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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: February 08, 2010
Date of Order: March 04, 2010

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04.03.2010

Smt. Saritha Rao & Ors.

...Petitioners

Through: Mr. L.K. Garg, Advocate

V.

Y. Raghunath Rao & Anr.

...Respondents

Through: nemo

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. By way of present petition under Article 227 of the Constitution of India, the petitioners have assailed an order dated 26th November 2009 passed by Additional District Judge whereby an application of the petitioners under Order 7 Rule 11, Order 7 Rule 10 read with Section 151 CPC was dismissed.

2. Brief facts relevant for deciding this petition are that the petitioners filed a suit claiming damages on account of false allegations and accusations made by the respondents in Criminal case against the respondents at Secunderabad, Andhra Pradesh. The facts reveal that son of the Shri Y. Raghunath Rao and Smt. S. Charulata Rao was married to Smt. Saritha Rao, petitioner no.1 herein. The marriage did not go smooth and Smt. Saritha Rao filed a divorce in Secunderabad in 1998. This divorce petition was dismissed in March, 2001. She

also filed a criminal complaint against three unmarried sisters of her husband and parents of her husband as well as against her husband with the result that unmarried daughters of the plaintiffs were arrested in the criminal case filed by the petitioners herein. The plaintiffs who were settled in US were forced to come back to India as warrants were also issued against them in their absence, executable at Delhi. They surrendered before the Criminal Court at Secunderabad and thereafter they were released on bail. Since the divorce petition of the petitioner was dismissed, an appeal against the dismissal of her divorce petition before the Andhra Pradesh High Court was preferred by the petitioner no.1 which was also dismissed on 9th July, 2002. The Andhra Pradesh High Court also observed that it appeared that petitioners had misused the process of law in initiation of the proceedings under Section 498A IPC against respondents herein in order to harass the respondents and respondents had therefore to come to Hyderabad from Delhi to attend the case. The petitioner then preferred an SLP before the Supreme Court which was dismissed on 9th January, 2004. The husband of petitioner no.1 Shri Ramachandra Rao and son of respondent filed a petition for restoration of conjugal rights and the petitioners filed a transfer petition before the Supreme Court and the petition was transferred to family court at Secunderabad whereby the family court at Secunderabad directed the petitioner no.1 to join company of her husband vide order dated 6th June, 2005 but she did not honour the order of the Court. Against the order of Family Court, she preferred an OP i.e. another petition on 18th March, 2005 and then again respondents had to travel from Delhi to Secunderabad incurring huge expenses. The criminal complaint filed by petitioner no.1 herein was dismissed by the criminal Court and it was observed by the criminal court that this complaint was filed by her to harass the members of the family of respondents. Against this order, the petitioner no.1 filed a criminal revision number 446 of 2003 before the High Court of Andhra Pradesh which was dismissed on 18th March, 2006. After dismissal of the criminal revision filed by the petitioner before the Andhra Pradesh High Court on 18th March 2006 and after noting the fact that the petitioner did not file any SLP against the order passed by Andhra Pradesh High Court to Supreme Court, respondent filed a suit claiming damages for false and

frivolous prosecution and for harassment.

3. The petitioners filed an application under Order 7 Rule 10 and Order 7 Rule 11 CPC on the ground that the Court at Delhi had no jurisdiction as also on the ground that the suit was barred by limitation.

4. It is submitted by counsel for the petitioner that the entire cause of action had taken place at Secunderabad therefore the Delhi Court had no territorial jurisdiction and that the suit filed by the respondents was barred by limitation as the period of limitation was one year. The trial court held that the cause of action had taken place partly at Delhi because the warrants against respondents were got issued in Delhi and they were executable in Delhi and since on the basis of cause of action had arisen in Delhi, the Delhi Court would have jurisdiction. Regarding limitation, the trial court observed that it was a triable issue and, therefore, no finding can be given at the initial stage.

5. It is argued by counsel for the petitioner that the trial court should have returned finding on the issue of limitation as facts were very clear.

6. No doubt that the period of limitation in a case of a suit claiming damages on account of false prosecution is covered under Section 74 of Limitation Act and is one year. However, the period of limitation has to be counted from the date when this false prosecution ultimately came to an end and the Court gave a final finding that the prosecution was false. After dismissal of the criminal complaint, the petitioner no.1 preferred a criminal revision petition before the High Court of Andhra Pradesh which was dismissed with the same findings and it is only thereafter that respondents could not bring action regarding false prosecution. A perusal of the suit filed by respondents shows that the suit was filed on 3rd April, 2007. The respondents were entitled to deduction of the period which respondents spent in obtaining certified copies of the orders passed by Andhra Pradesh High Court and were also entitled to wait for the period available to the

petitioner for approaching next Court to see if the petitioners approached the Supreme Court, since the petitioner had been approaching Supreme Court almost in every matter. I, therefore, consider that whether the suit was filed within the period of limitation would depend upon the facts and the trial court rightly observed that it was a triable issue. The contention of petitioner's counsel that the period of limitation has to start from the date when the statements were made by the petitioner and witnesses in the Court is baseless and frivolous contention. The period of limitation would start only from the date when ultimately, it was held by the competent Court that the criminal prosecution was a false prosecution. It is well-know maxim of law that an appeal/ revision is continuity of the criminal trial and criminal trial finally comes to an end when the last Court i.e. the Supreme Court, give its verdict.

I find no force in this petition. The petition is hereby dismissed.

March 04, 2010
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SHIV NARAYAN DHINGRA J.