionals such as Architect, Lawyer, Doctor etc., as professionals charge a 'fee'. Also, the term 'work done' in Article 56 will not be applicable to professionals such as Architect, Lawyer, Doctor etc. as these professionals render services to their clients. The remuneration of a professional is in the form of a 'fee' and therefore, it cannot be said that the professional earns a 'price'. In common usage, the term 'price' refers to goods sold. For illustration, the term 'price' is defined in Section 2 (10) of the Sale of Goods Act, 1930 as "price" means the money consideration for a sale of goods.

* DHARMARTH TRUST J & K JAMMU & ORS. v. 1107
DINESH CHANDER NANDA [P. SATHASIVAM, J.]

9. The word 'price' according to Websters Encyclopedic Unabridged Dictionary means: A

"Price- 1. the sum or amount of money or its equivalent for which anything is bought, sold, or offered for sale 2. a sum offered for the capture of a person alive or dead: The authorities put a price on his head. 3. the sum of money, or other consideration, for which a person's support, consent, etc., may be obtained, esp. in cases involving sacrifice of integrity: They claimed that every man has his price. 4. that which must be given, done, or undergone in order to obtain a thing: He gained the victory, but at a heavy price. 5. Odds (def.2). 6. Archaic, value or worth: The price of an honest man is beyond measure. 7. Archaic, great value or worth (usually prec by of): Among the inventory were many articles of price. 8. at any price, at any cost, no matter how great: There were no bananas to be had at any price. He would have his own way at any price. 9. beyond or without price, of incalculable value; priceless: The crown jewels are beyond price.-v.t. 10. to fix the price of. 11. to ask or determine the price of: We spent the day pricing furniture at various stores. B C D E

"Chambers Twentieth Century Dictionary defines "price" to mean:

"The amount, usually in money, for which a thing is sold or offered; that which one for goes or suffers for the sake of or in gaining something: money offered for capture or killing of anybody; that for which one can be bribed; betting odds; value." F

According to P. Ramanatha Iyer, Law Lexicon (2nd Edn. 1997), G

"the term 'price' is the value which a seller places upon his goods for sale. It is not a fixed or unchangeable thing. It may be one thing today and another tomorrow and one H

A valuation to one customer and a different one to another on the same day or hour. Whether a seller asks any one to give is the price until he changes it for another. The price asked is changed to another price, the former price is no longer an existing fact."

B **The Law Lexicon** also defines the term 'price' as

C "the sum or amount of money or its equivalent, which a seller asks or obtains for goods in market—the exchangeable value of a commodity—and hence, as used in a contract providing for the sale of articles at a fixed price, and that if the price falls below such fixed price, a rebate will be given..."

D "The term 'price' is sometimes also used for "work done" in the context of work done by masons such as land filling etc. or engineering contracts. In view of the above, the term 'price' is in common usage used in correlation to either goods bought or sold or work done."

E There is further indication of this word in the Act itself. The setting of Article 56 i.e. immediately after Articles 52 to 55 is important. Articles 52 to 55 uses the expression 'price'. These are reproduced hereinbelow:-

F	Article 52	For the price of goods delivered where no fixed period of credit is agreed	Three years upon.	The date of the delivery of goods.
G	Article 53	For the price of goods sold and delivered to be paid for after the expiry of fixed period of credit.	Three years	When the period of credit expires.
H	Article 54	For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Three years	When the period of the proposed bill elapses.

Article 55	For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Three years	The date of the sale
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The term 'price' has been used in Articles 52 to 55 in correlation to goods delivered, goods sold and delivered and trees or growing crops sold. In this way, 'price' would take a similar meaning when used in Article 56.

10. The intention of the Legislature can also be ascertained by referring to Article 114 of the Act where the Legislature has specifically provided for the period of Limitation for suits filed by an attorney/vakil. Article 114 is as follows:-

Article 114	By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Six Years	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.
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11. As rightly pointed out by Mr. Giri, learned senior counsel for the respondent that the specific treatment of attorneys/vakils who provide professional services is a reflection of the intention of the Legislature to treat the services provided by professionals differently from work done by others. The word 'price' was never intended to be used synonymously with the word 'fee' and, therefore, the fee charged by an Architect for services rendered by him would not be covered under Article 56 of the Act. In the case on hand, the Trial Court as well as the High Court have made a clear distinction between the terms

A 'work done' and 'services'. The 'work done' would refer work done by masons such as land filling or engineering projects etc.

12. It is useful to refer to the tax treatment of Architects under the Service Tax Law. Chapter V of the Finance Act, 1994, which contains the law relating to Service tax in India defines an "architect" in Section 65(6) as:-

"any person whose name is, for the time being, entered in the register of architects maintained under section 23 of the Architect Act, 1972 and also includes any person engaged in any manner, whether directly or indirectly, in rendering services in the field of architecture."

It is brought to our notice that the services provided by an architect are taxable under the Service Tax law. Under the Service Tax Laws, the architects are considered as persons providing a service and are liable to pay service tax. The term 'work done' has not been defined anywhere. We have already pointed out the dictionary meaning to the definition of 'work'. The Law Lexicon defines 'work' as:-

"the word "work" has a very wide meaning. It is really used in two senses of bestowing labour and that upon which labour has been bestowed. When used in plural the word certainly means some outstanding or important result of the labour that has been bestowed and large industrial and scientific establishment are called works"

We have already referred to Articles 52 to 55 which are placed above Article 56. It is clear that the term 'work done' as appearing in Article 56 does not apply to the respondent, who is an architect providing services for a fee.

13. It is also pointed out that Article 56 of the Act is a verbatim of Article 18 of the Indian Limitation Act, 1963. Article 18, in turn is the same as Article 56 of the old Indian Limitation Act, 1908.

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14. The High Court of Allahabad in *Kaviraj Baroda Kant Sen vs. Court of Wards in Charge of Baraon Estate*, AIR 1931 All. 752, as early as in 1931, while interpreting Article 56 of the Indian Limitation Act, 1908 has stated as follows: A

“.....it is difficult to apply Article 56 which relates to a suit for the price of work done by the Plaintiff for the Defendant at his request. No special article appears to be applicable to a claim by a medical practitioner for recovery of his fees for attendance on a patient. The residuary Article 115 which applies to all breaches of contract, would therefore apply, for there was undoubtedly a contract, at east, an implied one, to pay the fee, and the non-payment of that fee amounted to a breach for which the plaintiff would be entitled to compensation. In *Harish Chander Surmah vs Brojonath Chackerbutty* [1870] 13 W.R. 96 a suit for recovery of compensation for the fees of a medical practitioner was held to lie under the corresponding article of the Limitation Act then in force” B C D

15. The High Court of Gauhati in *Kakodonga Tea Estate vs. J.N. Saikia*, AIR 1973 Gau. 27, has also held that “a suit to recover unpaid professional fees by a Chartered Accountant falls under Article 113 and not under Article 18 or Article 55...”. The High Court of Gauhati further specifically held as follows: E

“8. It is easy to assume that very deep thought must have been devoted by the Legislature in giving shape to the various Articles of the old as well as the new Limitation Act. It is equally legitimate to assume that the words of each Article must have been used in their commonly accepted connotation unless contrary intention is expressed in the body of the Act just as is apparent from Section 2 wherein certain expressions have been defined to mean something less or more than what their commonly known attributes are. The expression “price” used in Article 18 must, therefore, be taken to convey the commonly F G H

A accepted sense implicit in it. According to the Chambers
 Twentieth Century dictionary the word "price" means: the
 amount, usually in money, for which a thing is sold or
 offered; that which one forgoes or suffers for the sake of
 B of anybody: that for which one can be bribed; betting odds;
 values. In common parlance what a client pays to a
 professional person like an Advocate and a CA is
 described as "fee" and not "price". Likewise, what a
 patient pays to a medical-man for the services rendered
 C to him by the latter is called "fee" and not "price". Therefore,
 it would be unduly straining the expression "price" used in
 Article 18 if it were held synonymous in connotation with
 the fee paid to an Advocate, a Medical-man or a CA. For
 this reason alone, I believe, Article 18 does not provide
 D for a suit for the professional fee of the nature just
 stated....."

16. We agree with the ratio laid down by the Allahabad
 and Gauhati High Court relating to Article 56 of the Indian
 Limitation Act, 1908 that the term "price of work done" cannot
 E be made applicable to professions where the professionals
 merely provides services for a "fee". We accept the claim of
 the respondent that the profession of an Architect is one such
 service, hence Article 56 is not applicable to the present case.
 Both the Trial Court as well as the High Court has arrived correct
 F conclusion.

17. In the light of the above discussion, we do not find any
 error in the conclusion arrived at by the Trial Court and affirmed
 by the High Court. Consequently, the appeal fails and the same
 is dismissed with no orders as to costs. We further make it
 G clear that our conclusion is confined to the interpretation relating
 to limitation and we have not expressed anything on the merits
 of the claim made by the parties.