

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA(OS) No.35/2007

ITPO

.....Appellant through
Mr. Jayant Bhushan, Sr.
Adv. with Mr Ravi Sikri,
Mr. Ayushya Kumar and
Mr. Gautam Talukdar, Advs.

versus

V. MEERA & ORS.

.....Respondent through
Mr. Maheshwar Dass, Adv. for
Respondent No.3
Mr. Jayesh Kumar, Adv.
for Respondent No.4
Mr. Suresh Bharti, Adv. for
Respondent No.7
Mr. Suman Doval, Adv.
for Respondent No.10
Mr D.K.Garg and Mr Vijay Pratap
Singh, Advs.for Respondent No.18
Sheikh Imran Alam, Adv. for
Respondents Nos.5, 19 and 20
Mr Akhilesh Arora, Adv.
for Respondent Nos.11 to 14

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Date of Hearing : July 28, 2009

Date of Decision : August 03, 2009

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether reporters of local papers may be allowed to see the Judgment?	No
2. To be referred to the Reporter or not?	Yes
3. Whether the Judgment should be reported in the Digest?	Yes

VIKRAMAJIT SEN, J.

1. In this Appeal, the Plaintiff has laid siege to the Order dated 12.10.2006 passed by the learned Single Judge dismissing the suit

on the finding that it was clearly barred by limitation. The Appellant/Plaintiff has filed a suit for recovery of Rupees 1,08,00,000/- against twenty of its employees, together with three other persons (Defendants No.20-22) as beneficiaries of the defalcation allegedly carried out by Defendant Nos.1-19. In the Plaint, it has been averred that the Vigilance Department had received information in December, 1996 in respect of this defalcation. The Department submitted its Report in July, 1997. It appears that the Central Bureau of Investigation (CBI) had registered a First Information Report against all the Defendants and filed a Chargesheet on 5.11.1997. Reliance has been placed by the Plaintiff on several documents and actions carried out between 19.8.1997 and March, 1998. All this is succinctly stated in the cause of action paragraph of the Plaint, which is in these words – “That the cause of action arose for the first time on 14.7.1997 when the Vigilance Department submitted its report for further investigation. It further arose in favour of the Plaintiff and against the Defendants after the submission of the inquiry report by the various Inquiry officers who were appointed by the Plaintiff to conduct the inquiries against the Defendants. It further arose when the Hon’ble High court has directed the Plaintiff vide its order dated 23.1.2001 to take up appropriate proceedings against the aforesaid defendants. It further arose when the CBI filed its

charge-sheet before the Special Court of CBI on 5.11.1997 and it is still continuing as the Defendants have not paid the said amount”.

2. The Order passed by this Court in a Public Interest Litigation (PIL) reads as follows:-

From the affidavit filed by respondent Nos.2 and 3, it is apparent that as many as 19 officials were charge-sheeted. Out of 19 officials, seven officials have since been removed/dismissed from service on the basis of the findings of the Inquiry Officers. In respect of five officials, major penalties have been imposed. Two officials were exonerated as the charges framed against them could not be sustained for lack of evidence. In respect of remaining two officials, it is stated in the counter affidavit that the inquiry has been completed and appropriate orders of the Disciplinary Authority are awaited. The affidavit also discloses that cases against the officials who were involved in the scam have been registered by CBI under Section 120-B, 419, 420, 468, 471 of IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act. It is also stated that CBI has filed charge sheets against 21 persons including the officials of ITPO.

From the Inquiry Reports, we find that the company was defrauded/cheated of huge sum of money by the officials. This fact has been admitted in the counter affidavit.

Having regard to the Inquiry Reports and the counter affidavit, we direct that appropriate proceedings for recovery of the amounts of which the company was defrauded/cheated by the officials should be initiated. We hope and trust that the proceedings shall be initiated expeditiously.

The writ petition is disposed of with the above said direction and observations.

Dasti.

3. The learned Single Judge has correctly arrived at the conclusion that Article 113 of the Limitation Act, 1963 is attracted to the present case. In other words, the cause of action should not have arisen prior to three years of 12.4.2001, the date on which the Complaint was filed.

4. On a reading of the Complaint it becomes manifestly clear that the cause of action arose on 14.7.1997 and the Suit, therefore, ought to have been filed on or before 13.7.2000. We cannot agree with Mr. Jayant Bhushan, learned Senior Counsel for the Appellant, that the cause of action can only arise after the decision of the Special Court of CBI before whom the Chargesheet had been filed. If this argument is extended further, it would necessarily mean that until the criminal cases are finally settled, that is, after a possible appeal to the Hon'ble Supreme Court is exhausted, the cause of action would not be seen to have arisen. Such an argument has to be rejected no sooner it is stated.

5. It is next argued that in any event the directions of this Court passed on 23.1.2001 would create a fresh cause of action, and if so, the Suit is well within time, having been initiated within few months of the directions given by the Division Bench in the PIL. It is noteworthy that the Defendants/Respondents were not parties in the PIL. In any event, even a Division Bench hearing PIL would not

have power to extend the limitation prescribed by the statute. It is trite that delay in filing a suit cannot be condoned. It is quite obvious to us that it had not been pointed out in the PIL that litigation against the present Respondents/Defendants may have become time-barred. Therefore, we find no merit in this contention.

6. Finally, reliance has been placed by Mr. Jayant Bhushan on the decision of a Single Judge in **Anant Ram Negi -vs- State of H.P.**, AIR 2003 HP 114. In that case, it was found that Article 91(b) of the Schedule to the Limitation Act was applicable to the facts of that case. This Article prescribes that for compensation for wrongful taking or injuring or wrongfully detaining any other specific movable property a period of limitation would be three years depending upon when the period had been wrongfully taken. Even if this Article were to be applied, we entertain no doubt that the property in question, that is, funds and monies belonging to the Appellant, had been defalcated before December, 1996. Delay in completing a Departmental Inquiry cannot extend limitation; otherwise, the statute of repose would never be attracted and limitation would always remain open-ended. It is for the Court, and not for the Plaintiff, to decide the culpability or liability of the Defendants. The information gathered by the Vigilance Department of the Plaintiff would also constitute the springboard for litigation. The factual matrix in **Anant Ram Negi** thus is wholly dissimilar

since in that case the finding was to the effect that “the possession of the defendants evidently became illegal when despite release order passed by the concerned Court they failed to release the case property or value thereof in its entirety to the plaintiff”. In the case in hand, the cause of action arose on each and every date when the defalcation of funds took place.

7. We find no error in the impugned Order. The Appeal is dismissed. Keeping in perspective the singular facts of the case, we do not think it appropriate to impose costs on the Appellant as that would enure to the benefit of the Respondents.

(VIKRAMAJIT SEN)
JUDGE

August 03, 2009
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(V.K. JAIN)
JUDGE