decision of this Court reported as *Sher and others* v. *Phuman Ram and others* (3), as recorded in head-note (i), will be applicable, which reads :—

> "It is well-known that when a person other than the real owner is found to be in possession of the land belonging to any person, the revenue officers frequently enter that person as a tenant-at-will of the owner. Therefore where the plaintiffs do not allege that the defendants are their tenants no presumption of correctness can be attached to the entries in the revenue records showing the defendants as tenants-at-will under the plantiffs."

(8) After going through the evidence minutely myself, I am of the view, as already stated, that Smt. Sukhmani, plaintiff-appellant, has failed to prove her adverse possession for a continuous period of twelve years and so she has no right to seek possession of the land of the share of Smt. Mansan which is now in possession of the rightful heirs of Smt. Mansan. Therefore, I affirm the finding of the lower appellate Court to that extent.

(9) For the reasons recorded above, this appeal fails and is dismissed, but in the circumstances of the case I make no order as to costs.

N. K. S.

APPELLATE CIVIL

Before Prem Chand Pandit and S. S. Sandhawalia, JJ.

STATE OF PUNJAB ETC.,—*Appellants.*

versus

SHAM LAL GUPTA,—*Respondent.*

Regular First Appeal No. 355 of 1960

December 7, 1970

Limitation Act (IX of 1908)—Article 56—Conditions for the applicability of—Stated—Contractor submitting tender in response to the invitation of the

(3) 1940 P.L.R. 497.

Government for some work—Tender accepted and the contractor doing work in consequence thereof—Such work—Whether deemed to have been done at request of the Government—Article 56—Whether applicable in such case.

Held, that for the applicability of Article 56 of Limitation Act, 1908, three things are necessary :—

(i) That the suit should be for the price of the work done by the contractor for the Government;

(ii) that the said work was done by the contractor at the request of the Government; and

(iii) that no time had been fixed for payment of the price of that work. (Para 11).

Held, that where in response to the invitation issued by the Government for the completion of some work, a contractor submits his tender and completes the work, it is at the desire or request of the Government that the contractor undertakes to do the work. Simply because the contractor files his tender at the invitation of the Government, it cannot be said that the work, which is admittedly of the Government, is done by the Contractor at his own request. The putting in of the tender is merely an offer on his behalf that he will do that particular work at the price quoted by him and if that amount is the lowest and is accepted by the Government that does not mean that it is his work that is being done by him or that it is at his request that he does that work. By the acceptance of the contractor's tender by the Government, the work does not cease to be that of the Government. The acceptance of the tender only amounts to the fixing of the price of that work. The work has to be entrusted by the Government to some contractor and it is according to the wishes of Government that the contractor does that work. Hence in such a case and also whereby the terms of the agreement, no time for payment of price of the work is fixed, Article 56 of Limitation Act, 1908, is squarely applicable and the suit for the price of the work done has to be filed within three years of the completion of the work. (Para 12).

Regular First Appeal from the final decree of the Court of Shri Nathu Ram Sharma, Sub-Judge First Class, Patiala (C) dated the 3rd day of September, 1960, granting the plaintiff a final decree for the recovery of Rs. 40,523.97 nP. with costs against the defendant State of Punjab and further ordering that the defendant would make payment of the decretal amount to the plaintiff within one month of the date of this order i.e. 3rd September, 1960.

H. L. Sibal, Advocate General Punjab with L. M. Suri, Advocate, for the appellants.

K. R. Mahajan and R. K. Aggarwal, Advocates, for the respondents.

JUDGMENT.

P. C. Pandit, J.—(1) This is a defendants' appeal against the decision of the learned Subordinate Judge, 1st Class, Patiala, decreeing the plaintiff's suit.

(2) Sham Lal Gupta brought a suit against the State of Punjab and the Chief Engineer, Public Works Department, Incharge, Buildings and Roads, Patiala, for rendition of accounts. His allegations were that he was an approved contractor in the Public Works Department at Patiala. On 26th July, 1952, the said department accepted the plaintiff's tender for the work of canalisation of the approach to the bridge near Moti Bagh palace and gave the contract to him. He finished the work according to the terms and conditions of the contract and asked the department to prepare the final bill. Some officers of the department tampered with the measurement book No. 5,824 in order to harm the plaintiff, who sent applications and telegrams to the Chief Engineer in that behalf. The Chief Engineer then directed that the said measurement book be kept in safe custody. Consequently, Mr. Rajinder Singh, Executive Engineer, made an enquiry regarding the measurement book and in his report dated 29th September, 1953, he stated that it was tampered with. Thereupon, the Superintending Engineer asked the Executive Engineer to submit a detailed report regarding the measurement entry and the said report was made on 30th December, 1953. On 2nd March, 1954, the Superintending Engineer, Patiala, ordered that payment should be made to the plaintiff on the basis of the report of Mr. Rajinder Singh, Executive Engineer. The department, however, neither prepared any bill nor made the payment. The plaintiff then made applications to the Minister-in-charge, but in spite of the latter's order, the said payment was not made to him. On 9th August, 1955, the Superintending Engineer, Patiala, again passed an order that the payment should be made to the plaintiff, but no heed was paid to it also. At last on 24th September, 1956, the Chief Engineer, Buildings and Roads, Patiala, entrusted the matter to the arbitrator by virtue of the arbitration clause in the agreement and Mr. Jawala Parshad Singh, Superintending Engineer, Buildings and Roads, Nabha Circle, was appointed as Chairman of the arbitration. The said Arbitrator fixed two dates to hear the cases, but the department did not take any part and, therefore, no proceedings were taken. Thereafter, Mr. Jagmal Singh was appointed as an Arbitrator on 14th December, 1957. This arbitration also met with the same fate, with the result that no award was given. The plaintiff repeatedly asked the department to pay the amount due to him,—*vide* measurements as given in the measurement book No. 5,824 after preparing the final bill, but the department did not pay any heed. Ultimately, a registered notice under section 80; Code of Civil Procedure, was served on the Chief Secretary of the

State of Punjab and the same was received by him on 25th September, 1958. In spite of the service of the notice, neither the State or the department rendered any accounts nor prepared any bill or made the payment. The plaintiff was entitled to recover the amount found due from the defendants according to the measurements as given in the measurement book No. 5,824. Thereafter, the plaintiff filed the suit on 3rd June, 1959, praying that a preliminary decree regarding rendition of accounts be passed in favour of the plaintiff against the defendants. It was also prayed that interest at the rate of Re. 1 per month on the amount found due from the defendants be awarded to him from the date of the completion of work till the payment thereof.

(3) The suit was contested by the State of Punjab. Their case was that the plaintiff had failed to complete the work according to the agreement. It was admitted that an enquiry was held by Mr. Rajinder Singh, Executive Engineer, who submitted his report, but the interpretation placed by the plaintiff thereon was incorrect. It was further admitted that Mr. Rajinder Singh submitted another report dated 30th December, 1953, as required by the Superintending Engineer. It was stated that Mr. Rajinder Singh had passed the bill of the contractor for a minus amount of Rs. 1,305-60 adjustable against the security deposited by the contractor. This bill was, however, not accepted by the contractor. It was also admitted that Mr. Jawala Parshad Singh, Superintending Engineer, Nabha Circle, was appointed an Arbitrator, but it was not correct that the department had not done its duty. It was further admitted that Mr. Jagmal Singh, Superintending Engineer, was also appointed as an Arbitrator, but he could not decide the case, as he had referred the matter to the Chief Engineer for transferring the arbitration case to the Superintending Engineer, Buildings and Roads. But as his suggestion was not approved by the Chief Engineer, the case remained on his file and while he was taking steps with regard to the same, the plaintiff filed the suit. The sending of the registered notice under section 80, Code of Civil Procedure, by the plaintiff to the defendants and its receipt by them was denied. Apart from the reply on the merits, the Government took some preliminary objections also. According to them (i) the suit of the plaintiff was barred by limitation; (ii) a suit for accounts could not lie in the present circumstances, as the case was based on a definite agreement and the plaintiff was alleged to have completed the work; (iii) in the absence of a notice under section 80, Code of Civil Procedure,

the suit was not competent; and (iv) proper court fees had not been paid on the plaint.

(4) On the pleadings of the parties, the following issues were framed :—

(1) Whether the plaintiff completed the work according to the terms and conditions of the agreement ?

(2) Whether the suit is barred by time ?

(3) Whether the suit for accounts is maintainable ?

(4) To what amount the plaintiff is entitled regarding the contract work in dispute ?

(5) Whether measurement book No. 5,824 was tampered with and what is its effect ?

(6) Whether proper court-fee has been paid ?

(7) Whether notice under section 80 Civil Procedure Code has been duly served ?

(8) Whether the present suit does not lie in view of the arbitration clause ?

(5) The trial Judge came to the conclusion that the plaintiff completed the work according to the terms and conditions of the agreement; that the suit was not barred by time; that the suit for accounts was maintainable; that the measurement book No. 5,824 was tampered with; its entries were erased and overwritten and finally it was lost; that proper court-fee had been paid; that a notice under section 80, Code of Civil Procedure, had been duly served; that the present suit did lie and there was no justification for referring the matter again to arbitration and that the plaintiff was entitled to Rs. 40,523.97 on account of principal and interest. On these findings, the learned Judge passed the following decree:—

> "I hereby pass a preliminary decree for Rs. 40,523.97 nP, with costs of the suit in favour of the plaintiff against the defendant, State of Punjab, and I further order that the plaintiff will pay up the deficiency of Court-fees due by 25th August, 1960, and he can then apply for a final decree being passed in his favour."

(6) Against this decree, the present appeal has been instituted by the defendants and the plaintiff has filed cross-objections to the effect that a decree for a further amount of Rs. 9,000 along with

interest from the date of the suit till the date of realisation be passed in his favour with costs. This order will dispose of both the appeal and the cross-objections.

(7) Before going into the merits of the case, it would be expedient to decide the preliminary objections raised by the defendants to the suit of the plaintiff. Learned counsel for the appellants submitted that the findings of the trial Judge on issues Nos. 2, 3 and 7 were incorrect. It was submitted that it ought to have been held that the suit was barred by time, that a suit for accounts was not maintainable and that without a valid notice under section 80, Code of Civil Procedure, having been served on the defendants, the suit was not competent.

(8) The first question for decision is whether the plaintiff's suit was barred by limitation or not. It is common ground that the work was finished on 31st March, 1953, and the suit was filed on 3rd June, 1959. According to the appellants, the suit was governed by Article 56 of the Indian Limitation Act, 1908. The case of the plaintiff, on the other hand, was that the residuary Article 120 would be applicable. It is also agreed that the old Limitation Act, i.e., of 1908, would apply in the instant case. It was conceded by the counsel for the appellants that if the case was covered by Article 120, then the suit would be within limitation. Article 120, will, undoubtedly, be applicable to a suit, for which no period of limitation had been provided elsewhere in the First Schedule of the Limitation Act. That obviously means that if the appellants could show that the present case was covered by Article 56, then the applicability of Article 120 will be out of question. So the point to be decided is whether the suit of the present nature is governed by Article 56 or not. The said Article says—

Description of suit	Period of limitation	Time from which period begins to run
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.

(9) The case of the appellants was that the plantiff had done the work at their instance and no time had been fixed for the payment of the price of work done by the latter. That being so, the

limitation of three years will start from the time when the work was completed, that is, 31st March, 1953. The main reliance for this submission was placed by the counsel on a decision of the Andhra Pradesh High Court in *Badarwada Bhima Subbaraju* v. *Village Panchayat of Gundugolanu,* (1), though he did make a reference to two other decisions also, namely, *Zila Parishad (District Board)* v. *Smt. Shanti Devi and another,* (2) and *Mathura Prasad* v. *Chairman District Board,* (3).

(10) The reply of the plaintiff to this argument was that the work was not done by him at the request of the defendant. The Government had invited tenders and the plaintiff had given one, which was accepted by the former. In other words, his offer was accepted by the Government, with the result that it was not at the request of the Government that he had done the work. It was also said that this was not a case where no time had been fixed for the payment of the price of the work done by the plaintiff. A final bill regarding the price of the work had to be prepared by the Government and then payment made thereafter. It may be stated that the counsel for the respondent conceded that the suit of the plaintiff was for the price of the work done by him for the defendant. His argument only was that this work was not done at the request of the defendant and in this case time had been fixed for payment of the price of the work done and, therefore, Article 56 was not applicable. In support of this contention counsel for the plaintiff referred to a Bench decision of the Patna High Court in *State of Bihar* v. *Rama Bhushan Basu,* (4).

(11) For the applicability of Article 56, three things are necessary—

(i) that the suit should be for the price of the work done by the plaintiff for the defendant;

(ii) that the said work was done by the plaintiff at the request of the defendant; and

(iii) that no time had been fixed for payment of the price of that work.

(1) A.I.R. 1965 A.P. 186.
(2) A.I.R. 1965 All. 590.
(3) A.I.R. 1928 Oudh. 297.
(4) A.I.R. 1964 Patna 326.

Since it was the case of the appellants that the present suit was governed by this Article, it were they who had to establish the three requirements of the Article. So far as the first requirement is concerned, as I have already mentioned above, learned counsel for the respondent did not urge that the present suit filed by the plaintiff was not for the price of work done by him for the defendant. As a matter of fact, the plaintiff had actually executed the work of the Government regarding the canalisation of the approach to the bridge near Moti Bagh palace and it was for the price of this work that he had done that the present suit had been instituted by him. No argument was, therefore, raised about this condition.

(12) Now coming to the second requirement, the question is, at whose request the work was done by the plaintiff for the defendant ? Was it done at the request of the plaintiff or the defendant ? It is undisputed that it was the Government, who wanted the work regarding the canalisation of the approach to the bridge to be done and it is, therefore, that it invited tenders for the same. In response to this invitation, the plaintiff also submitted his tender, which was ultimately accepted. The fact, however, remains that it was the Government, which wanted its work to be done by the contractor. In other words, it was at the desire or request of the Government that the contractor undertook to do the work. Simply because the plaintiff had filed his tender at the invitation of the Government, it could not be said that the work, which was admittedly of the Government, was being done by him at his own request. His putting in the tender was merely an offer on his behalf that he would do that particular work at the price quoted by him and if that amount was the lowest and had been accepted by the Government that did not mean that it was his work that was being done by him, or that it was at his request that he had done that work. By the acceptance of the plaintiff's tender by the Government, the work did not cease to be that of the Government. The acceptance of the tender only amounted to the fixing of the price of that work. The work had to be entrusted by the Government to the contractor and it was according to the wishes of the former that he had to do it. Take for instance a homely example. If a person wants a house to be constructed for him by the contractor and he invites tenders for the same, if he accepts the tender of a particular contractor and entrusts the work to him, it cannot be said that the house was being constructed at the request of the contractor. It would be at the instance of the owner that the contractor would be constructing the house.

(13) Learned counsel for the plaintiff-respondent had relied on *Rama Bhushan Basu's case* (4), in support of his contention that in such circumstances, it would be at the request of the plaintiff contractor that the work was being done by him for the Government. On this point, the learned Judges of the Patna High Court observed thus—

> "It is doubtful if in the present case it can be said that the work done by the plaintiff was at the request of the defendant. There was first a general invitation for tenders for the work. The tender was to be of the rates for specified items of work. The plaintiff like other contractors submitted his tender which was finally accepted by the defendant. Acceptance of the plaintiff's tender is the acceptance of an offer made by the plaintiff, in other words, the plaintiff requested that he may be entrusted with the work at specified rates and his request was accepted and he was allowed to execute the work. In that view it was not at the defendant's request that the plaintiff did the work but it was as the other way about."

It would be seen from the above quoted passage, that the learned Judges were themselves doubtful if it could be said that the work done by the plaintiff in that case was at the request of the defendant. Secondly, we cannot lose sight of the fact that it was the Government in the first instance, which invited tenders for the construction of their work. On that invitation, various contractors submitted their tenders. It was not as if the contractor on his own put in his tender. If the plaintiff's tender was accepted, that only meant that the rate offered by the contractor was accepted by the Government. The tender was submitted at the desire of the Government and it was the Government, which wanted that work to be done by the contractor, whose tender had been accepted. There is no doubt that the work was of the Government and it was done for it by the contractor. The words "at his request" will govern the expression "work done by the plaintiff for the defendant" and not the price thereof. If the work was of the Government, as undoubtedly it was, and if it was done by plaintiff for the Government, as actually he did, then there is no escape from the conclusion that the plaintiff did that work obviously at the instance of the Government. By accepting the tender of the plaintiff, the Government had merely agreed to pay the price demanded by the contractor for the work which was to be

done by him for the Government at the latter's desire. In view of what I have said above, I am, I say so with respect, unable to agree with the above observation of the learned Judges.

(14) The view that I have taken finds support in *Badarwada Bhima Subbaraju's case* (1), where it was held:—

> "A suit brought by the plaintiff for recovery of an amount due on the execution of contract work of the defendant is governed by Article 56 and not by Article 115 of the Limitation Act. Article 56 mentions that for the price of work done by the plaintiff for the defendant at his request where no time had been fixed for payment. There is no material difference between the words used in Article 56, i.e., "at the request of the defendant" and work done under the contract entered into between the parties. Merely because the parties have entered into an agreement or a contract it can hardly be disputed that the work, in such cases would not be deemed to have been carried out by the plaintiff at the request of the defendant. When the tenders are called for it is an offer which the defendant has made and a counter offer is made in the form of submission of tenders by the contractor. Once that tenders is accepted, it is a contract which is entered into between the parties. But merely because the contract is reduced to writing or the work is executed on the basis of such contract, it cannot be said that Article 56 does not apply."

(15) It may be stated that the decisions in *Smt. Shanti Devi's case* (2), and that of *Mathura Prasad* (3), are not very helpful in deciding this point.

(16) I would, therefore, hold that in the case in hand, the work was done by the plaintiff-contractor for the Government at the latter's request.

(17) As regards the third requirement, the point to be decided is, as to whether any time had been fixed for the payment of the price of the work done by the plaintiff for the defendants in the instant case. That will depend on the terms of the agreement entered

into between the parties. The relevant clause in that behalf is No. 7, which reads:

> "No payments shall be made for works estimated to cost less than rupees one thousand, till after the whole of the works shall have been completed and a certificate of completion given. But in the case of works estimated to cost more than rupees one thousand, the contractor shall on submitting the bill therefor be entitled to receive a monthly payment proportionate to the part thereof then approved and passed by the Engineer-in-charge, whose certificate of such approval and passing of the sum so payable shall be final and conclusive against the contractor. But all such intermediate payments shall be regarded as payments by way of advance against the final payment only and not as payments for work actually done and completed and shall not preclude the requiring of bad, unsound, and imperfect or unskilful work to be removed and taken away and reconstructed or re-erected, or be considered as an admission of the due performance of the contract, or any part thereof in any respect, or the accruing of any claim, nor shall it conclude, determine, or affect in any way the powers of the Engineer-in-charge under these conditions, or any of them as to the final settlement and adjustment of the accounts or otherwise, or in any other way (torn) or affect the contract. The final bill shall be submitted by the contractor within one month of the date fixed for completion of the work otherwise the Engineer-in-charge's certificate of the measurement and of the total amount payable for the work accordingly shall be final and binding on all the parties."

(18) A perusal of the same would show that the final bill will be submitted by the contractor within one month of the date fixed for completion of the work. If he does not do that, then the Engineer-in-charge's certificate regarding the measurements of the work done and the total amount payable for that work shall be final and binding on all the parties. It is common ground that the payment for the work had to be made after the final bill had been submitted by the contractor. According to this clause, the final bill had to be submitted by the contractor within one month of the date

fixed for the completion of the work, but no time had been fixed for the payment of that bill by the Government. If the contractor failed to present his bill within the specified time, there is nothing to indicate as to within what period, the Engineer-in-charge would issue the certificate regarding the measurements of the work done and the total amount payable to the contractor by the Government. It is also not mentioned as to when the payment will be made by the Government after the certificate of the Engineer-in-charge had been issued. In this state of affairs, it cannot be said that any time had been fixed for payment of the price of the work done by the contractor for the Government in the instant case. That being so, I am of the view that no time had been fixed for such payment.

(19) In *Rama Bhushan Basu's case* (4), the following observations were made by the learned Judges regarding this point:—

> "There is another reason why this article cannot apply. In the suit agreement clause 8 provided for the mode of payment to the contractor. Interim payments were ordinarily to be made monthly but the final payment was not to be made until the whole of the works was completed, and a certificate of completion thereof was given. All interim payments were to be regarded as payments by way of advance against the final payments only and not as payments for works actually done and completed. The final bill was to be submitted by the contractor within one month of the date fixed for completion of the work, otherwise the Engineer's certificate of measurements, of which due notice was to be given beforehand to the contractor, and of the total amount payable for the works accordingly, was to be final and binding on all the parties. This provision indicated the time for payment. There was a time limit for submission of the final bill by the contractor or final measurements by the Engineer for the whole work. Final payment was to be made thereafter. Thus it cannot be said to be a contract where there was no time fixed for payment."

(20) It appears that the agreement in that case was on somewhat similar lines as in the instant case. It is true that there was a time limit for the submission of the final bill by the contractor, but as I have already mentioned above, no time had been fixed for the

issuance of the Engineer-in-charge's certificate regarding the final measurements for the whole work. Moreover, no time had been fixed for making the final payment of the bill. Though it is true that the said payment had to be made either after the submission of the final bill by the contractor or the issuance of the certificate by the Engineer-in-charge, but, as I have already said, no time had been fixed for making the payment of the final bill.

(21) For the reasons given above, I am unable to agree, I say so with respect, with the view taken by the learned Judges in the concluding portion of their observations quoted above. On the other hand, in my opinion, in the case in hand, no time had been fixed for the payment of the price of work done by the contractor for the Government.

(22) The result of all this discussion is that the Government has been able to establish the three requirements for the applicability of Article 56 of the Limitation Act to the instant case. I would, therefore, hold that this Article would apply to the facts of the present case. That being so, Article 120, as contended by the learned counsel for the respondent, would be inapplicable. The suit having been filed beyond three years of the date of the completion of the work would be barred by limitation.

(23) Faced with this difficulty, learned counsel for the respondent submitted that the time, in the instant case, had been extended under section 19 of the Limitation Act, because there was an acknowledgement of liability made in writing by the defendant. The relevant part of section 19 reads—

> 19. *"Effect of acknowledgement in writing.*—(1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed."

(24) According to this section, the acknowledgement of liability in respect of the property or right had to be (i) made in writing; (ii) signed by the party against whom such property or right is

claimed or by some person through whom he derives title or liability; and (iii) made before the expiration of the period prescribed for a suit or application in respect of any property or right. Learned counsel relied on two documents for showing that they were acknowledgements within the meaning of section 19. The first was Exhibit P.W. 9/L at Page 93 of the printed paper-book. It was a letter written by the Executive Engineer, Patiala Division, on 14th June, 1956, to the plaintiff, which reads—

> "Please refer to your letter No. 546/C.E., dated the 7th June, 1956.
>
> (1) Your claim regarding Patiala Naddi Bridge is under consideration of the higher authorities and the orders will be communicated to you in due course.
>
> (2) Please intimate the name of the officer under whose order the work was done on behalf of Government and send original receipt, duly verified by the Executive Engineer Electrical Division, E. & M., of the amount spent by you so that further action in the matter may be taken."

In the first place, this letter was written on 14th June, 1956, while the limitation for filing the suit under Article 56 expired on 31st March, 1956. Secondly, the language of this letter does not show that it was an acknowledgement of any liability on behalf of the Government. All that it said was that the claim of the contractor was under consideration of the higher authorities and the orders would be communicated to him in due course. The contractor was also asked to intimate the name of the officer under whose orders the work was done on behalf of the Government and he was also directed to send the original receipt, verified by the Executive Engineer and the amount spent by him so that further action might be taken in the matter. The second document was Exhibit P.W. 9/C on Page 81, of the paper-book. This was a letter written by the Under-Secretary to Government, P.W.D. (B&R) Pepsu, Patiala, on 24th September, 1956, to the plaintiff. It reads:

> "With reference to your request, dated the 6th July, 1956, applying for arbitration in the above-noted case, I am directed to say that according to Clause No. 25-A of the contract agreement, Superintending Engineer, B&R, P.W.D., Pepsu, Patiala, is designated as the Arbitrator in this case. At the time when this work was executed there was only

one Superintending Engineer and this post was held by S. J. P. Singh. He has, therefore, been nominated as the Arbitrator in this case and you are advised to refer the case to him (S. J. P. Singh, Superintending Engineer, B&R, Nabha). A copy of this letter is also being forwarded to him for necesary action."

This again was written after the limitation for filing the suit was over. Moreover, there is no acknowledgement of any liability on the part of the Government. It only mentions that the Superintending Engineer, P.W.D., had been designated as the Arbitrator in the case. The plaintiff was advised to refer the case to him.

(25) Thus, both these documents cannot be termed as acknowledgments within the meaning of section 19 of the Limitation Act. They cannot, therefore, extend the period of limitation, as contended by the learned counsel for the respondent.

(26) The learned trial Judge, while discussing the question of limitation under issue No. 2, had referred to two circumstances which, in my opinion, cannot advance the case of the plaintiff in any way regarding this point. The first was that the period spent by the department in arbitration proceedings from 24th September, 1956, to 6th January, 1959, was to be excluded under section 37 of the Arbitration Act and, according to the learned Judge, from that view, the suit was clearly within time. It is noteworthy that limitation for filing the suit had already expired before 24th September, 1956, and, consequently, the period spent in arbitration proceedings cannot be of any avail to the plaintiff for computing the period of limitation for filing the suit. The second was that according to the learned Judge responsible officers of the department had committed forgeries, tampered with the record and lost the measurement book No. 5824, in spite of the order regarding its safe custody by the Chief Engineer, Patiala. The department had itself prolonged the matter by holding enquiries, preparing fresh estimates and bills and by appointing Arbitrators, who were also the officers of the department. According to the learned Judge, it was thus clear that the department had been itself responsible for all the delay and the plaintiff was never refused payment, which could give him the "start for limitation". This circumstances, in my opinion, is wholly irrelevant. If the suit was governed by Article 56 of the Limitation Act, as I have already held, then the limitation of three years for

filing the suit started from the date when the work was completed. The question of refusing the payment to the plaintiff by the Government does not arise. The circumstance that the department was itself delaying the things is also irrelevant for the purpose of counting the limitation.

It may also be stated that the learned Judge had also referred to an admission and an acknowledgment by the defendant regarding the liability of the payment of Rs. 26,959 and on that basis the learned Judge found that the suit was within limitation. This again is an erroneous approach. The alleged admission and acknowledgement, according to the learned counsel for the respondent, was contained in Exhibit P.W. 1/H, at page 57 of the paper-book and it reads:

> "Patiala Division, B. & R., Patiala, No. 2972/ce, dated the 27th August, 1955.
>
> Reg: Settlement of claim of L. Sham Lal, Contractor for canalization of Patiala Naddi and approaches to bridge.
>
> Superintending Engineer,
> B. & R., 1st Circle, Patiala.
>
> Kindly refer to your letter No. 1221/C, dated the 9th August, 1955.
>
> The estimate for the above noted work amounting to Rs. 26,959 is submitted herewith for favour of sanction debitable to the provision of Rs. 1,00,000 under head O. W. Miscellaneous for 1955-56.
>
> Necessary provision is available to cover the cost of the estimate as shown in the provision slip attached herewith for reference and perusal please.
>
> Sd/- . . . .,
>
> Executive Engineer,
> Patiala Division, B. & R., Patiala."

A perusal of this document will show that it is no acknowledgement of any liability on behalf of the Government. All that it means is that the Executive Engineer had written to the Superintending Engineer that the estimate of the work done by the plaintiff was Rs. 26,959. This estimate was sent to the Superintending Engineer

for favour of sanction. It has not been proved on the record as to whether the Superintending Engineer ever sanctioned that amount. Unless that sanction was there, it cannot be said that the Government had admitted its liability to pay the said amount to the plaintiff. On the other hand, the case of the Government was that finally Rs. 1,305/6/- were due from the plaintiff.

While discussing issue No. 2, the trial Judge had observed that the plaintiff had filed the present suit for accounts and there was no specific article in the Limitation Act governing such a suit and, therefore, the residuary Article 120 would apply.

I have already held above that the plaintiff, in the instant case, was claiming from the Government the price of the work done by him. It does not make any difference if he claims a specific amount in that connection or asks the Government for accounts in order to ascertain the exact amount that will be due to him in that behalf. The fact remains that what he was demanding from the Government was the price of the work that had been done by him for it. The nature of the claim does not change by the label that one chooses to put on the suit. Learned counsel for the respondent also, as already stated above, did not urge that the present suit filed by the plaintiff was not for the price of the work done by him for the defendants. It may be that there is no specific article for a suit for accounts of this nature, but since the present case is covered by Article 56, therefore, the question of the applicability of the residuary Article 120 will not arise.

In view of what I have said above, I hold that the suit was barred by limitation. The same is, therefore, dismissed on that ground.

In this view of the matter, it is not necessary to decide the other points arising in the case.

The result is that this appeal is accepted, the judgment and decree of the Court below are set aside and the plaintiff's suit is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs throughout.

The cross-objections filed by the plaintiff automatically fail and are rejected, but with no order as to costs.

S. S. SANDHAWALIA, J.—I agree.

K.S.K.