IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COMMERCIAL FIRST APPEAL NO.17 OF 2024

Multi Commodity Exchange of India Ltd.)
Company incorporated under the provisions)
of the Companies Act, 1956)
having its registered office at Exchange Square,)
Suren Road, Chakala Andheri (East),)
Mumbai – 400 093.)
Through its Authorised representative)
Mr. Manoj Jain (Chief Operating Officer)) ...Appellant
(Orig. Plaintiff)

Versus

1. M/s. Madhya Bharat (International))
Pvt. Ltd. incorporated under the provisions)
of the Companies Act and having its registered)
office at Unit No.630 & 631, Usha Nagar Extn.,))
Indore – 452 001,)
Madhya Pradesh.)

2. Mr. Ram Kumar Agarwal)
having his address at 630, Usha Nagar Extn.,)
Indore – 452 001.)

3. Ms. SnehPrabha Agarwal)
having his address at 630,Usha Nagar Extn.,)
Indore – 452 001.)

4. Mr. Ankit Agarwal)
having his address at 630/631,)
Usha Nagar Extn., Opp. Dashara Maiden)
Indore – 452 001.) ...Respondents
(Orig. Defendants)

Mr. Siddhesh Bhole a/w Mr. Ashwin Pimpale and Mr. Apoorva Kulkarni i/b. SSB Legal & Advisory, for the Appellant.
Mr. Sunil Chaturvedi i/b. Chiyarajawala & Co., for the Respondents.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

RESERVED ON : 15 JANUARY 2025
PRONOUNCED ON : 13 MARCH 2025

JUDGMENT (Per Advait M. Sethna), J. :

1. This Commercial First Appeal is filed against the judgment dated 8 March 2022 passed by the City Civil Court, Dindoshi in Commercial Suit No.701 of 2020 ("**Impugned Judgment**" for short).

2. Considering the order passed by a co-ordinate Bench of this Court dated 13 November 2024 this appeal ought to be taken up finally at the stage of admission.

3. Admit. We have heard the learned counsel for the parties.

4. The appellant (plaintiff) is the Multi Commodity Exchange of India Limited ("**MCX**" for short) a company dealing with facility of online trading, clearing and settlement of commodity derivatives. The respondent no.1 (defendant no.1) is a registered member of the appellant-exchange who regularly used the online platform provided by the appellant-exchange for the purpose of trading and the remaining defendants are the Directors of respondent no.1.

5. By way of the present appeal, the appellant (plaintiff) has assailed the impugned judgment and order passed by the Commercial Court by which the commercial suit filed by the appellant (plaintiff) for recovery of a sum of Rs.12,12,980/- with further interest @ 18% p.a. from the date of filing of the suit, till the realization of the entire amount was dismissed, on the ground that it was filed beyond the period of three years under the provisions of the Limitation Act, 1963 ("**Limitation Act**" for short) and hence, was time-barred.

6. The issues framed by the trial Court for determination read thus :-

Sr. No.	POINTS	FINDINGS
1.	Whether the plaintiff is entitled to recover an amount of Rs.12,12,980/- with the interest at rate of 18% p.a. from the defendants?	No.
2.	Whether the suit is within limitation?	No.
3.	What order and decree?	Suit is dismissed.

7. With the assistance of the learned counsel for the parties, we have perused the record.

8. Mr. Siddhesh Bhole, learned counsel for the appellant (plaintiff), at the very outset would refer to the plaint dated 7 October 2022 to contend that under the terms of membership, respondent no. 1 (defendant no.1) was required to pay annual fees, VSAT charges, User ID charges, penalty (as applicable), submit annual report as well as annual compliance report to maintain margins and fulfill other documents. However, with the passage of time, the respondents (defendants) began to default on such payments and submission of reports. Such defaults were in the nature of outstanding amounts of annual charges/dues/fees, payable to the appellant (plaintiff) by the respondents (defendants) towards membership fees and other charges pertaining to the year 2008-2009 to 2015-2016.

9. As averred in the plaint, the appellant (plaintiff) by its letter dated 7 April 2017, highlighted the default committed by the respondents (defendants) and called upon the respondents (defendants) to make payment and rectify such defaults. The appellant (plaintiff), however, did not receive any response from the respondents (defendants), because of which, the appellant (plaintiff) sent another letter dated 31 May 2017 calling upon the respondents (defendants) to

make the payments. However, there was yet no response, pursuant to which the appellant (plaintiff) once again addressed another letter to the respondents (defendants) on 16 November 2017.

10. Mr. Bhole, referring to the plaint would point out that as the respondents (defendants) failed to respond to the above communication, the appellant (plaintiff), issued a show cause notice to the respondents (defendants) on 2 January 2018, to the effect that if the respondents (defendants) failed to reply/respond such show cause notice, respondents (defendants) would be declared as a 'Defaulter'. There was no response to such show cause notice from the respondents (defendants). In view thereof, another notice dated 22 February 2018 was sent to the respondents (defendants) by the appellant (plaintiff), calling upon the respondents (defendants) to appear for a personal hearing. However, the respondents (defendants) did not attend the personal hearing. As a result thereof, the respondents (defendants) were declared as a 'Defaulter' by the appellant (plaintiff) vide a communication dated 8 March 2018. The appellant (plaintiff) also published notice in widely circulated newspapers dated 20 March 2018 and 21 March 2018, respectively, informing the public about the declaration of the respondents (defendants) as defaulter and inviting claims from the clients of the appellant (plaintiff) to submit their claim(s) against the respondents (defendants) if any.

11. Pursuant to above, the appellant (plaintiff) vide notice dated 17 May 2018, called upon the respondents (defendants) to hand over to the appellant (plaintiff) all books and other documents as per the Rule 41(f) of the Exchange

Rules and to provide list of the respondents' (defendants') debtors and creditors. However, to this also there was no response from the respondents (defendants), leading the appellant (plaintiff) on 18 December 2018 to issue a recovery notice to the respondents (defendants) calling upon them to make a good payment of Rs. 11,05,573.43 along with interest @ 18 percent amounting to Rs. 1,07,407.22. The respondents (defendants) not only failed to respond to such notice, but also did not make the payment as required under the terms of its membership and thus defaulted. It was in such circumstances, that Mr. Bhole would submit that the appellant (plaintiff) was constrained to file the said suit for recovery of Rs.12,12,980.65 inclusive of 18% interest, before the Trial Court.

12. Mr. Bhole has drawn our attention to the various averments as made in the plaint in support of his submissions and the prayers made therein. According to him, the cause of action to file the suit in question had arisen, when the respondents (defendants) failed to make payment of its annual fees and other dues and in view thereof, respondents (defendants) was declared as a defaulter by the appellant (plaintiff) on 8 March 2018. It is contended that pursuant to such declaration, the appellant became entitled to recover a sum of Rs.12,12,980.65 in total, i.e., principal along with interest @ 18% p.a. from the respondents (defendants). In this regard, he would place reliance on paragraphs 13 and 14 of the plaint which read thus:-

> "13. In the circumstances, this Hon'ble court be pleased to pass a decree ordering and directing all the Defendants to pay the Principal amount of Rs.11,05,573.43/- along with the interest @18% of Rs.1,07,407.22/-i.e. Rs.12,12,980.65/- in total to the Plaintiff, as Particulars of claim annexed hereto and marked as Exhibit J.

> 14. The plaintiff states that the cause of action arose when the Defendant No. 1 did not make payment of its annual fees and other dues and as a result the Plaintiff declared the Defendants as a defaulter on March 8, 2018."

13. According to Mr. Bhole, for the purposes of ascertaining the cause of action, as also when the right to sue accrued in the above factual backdrop, the Rules of Multi Commodity Exchange of India Limited (as amended upto 1.7.2017) (The **"MCX Rules"** for short) framed under Section 4(5) read with Section 7(A) of the Securities Contract (Regulation) Act, 1956 had became relevant.

14. In this regard it is submitted that Rule 41 of the MCX Rules which provides for default and declaration of defaulter, had become applicable. It is submitted that under clause (iv) of Rule 41, any member of the appellant-exchange who fails or neglects to pay subscriptions, security deposit or any other charges, levies for continuous period of six months, such member would be declared as defaulter under Rule 41 of the said Rules (supra). According to Mr. Bhole there is a procedure contemplated under the MCX Rules for declaring a member as a defaulter upon happening of any of the events/ instances as stipulated under Rule 41 of the MCX Rules (supra). He would urge that, non-payment of the membership fees, dues and other charges and failure to deposit the same with the appellant (plaintiff) would make the respondents (defendants) defaulter under the said Rules.

15. According to Mr. Bhole, upon following the procedure laid down under the said Rules, respondents (defendants) were declared as a defaulter on 8 March 2018 by the appellant (plaintiff). It is not in dispute that the default in

payment of membership fees, charges, dues, etc., payable to the appellant (plaintiff) by the respondents (defendants) pertained to the period from 2008-2009 to 2015-2016. Mr. Bhole in this context would submit that under the MCX Rules, the cause of action and the right to sue would accrue only on and from the date of the defaulting member is declared as a defaulter, i.e. on or from 8 March 2018. Mr. Bhole would next place reliance on Rule 42A to submit that pursuant to such declaration of respondents (defendants) as defaulter, the competent authority under the MCX Rules, is empowered to initiate recovery proceedings against or in the name of the defaulter.

16. Mr. Bhole would next contend that considering the nature, framework and scheme of the MCX Rules (supra), the appellant (plaintiff) can initiate proceedings in a Court against such defaulters for recovering any amounts due and payable from them. According to him, for instituting such legal proceedings for recovery of dues from the defaulting members, the time frame for instituting such proceedings would have to be reckoned from the date on which such member is adjudged/declared as defaulter, under the MCX Rules (supra) after following the procedure contemplated therein.

17. Mr. Bhole would then submit that the trial Court ought to have considered that the issue of limitation entails a mixed question of law and fact. Overlooking this vital aspect, the trial Court proceeded to dismiss the suit solely and erroneously on the ground that it was not filed within the stipulated period of three years as mandated under the Limitation Act. Thus, he would urge that the impugned judgment of the trial Court cannot be sustained, it deserves to be

set aside and the appeal be accordingly allowed.

18. On the other hand, Mr. Sunil Chaturvedi, learned counsel for respondents (defendants) would submit that there is no error, irregularity much less illegality whatsoever in the impugned judgment. He would at first refer to the prayer in the plaint from which he submits that it was crystal clear, that the suit of the appellant (plaintiff) was purely for recovery of monies, claimed to be payable jointly and severally by the respondents (defendants) to the appellant (plaintiff). He would urge that it is not in dispute that the appellant (plaintiff) was fully aware of the nature of defaults in purported payment of membership fees, dues and other charges by the respondents (defendants) that arose during the period 2008-2009 which continued upto 2015-2016. According to him, even going by the documents annexed to the plaint, more particularly, the letter dated 2 January 2018 addressed by the appellant (plaintiff) to the respondents (defendants) would clearly indicate that such amounts were attributable to be the annual fees, charges, etc. payable by the respondents (defendants) to the appellant (plaintiff) relating to the said period i.e. 2008-2009 to 2015-2016. The liability to pay such amounts was attributable to defaults in making payments by respondents (defendants) arising in such period. He would also submit that the show cause notice dated 2 January 2018 under Rule 41A of the MCX Rules was issued by the appellant (plaintiff) to the respondents much after the cause of action had arisen during the period of default, that too without any justification for such belated action.

19. Mr. Chaturvedi would urge that, Rules 41A and 42 the MCX Rules

which deal with declaration of defaulter are not relevant and/or applicable for the purposes of ascertaining the accrual of right to sue from which the limitation is to be reckoned. Therefore, for instituting the said money recovery suit against the respondents (defendants) the cause of action arose on the default of non-payment by the respondents (defendants) which had taken place during the 2008-2009 to 2015-2016. Such default had no connection whatsoever with the subsequent and separate action of declaration of the respondents (defendants) as a defaulter, under the MCX Rules.

ANALYSIS & CONCLUSION

20. As the facts noted above would indicate that a suit for recovery of money was filed by the appellant (plaintiff) against respondent (defendant) before the trial Court for a decree that the respondent (defendant) be ordered to pay a sum of Rs.12,12,980.65/- as per the particulars of claim to the appellant (plaintiff) with applicable interest @ 18% p.a. The defaults in the payments arose during the period 2008-09 continuing until the year 2015-16 during which the respondent (defendant) consistently failed to pay dues in the nature of membership charges, fees/ penalties to the appellant (plaintiff). It is on 8 March 2018 that the respondent (defendant) was declared as a defaulter by the appellant (plaintiff) under the MCX Rules.

21. In the given facts a peculiar submission is canvassed by Mr. Bhole on behalf of the appellant (plaintiff). This is to state that although the defaults in payments by the respondent (defendant) arose during the period 2008-09 to 2015-16, it is the action of the appellant (plaintiff) declaring the respondent

(defendant) as a defaulter which would be material and relevant for the purposes of determining the limitation period of 3 years to file such suit under the Limitation Act. Therefore, according to Mr. Bhole, as the respondent (defendant) was lebelled/declared as a defaulter on 8 March 2018, the period of 3 years would reckon from such date and not from when the defaults arose. We are called upon to test the legality of such stand of the appellant (plaintiff) in the context of the impugned judgment of the trial Court which dismissed the suit of the appellant (plaintiff) on the ground of it being barred by limitation as it was filed beyond 3 years. The primary question which arises for consideration is whether the impugned judgment dated 8 March 2022 holding that the suit was barred by limitation, can be sustained.

22. We may at the threshold note the various heads of amounts, due and payable by the respondents (defendants) to the appellant (plaintiff) which read thus:

Sr. No.	Particulars of Dues/Charges/Fees/Penalties	Period of levy	Amount (in Rs.)
1	Non-Compliance Charges on shortages	-	3383.08
2	User ID charges	2008-09	26422.00
3	Inspection Penalties (non-compliance in Inspection for F.Y. 2006-07) (Out of Total Penalty of Rs.50,000/-, Rs.1181.73 was recovered on 24.12.2008)	2008-09	48818.27
4	Minimum Usage Fees (Min Usage Fees for Q4)	2008-09	28090.00
5	Inspection Penalties (Non Compliance observed in FMC Inspection report for the period 01-04-06 to 31-08-2007)	2008-09	5200.00
6	VSAT Installment	2008-09	5000.01
7	User ID charges	2009-10	22060.00
8	User ID charges	2009-10	26472.00
9	Minimum Usage Fees (Min Usage Fees for Q1)	2009-10	27575.00
10	Annual Fees	2009-10	82725.00
11	Annual Returns penalty	2009-10	20600.00

12	Minimum Usage Fees (Min Usage Fees for Q2)	2009-10	27575.00
13	Annual Compliance Report penalties (Non Submission of Annual Compliance Report for FY 2008-09-Period 01.07.2009 to 20.07.2009)	2009-10	2000.00
14	Annual Compliance Report penalties (Non Submission of Annual Compliance Report for FY 2008-09 for the period 21.07.2009 to 18.08.2009)	2009-10	2900.00
15	Minimum Usage Fees (Min Usage Fees for 03)	2009-10	27575.00
16	ACR Penalties (Non-Submission of ACR for FY 2008-09 (19-08-2008 to 30-09-2009 Rs.100/- per day for 43 days)	2009-10	4300.00
17	Annual Compliance Report penalties (Annual Compliance Report Charges)	2009-10	4600.00
18	Minimum Usage Fees (Min Usage Fees for Q4)	2009-10	27575.00
19	Annual Returns penalty	2009-10	2100.00
20	VSAT/Bandwidth/NPN Charges	2009-10	28000.01
21	Annual Compliance Report penalties (Annual Compliance Report Charges-16/11/2009 to 31/03/2010)	2010-11	13600.00
22	Annual Fee	2010-11	82725.00
23	Annual Returns Penalty	2010-11	11500.00
24	Annual Compliance Report penalties (Non submission of Annual Compliance Report for period 01.04.2010 to 31.05.2010)	2010-11	6100.00
25	Annual Returns penalty	2010-11	18300.00
26	Annual Returns penalty	2010-11	3100.00
27	VSAT/Bandwidth/NPN Charges	2010-11	28000.01
28	Annual Compliance Report penalties	2011-12	3000.00
29	Annual Fees	2011-12	82725.00
30	VSAT/Bandwidth/NPN Charges	2011-12	28000.01
31	Inspection Penalties (Annual Report Charges)	2011-12	40000.00
32	Annual Fees	2012-13	84270.00
33	VSAT/Bandwidth/NPN Charges	2012-13	28000.00
34	Annual Fees	2013-14	84270.00
35	Annual Fees	2014-15	84270.00
36	Annual Fees	2015-16	84270.00
37	Non-Compliance Charges on shortages (Cir-140 (1-l) dated 11-04-2013)	2015-16	473.04
	Total		**11,05,573.43**

A bare perusal of the above would demonstrate that the default in payments of the above sums of monies by the respondents (defendants) to appellant (plaintiff), commenced in the year 2008-2009 and continued until the year 2015-

2016, which is not controverted by the appellant (plaintiff). In view thereof, at this juncture, we refer to the applicable MCX Rules which read thus:-

"41. DEFAULT

a. Declaration of Defaulter

A member of the Exchange shall be declared by the relevant authority a defaulter, where the monies, commodities, securities and bank guarantees deposited with the Exchange are nor adequate to discharge the members obligations and liabilities.

A member of the Exchange shall also be declared a defaulter by direction of the Governing Board, or a Committee, or the Managing Director, on the happening of any one or more of the following instances

i) If he is unable to fulfill his engagements or obligations; or

ii) If there is inadequate balance in his designated bank account and as a consequence an instruction issued by the Exchange for debiting his account towards recovery of pay in dues, margin dues or any other dues fails;

iii) If he admits or discloses his inability to fulfill or discharge his engagements, obligations or liabilities; or

iv) If he fails or is unable to pay within the specified time the damages and the money difference due on a closing out effected against him under the Bye-Laws/Regulations of the of the Exchange; or

v) If he fails to pay any sum due to the Clearing House/Clearing Corporation] or to deliver to the Clearing House ST/Clearing Corporation] any commodity or instrument on the due date;

vi) If he fails to pay/reimburse to the Settlement Guarantee Fund of the Exchange in respect of the amount used from it for the purpose of fulfilling settlement obligations on this behalf.

b. i) If he fails to pay or deliver such money and /or such commodities and / or instruments arising out of an award given by the Arbitrator under the Arbitration proceedings provided in the Bye-Laws of the Exchange; or

ii) If he fails to pay or deliver such money and/or such commodities and / or instruments arising out of a transaction executed on the Exchange, provided such obligation is not disputed by the member/trading member; or

iii) If he fails to pay or deliver to the Exchange or Relevant Authority all monies, delivery commitments and other assets due to a member of the Exchange who has been declared a defaulter within such time as directed by the Managing Director.

iv) If any Member of the Exchange fails or neglects to pay subscription, security deposit or any other levies as required by the Board for a continuous period of six (6) months.

v) If he has been declared as a defaulter by any other Commodity Exchange.

vi) If he has been adjudicated as an insolvent or a winding up order has been passed against such member then such member shall be ipso facto declared as a defaulter although he may not be at the same time a defaulter on the Exchange."

"42A. Proceedings in name of or against the Defaulter

The Relevant Authority shall be entitled to but not bound to:

a. initiate any proceedings in a court of law either in the name of the Exchange or in the name of the defaulter against any person for the purpose of recovering any amounts due to the defaulter,

b. initiate any proceedings in a court of law either in the name of the Exchange or in the name of creditors (who have become creditors of the defaulter **as a result of transactions executed subject to and in accordance with Bye-laws, Rules and Business Rules of the Exchange) of the defaulter against** the defaulter for the purpose of recovering any amounts due from the defaulter. The defaulter as well as the creditors of the defaulter shall be deemed to have appointed the Exchange as their constituted attorney for the purpose of taking such proceedings."

We may note the provisions of Article 113 of the Limitation Act which reads thus:

Sr. No.	Description of suit	Period of limitation	Time from which period begins to run
113.	Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years.	When the right to sue accrues.

The learned trial Judge has observed that the suit being for recovery of monies was required to be filed within aforementioned period of three years.

The cause of action to file such suit had arisen upon defaults in payments by the respondents (defendants) to the appellant (plaintiff), which arose, undisputedly, during the period 2008-2009 to 2015-2016. For this reason, the trial court held that the appellant (plaintiff) having instituted the suit belatedly in the year 2019 was not within the prescribed period of limitation of three years as stipulated under Article 113 of the Limitation Act (supra).

23. We may refer to the prayers in the plaint, which makes it clear that the suit was filed as a pure money suit by the appellant (plaintiff) for a decree jointly and severally against the respondents (defendants) to pay a sum of Rs.12,12,980.65 as per particulars of claim ("Exhibit J" to the plaint) with further interest. The prayer in the suit reads thus :

> "(a) that the Defendant Nos. 1 to 4 be ordered and decreed to pay jointly and severally to the Plaintiff the sum of Rs.12,12,980.65/- as per Particulars of Claim (Exhibit J annexed hereto) with further interest @ 18 p.a. from the date of filing of the suit till actual payment and/or realization."

Also paras 13 and 14 of the plaint (supra) which are pertinent to be noted, point out to the admitted defaults of the respondents (defendant) in making the payments to constitute the cause of action to file such suit.

24. Thus, in our view, such an action of labelling of the respondents (defendants) as defaulter is an independent, separate consequential action arising pursuant to the default, which has already taken place. Thus, default and defaulter cannot be intermingled or confused with one another, in the manner the appellant (plaintiff) would want us to do.

25. Having examined the issues and controversy before us in detail and on

perusal of record, we find that the trial Court has rightly applied Article 113 of the Limitation Act in adjudicating the suit. Article 113 categorically provides for computation of three years limitation period from the time when the right to sue accrues. Mr. Bhole does not dispute the application of this article to the given facts. Such right to sue would emanate from and depend upon the cause of action arising in the facts and circumstances of each case. The given facts, bring out that such cause of action arose upon the default by the respondents (defendants) in making payment towards the membership fee and other charges for the period 2008-2009 to 2015-16. The position in law in such context is well settled as elucidated below.

26. At this juncture, we would advert to a few decisions in support of our analysis in the given facts and circumstances.

27. On the expression "Right to Sue", the Supreme Court in **State of Punjab and Ors v. Gurdev Singh**[1] held thus:-

> "6. First of all, to say that the suit is not governed by the law of Limitation runs afoul of our Limitation Act. The statute of limitation was intended to provide a time limit for all suits conceivable. Section 3 of the Limitation Act provides that a suit, appeal or application instituted after the prescribed "period of limitation" must subject to the provisions of Sections 4 to 24 be dismissed although limitation has not been set up as a defence, Section-2(J) defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appealor application. Section 2(J) also defines, "prescribed period" to mean the period of limitation computed in accordance with the provisions of the Act. The Court's function on the presentation of plaint is simply to examine whether, on the assumed facts the plaintiff is within time. The Court has to find out when the "right to sue" accrued to the plaintiff. If a suit is not covered by any of the specific articles prescribing a period of limitation, it must fail within the residuary article. The purpose of the residuary article is to provide for cases which could not be covered by any other provision in the Limitation Act. The residuary article is applicable to every variety

1. (1991) 4 SCC 1

> of suits not otherwise provided for. Article 113 (corresponding to Article 120 of the Act 1908) is a residu- ary article for cases not covered by any other provisions in the Act. It prescribes a period of three years when the right to sue accrues. Under Article 120 it was six years which has been reduced to three years under Article 113. According to the third column in Article 113, time commences to run when the right to sue accrues. The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the 'cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted."

28. It is equally apposite to refer to a judgment of the Supreme Court in the case of **Shakti Bhog Food Industries Limited v. Central Bank of India and Anr.**[2], wherein the Supreme Court it had the occasion to construe and interpret the expression "when the right to sue accrues" as it appears under Section 113 of the Limitation Act. In this regard, paragraph 17 reads thus:

> "17. The expression used in Article 113 of the 1963 Act is "when the right to sue accrues", which is markedly distinct from the expression used in other Articles in First Division of the Schedule dealing with suits, which unambiguously refer to the happening of a specified event. Whereas, Article 113 being a residuary clause and which has been invoked by all the three Courts in this case, does not specify happening of particular event as such, but merely refers to the accrual of cause of action on the basis of which the right to sue would accrue."

29. The Supreme Court referring to the **Shakti Bhog Judgment** (supra) in a recent decision in the case of **Indian Evangelical Lutheran Church Trust Association v. Sri Bala & Co.**[3] interpreted Article 113 of the Limitation Act in paragraphs 9.8 and 9.9 of the said judgment which read thus:

> "9.8 Under Article 113 of the Limitation Act, time commences to run when the right to sue accrues. This is in contradistinction to Article 54 of the Limitation Act relating to a suit for specific performance of a contract which is on the happening of an event.

2. (2020) 17 SCC 260
3. (2025) SCC OnLine SC 48

> No doubt, the second suit which is the present suit filed by the respondent/plaintiff is also for specific performance of the contract but the right to sue accrued to file the second suit is on the basis of Order VII Rule 13 of the Code subsequent to the rejection of the plaint in the earlier suit on 12.01.1998. Therefore, the right to sue by means of a fresh suit was only after 12.01.1998. The expression "when the right to sue accrues" in Article 113 of the Limitation Act need not always mean "when the right to sue first accrues". For the right to sue to accrue, the right sought to be vindicated in the suit should have already come into existence and there should be an infringement of it or at least a serious threat to infringe the same vide M.V.S. Manikyala Rao vs. M. Narasimhaswami, (AIR 1966 SC 470). Thus, the right to sue under Article 113 of the Limitation Act accrues when there is an accrual of rights asserted in the suit and an unequivocal threat by the defendant to infringe the right asserted by the plaintiff in the suit. Thus, "right to sue" means the right to seek relief by means of legal procedure when the person suing has a substantive and exclusive right to the claim asserted by him and there is an invasion of it or a threat of invasion. When the right to sue accrues, depends, to a large extent on the facts and circumstances of a particular case keeping in view the relief sought. It accrues only when a cause of action arises and for a cause of action to arise, it must be clear that the averments in the plaint, if found correct, should lead to a successful issue. The use of the phrase "right to sue" is synonymous with the phrase "cause of action" and would be in consonance when one uses the word "arises" or "accrues" with it. In the instant case, the right to sue first occurred in the year 1993 as the respondent/plaintiff had filed the first suit then, which is on the premise that it had a cause of action to do so. The said suit was filed within the period of limitation as per Article 54 of the Schedule to the Limitation Act.
>
> 9.9 Thus, generally speaking, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. Article 113 of the Schedule to the Limitation Act provides for a suit to be instituted within three years from the date when the right to sue accrues and not on the happening of an event as stated in Article 54 of the Schedule to the Limitation Act."

30. We now gainfully refer to the judgment of the Supreme Court in the case of **B & T AG v. Ministry of Defence**[4], where the Supreme Court in the context

4. (2024) 5 SCC 358

of interpreting "cause of action" observed thus:

> "64. "Cause of action" means the whole bundle of material facts, which it is necessary for the plaintiff to prove in order to entitle him to succeed in the suit. In delivering the judgment of the Board in Mussummat Chand Kour and Another v. Partab Singh and Others, reported in ILR (1889) 16 Cal 98, Lord Watson observed: "Now the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff it refers entirely to the grounds set forth in the plaint as the cause of action, or in other words to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour."

31. The position that emerges from the above judgments is that the right to sue would accrue when a cause of action arises. Thus, in the facts of the present case, the cause of action arose when the respondents (defendants) defaulted in making the payment of the membership and other dues to the appellant-exchange during the period 2008-09 to 2015-16, which continued since 2008-2009, making it a case of continuing cause of action for the said period. Equally significant it is to note that under Article 113 of the Limitation Act, a suit is to be instituted within 3 years from the date when the right to sue accrues and; not on the happening of an event as envisaged under Article 54 of the Limitation Act. Such happening of an event in the facts of the present case would clearly indicate the subsequent affirmative action of the appellant (plaintiff) in declaring, categorizing the respondents (defendants) as "defaulter" under the MCX rules and bye-laws.

32. We are afraid that accepting the submissions of Mr. Bhole would result in distorting the language and purport of Article 113 of the Limitation Act by reading into it the MCX Rule/bye-laws which operate under a completely different legal sphere. This can be clarified by an illustration viz; A member of

the exchange commits a default of payment of membership dues and/or such other dues for the year 2010. The default of non-payment continues up to the year 2015. Under the rules and bye-laws of the exchange, he is declared as defaulter in the year 2019. The exchange files a money recovery suit against the defaulting member in the year 2020. In such situation, merely because upon following the procedure under the rules the member was declared as defaulter in the year 2019 for a cause of action of default which had arisen way back in 2010 and continues up to the year 2015, a suit for recovery of monies initiated in 2020 by the exchange against such defaulting member, is clearly barred under Article 113 of the Limitation Act.

33. We may observe that the sequel to accepting the case of the appellant (plaintiff) would lead to infusing life in a claim, which is *ex facie* barred by law of limitation. We are bound to confine ourselves to the averments in the plaint and the reliefs which are purely in the nature of money recovery. The suit in the present case does not seek any declaratory reliefs to declare the defaulting respondents (defendants) as defaulter, under the institutional paradigm of MCX Rules, bye-laws of the appellant (plaintiff). We cannot countenance a situation which would result in a departure from the clear and unambiguous purport of Article 113 of the Limitation Act, whereby the right to sue would necessarily fall back on the default by the respondents (defendants) which gave rise to the cause of action in favour of the appellant (plaintiff) to sue the respondents (defendants).

34. The learned trial Judge in the given facts was justified in deciding the

issue of limitation as preliminary issue as provided under Order XIV, Rule 2 of the Code of Civil Procedure, 1908. In such situation, when the suit was *ex facie* barred by law of limitation, it was just, legal, and proper to dismiss it on such ground alone taking recourse to the parameters as laid down under Article 113 of the Limitation Act. In the facts and circumstances before us, we therefore, are unable to agree with Mr. Bhole that issue of limitation would always involve a mixed question of law and fact.

35. In view of the foregoing discussion, no interference with the impugned judgment is warranted. The appeal is misconceived and is devoid of merit.

36. The Appeal is dismissed. No costs.

[ADVAIT M. SETHNA, J.] [G. S. KULKARNI, J.]