

REPORTED

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision : 31st August, 2010
+ **RFA No. 16/2003**

Sh. Rajiv Kumar Gupta Appellant
Through: In person.

versus

Sh. Sunil Shakt and Ors. Respondents
Through: Mr. B. Shekhar, Advocate.

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: REVA KHETRAPAL, J.

This appeal is directed against the order dated 22nd October, 2002 passed by the learned Additional District Judge, Delhi, dismissing the suit filed by the appellant herein against the respondents no.1, 2 and 3 on the ground of limitation.

2. The facts relevant for the disposal of the appeal are that a suit was filed by the appellant against the respondents no.1 to 3 for the recovery of Rs.4,63,491.84 with costs and damages and with pendente lite interest on the basis of certain dishonoured cheques. The said suit was accompanied by an application under Order XXXIII of the Code of Civil

Procedure seeking permission to prosecute the said suit as an indigent person. An application under Section 5 of the Limitation Act was also filed along with the suit for condonation of delay in filing the suit.

3. The learned trial court, at the outset, framed a preliminary issue and proceeded to determine whether the suit itself was within the period of limitation. Taking note of the fact that the cheques, on the basis of which the suit had been filed, were issued on various dates between 8th June, 1996 to 10th June, 1997, and were dishonoured on various dates during the period intervening 15th November, 1997 to 18th November, 1997, the trial court held that the limitation for filing the suit had expired on 17th November, 2000. The suit itself was instituted on 23rd June, 2001 and therefore was barred by limitation. On this ground alone, the trial court proceeded to dismiss the suit. Aggrieved by the aforesaid dismissal of his suit the appellant has preferred the present appeal.

4. At the threshold it may be stated that there is no manner of doubt that the limitation for filing the suit had expired on 17th November, 2000. This factual position is not disputed by the appellant. The appellant, however, has appeared in person before this Court to contend that the learned trial court erroneously dismissed the suit filed by him solely on the ground that the provisions of Section 5 of the Limitation Act, 1963 do not apply to suits and are applicable only to applications and appeals. The appellant's further contention is that the learned trial court failed to take note of the fact that he was entitled to the benefit of the provisions

of Section 6 of the Limitation Act in view of the innumerable documents placed by him on the record of the trial court (from page 219 to page 331 of the trial court's record), which clearly establish that he (the appellant) was suffering from schizophrenia. It is also the case of the appellant that though he had entrusted the file to an Advocate, namely, Ms. Ratna Aggarwal for the purpose of institution of the suit and the file remained with the said Advocate from September'99 till 18th June, 2001, the suit was not filed by her. This, despite the fact that on 12th May, 2000 he had instituted a complaint with the Bar Council against the aforesaid Advocate.

5. The learned counsel for the respondent filed his written submissions to rebut the contentions raised by the appellant. Before looking at the written submissions of the respondent, a look first at the provisions of Section 6 of the Limitation Act, 1963 which have been pressed into service by the appellant.

6. Sub-Section (1) of Section 6 which is relevant for our purposes reads as under: -

“Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have

been allowed from the time specified therefor in the 3rd column of the Schedule.”

7. The trial court record reveals that there is a compendium of medical documents filed by the appellant to establish on record that from 13th July, 1996 he was suffering from paranoid schizophrenia, as certified by various Institutes and Hospitals including Ram Manohar Lohia Hospital, Sir Ganga Ram Hospital, Jaipur Golden Hospital and the Institute of Human Behaviour and Allied Sciences. Indeed, this fact is not disputed by the respondents.

8. It is well-known that paranoid schizophrenia is a mental disease. It can recur. The question which now arises is as to what is ‘paranoid schizophrenia’. The Supreme Court in the case of **Shrikant Anand Rao Bhosale vs. State of Maharashtra (2002) 7 SCC 748** in the context of the murder committed by the appellant of his wife, has examined the ingredients of paranoid schizophrenia in paragraphs 10 of its judgment, with reference to Modi’s Medical Jurisprudence and Toxicology (22nd Edition) as follows: -

“10. What is paranoid schizophrenia, when it starts, what are its characteristics and dangers flowing from this ailment. Paranoidschizophrenia, in the vast majority of cases, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of reference occur, which gradually develops into delusions of persecution. Auditory hallucinations follow, which in the beginning, start as sounds or noises in the ears, but are afterwards changes into abuses or insults. Delusions are at first indefinite, but gradually they become fixed

and definite, to lead the patient to believe that he is persecuted by some unknown person or some super human agency. He believes that his food is being poisoned, some noxious gases are blown into his room, and people are plotting against him to ruin him. Disturbances of general sensation gives rise to hallucinations, which are attributed to the effects of hypnotism, electricity wireless telegraphy or atomic agencies. The patient gets very irritated and excited owing to these painful and disagreeable hallucinations and delusions. Since so many people are against him and are interested in his ruin, he comes to believe that he must be a very important man. The nature of delusions thus may change from prosecutor to the grandiose type. He entertains delusions of grandeur, power and wealth, and generally conducts himself in a haughty and overbearing manner. The patient usually retains his money and orientation and does not show signs of insanity, until the conversation is directed to the particular type of delusion from which he is suffering. When delusions affect his behavior, he is often a source of danger to himself and to others. [Modi's Medical Jurisprudence and Toxicology (22nd Edn.)]”

9. Paranoid Schizophrenia is, therefore, a disability which squarely falls within the ambit of the provisions of Section 6 of the Limitation Act, 1963. Yet, in the instant case, the learned trial court has, in a casual manner, dismissed the suit of the appellant refusing to take note of the disability of the appellant, merely by observing that there is nothing to prove the same. At the risk of repetition, it is reiterated that there is a sheaf of medical documents, which appear at pages 219 to 331 of the trial court's record, which clearly establish the fact that the appellant was suffering from depression, schizophrenia, insomnia and other allied medical conditions. In such circumstances, it was incumbent upon the

learned trial court to decide the application under Order XXXIII of the Code of Civil Procedure for treating the appellant as an 'indigent person' and thereafter to provide the appellant with a counsel at State expense, before undertaking the exercise of deciding whether the suit was barred by limitation, keeping in view the provisions of Section 6 of the Limitation Act, 1963. The trial court chose to ignore the indigency of the appellant and even his disability and to dismiss the suit in a hasty manner.

10. The contention of the learned counsel for the respondent in his written submissions that the disability of the appellant having ceased before the expiry of the period of limitation, i.e. prior to 17th November, 2000, the appellant has failed to explain as to how the suit which was instituted on 23rd June, 2001 is not hit by the bar of limitation, is again baseless. It deserves to be noted in this context that Section 6 of the Limitation Act, 1963 expressly states that extension under the said Section is related to the period of limitation specified in the third Column of the Schedule to the Act. Thus, the period of three years under Section 6 of the Act has to be counted from the date of cessation of the disability of the plaintiff. In other words, this Section signifies that the person under disability is entitled to extension of time till the expiry of the period mentioned in the Schedule, calculated from the cessation of his disability. Section 8, it may be noted, is by way of a proviso to Section 6 of the Act. The combined effect of Section 6 and

Section 8 read with the third Column of the appropriate Article in the Schedule would be that a person under disability may sue, after cessation of disability, within the same period as would otherwise be allowed from the time specified therefor in the third Column of the Schedule. Special limitation, as an exception, has been provided under Section 8 laying down that the extended period after cessation of the disability would not be beyond three years from the date of cessation of the disability or the death of the disabled person [See *Darshan Singh vs. Gurdev Singh* *AIR 1995 SC 75*]. Admittedly, the disability of the appellant and his schizophrenic condition continued till 17th November, 2000 (and possibly even thereafter), and, therefore, the suit filed by the appellant on 23rd June, 2001 was well within limitation keeping in view the provisions of Section 6 of the Act.

11. Before parting, it may be noted that as provided under Order XXXIII of the Code of Civil Procedure an enquiry has already been made for the purpose of declaring the appellant an 'indigent person' in terms of order dated 6th November, 2003 passed by Sh. Vimal Kumar Yadav, Additional District Judge in another suit filed by the appellant, being Suit No. 27/2003. A copy of the communication received from the Collector informing the Court about the enquiry conducted by him is placed at page 194 of the records. This fact may be taken into consideration by the learned trial court while disposing the application of the appellant under Order XXX and if declared indigent, the appellant

may be provided with a counsel at State expense as envisaged by the law.

12. With the above observations and directions, the appeal is allowed. The appellant is held entitled to costs, which are quantified at ₹25,000/-. The case is remanded back to the trial court for being tried in accordance with law. Parties are directed to appear before the concerned Court on 20th September, 2010 for further proceedings. The file of the trial court be sent back to the trial court forthwith.

**REVA KHETRAPAL
(JUDGE)**

August 31, 2010
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