

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA(OS) No.1/2010

Rohit Shekhar Appellant through
Mr. P.S. Patwalia, Sr. Adv. with
Mr. S. Santanam Swaminathan,
Mr. Kirtiman Singh &
Mr. Amandeep Singh, Adv.

versus

Narayan Dutt Tiwari Respondent through
Mr. Rajiv Nayyar, Sr. Adv. with
Mr. P.K. Bakshi, Mr. Jitender
Ratta, Adv. for Respondent No.1
Mr. Gaurav Mitra & Mr. Dhruv
Kapoor, Adv. for Respondent No.2

% Date of Hearing: March 11, 2010

Date of Decision: March 17, 2010

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE MANMOHAN SINGH

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 the Judgment should be reported in the Digest?	Yes

VIKRAMAJIT SEN, J.

1. This Appeal assails the Order dated 3.11.2009 passed by the learned Single Judge by means of which an application filed by Defendant No.1 under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC' for short) came to be allowed. The learned Single Judge has held the Suit not to be maintainable at

Delhi and secondly that it was liable to be rejected on the ground of limitation. By pronouncing on both pleas, with respect to the learned Single Judge, an anomalous situation has been brought into effect. Order VII Rule 11 of the CPC postulates circumstances in which a plaint can be rejected. Objections pertaining to territorial jurisdiction filed under the preceding Rule, that is, Order VII Rule 10 of the CPC requires the return of the plaint for the purpose of it being presented to the Court in which the suit should have been instituted. Rule 10(a) of Order VII of the CPC has been inserted into the CPC with effect from 1.2.1977 and endeavours to comprehensively cover cases where the plaint is returned to enable the Plaintiff to file it in the court which properly possesses jurisdiction to entertain and decide the disputes between the parties. If the learned Single Judge was convinced that the Delhi High Court or any other Court in Delhi does not possess territorial jurisdiction to adjudicate upon the *lis*, he was bound to return the Plaint. The learned Single Judge, by traversing into the second issue of limitation, has rendered the issue of territoriality otiose since the Plaint has been rejected under Order VII Rule 11 of the CPC on the ground that its consideration was barred on the ground of limitation. In our view, only one of the two courses ought to have been chartered. If the learned Single Judge was of the opinion that he

ought not to exercise jurisdiction on the ground that courts in Delhi were not appropriately possessed of jurisdiction, he should have returned the Plaint and gone no further. In such an event, if the Plaintiff had chosen not to challenge the Order, it would have been open for him to file the Plaint in Andhra Pradesh or anywhere else, according to his understanding. It would have been the province of any of these Courts to decide whether the Suit is barred by limitation. Alternatively, if the learned Single Judge was convinced that the Suit could not be entertained or tried because this exercise was barred by the statute of repose, this finding could only have been given only if in his opinion he possessed territorial jurisdiction. In the event, the learned Single Judge has held that the Courts in Delhi are bereft of jurisdiction. Therefore, he could do more than return the Plaint.

2. The Respondent/Defendant No.1 has not assailed the impugned Order. The inference that must be drawn is that he supports the finding and conclusion that the High Court of Delhi does not possess territorial jurisdiction, in which case the conclusion on limitation is devoid of jurisdiction. As we see it, confusion has been confounded by entertaining both Objections simultaneously which, in the circumstances obtaining before us, are mutually incompatible.

Do Courts In Delhi Possess Territorial Jurisdiction

3. We must first deal with the question of territorial jurisdiction and only if we conclude that Delhi holds jural sway over the disputes articulated in the Plaint will we venture towards the second. Discipline requires us to do so since the conclusion on this point will determine whether we should travel to the second aspect of the Appeal. In our opinion, the Courts in Delhi, and the High Court of Delhi in particular, possess territorial jurisdiction to receive, entertain, try and thereafter decide the Suit. The provisions of the law to be adverted to are in the fasciculus comprising Sections 15 to 25 of Part-I of the CPC dealing with the “place of suing”. We shall briefly mention Section 16 of the CPC, which deals with suits concerning immovable property, for the reason that Mr. Nayyar, learned Senior Counsel for Defendant No.1, has endeavoured to impart a new and restricted interpretation to Section 20 of the CPC. It is prescribed by the CPC that where suits pertain to immovable property, the Courts within whose ordinary jurisdiction such property is situate would possess jurisdiction. There is one exception which is frequently in debate, which we may say remains inconclusive, which is that a relief pertaining to immovable property can be fully executed through the personal obedience of any person, the place where such person actually

and voluntarily resides, or carries on business or personally works for gain, can exercise territorial jurisdiction. Drawing on this exception, Mr. Nayyar contends that since the Prayers in the Plaint essentially require compliance by Defendant No.1, the Court ought not to travel beyond Section 20(a) of the CPC, and jurisdiction should be restricted to that Court where Defendant No.1 actually and voluntarily resides or carries on business or personally works for gain. This argument, which indeed is ingenious, seeks to annihilate the contention of Mr.P.S. Patwalia, learned Senior Counsel for the Appellant, that even if Clause 20(a) of the CPC is attracted, since the cause of action has, wholly or in part, arisen in Delhi, the Plaint must be held to have been properly instituted in the High Court of Delhi on the strength of Section 20(c) of the CPC. We are unable to be persuaded by Mr. Nayyar because, facially, each of the three sub-clauses in Section 20 of the CPC are separated with the conjunction 'or', denoting thereby that each of them operate independently.

4. Even otherwise we cannot agree with Mr. Nayyar that if Section 20(a) of the CPC alone is attracted, the Courts in Delhi do not enjoy territorial jurisdiction. The Plaint, we are constrained to comment, could have been more cleverly constructed and crafted. It is because of deficient drafting that

both issues before us have become controversial. There can be no cavil that the Court must read pleadings in a holistic manner. We need not go any further than reproduce the observations contained in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I*, (2004) 9 SCC 512, which adumbrates that whether a plaint discloses a cause of action or not must be gathered from the averments made in the Plaint itself, which must be assumed as correct at this nascent stage. Since the stage of evidence is yet to reach, prejudging the probative value of the evidence would essentially be speculative and, therefore, an erroneous exercise by the Court.

151. In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown. In *Vijai Pratap Singh v. Dukh Haran Nath Singh* AIR 1962 SC 941 this Court held: (AIR pp. 943-44, para 9)

“By the express terms of Rule 5 clause (d), the court is concerned to ascertain whether the allegations made in the petition show a cause of action. The court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting relief

no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, prima facie, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him.”

152. So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars.

5. To these perspicuous observations, we may humbly add that procedure, being only a handmaid of justice, it should not be employed to defeat it on punctilio and empty formality. The Court is duty bound to ascertain from the pleadings the grievance of the Plaintiff and in that context consider the Prayers made in the Plaint.

6. The Plaint itself narrates that Defendant No.1 has a residence in New Delhi, his residence in Andhra Pradesh was indeed transient from inception, effective only for the period in

which he was expected to discharge gubernatorial duties. As it has happened, these responsibilities have not extended to the ordinary tenure of the assignment for reasons which are not germane for our present task. Of course, the Suit could as well have been filed in Andhra Pradesh, but that begs the question whether it could also have been filed in Delhi. Paragraph 9 speaks of the Tilak Lane residence of the Plaintiff in Delhi. The Complaint is replete with incidents which have transpired at the residence of Defendant No.1 in Delhi. In response to an inquiry under the Right to Information Act, 2005 it has been stated by response dated 21.7.2009 that – “General Category house No.C-1/09, Tilak Lane, New Delhi has been allotted to Shri Narain Dutt Tiwari under Freedom Fighters’ Quota(FFQ). Hence, for his entire lifetime”. It would, therefore, be legally logical to hold that Defendant No.1 actually and voluntarily resides in New Delhi. It is in this regard that reliance has been placed by learned Senior Counsel for the Appellant on *Mohan Singh -vs- Lajya Ram*, AIR 1956 Punjab 188. Although the renowned Hotelier, Late Shri M.S.Oberoi, was permanently residing in Calcutta, it was noted that he also had a residence in Delhi, thereby infusing Courts in Delhi with jurisdiction. The CPC does not ordain that only one Court can possess jurisdiction at one time. In the event that several Courts are simultaneously

competent to exercise jurisdiction, preference or preeminence has been bestowed on the one within whose territory the substantial part of the cause of action occurred. In these circumstances, we are satisfied that the provisions of Section 20(a) of the CPC support the jurisdiction of the High Court of Delhi.

7. Independent of the considerations contained in the foregoing paragraph, we think that the Suit is sustainable in the High Court of Delhi by virtue of Section 20(c) of the CPC since the cause of action, wholly or in part, has arisen in Delhi, as can be discerned from a holistic reading of the Plaint. We must again note an attractive argument of Mr. Nayyar *viz.* that the Plaintiff is not entitled to invoke Section 20(c) of the CPC for the reason that the cause of action on which the suit is predicated by the Plaintiff has occurred at a time which mandates that the Suit should be dismissed or rejected on the ground of prescription. A Three-Judge Bench has opined in *Balkrishna Savalram Pujari -vs- Shree Dhyaneshwar Maharaj Sansthan*, AIR 1959 SC 798 that a continuing wrong creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. According to Mr. Nayyar, the ground articulated by the Plaintiff in the Plaint is the indifferent attitude of Defendant No.1 towards the Plaintiff

between the years 1995 and 2001. Emphasis has been placed, *inter alia*, on the following pleadings:-

(x) It was in the year 1995, that the Plaintiff suffered a severe blow, when the Defendant No.1 refused to meet the Defendant No.2 and instructed the staff that she should not be allowed to enter the house and thereafter refused to have anything to do with the Defendant No.2 or the Plaintiff.

(xi) Although the Defendant No.2 decided to stay away from the Defendant No.1, the Plaintiff who was barely sixteen at that time found it extremely difficult to understand, that why would a father refuse to acknowledge his son, when it would have been so easy to accept him as his own.

(xii) This act of rejection and indifference from a father was a very big blow to the self esteem and confidence of the Plaintiff, who was at an impressionable age of 16 years at that time.

8. It has not been argued before us, and rightly so, that the Suit is premature inasmuch as the first available renunciation is contained in the subject application. We reiterate that the proper course would be to ascertain the occasion when the Plaintiff believed that there has been a denial, leaving him with no recourse other than initiating legal proceedings. Mr. Nayyar's contention is that the Plaintiff attained the age of majority in circa 1997 and, therefore, should have brought a suit within three years thereof, that is, on or before 2000. We agree

with Mr. Nayyar that if the cause of action for a suit is based on certain events, the place where they transpired would determine whether a Court possesses territorial jurisdiction over the *lis*. We also agree with Mr. Nayyar that since the Suit has been filed in 2008, it cannot be legally and logically be predicated on a cause of action which occurred more than three years anterior to the debate of its institution. Had no other events been pleaded, we may have been compelled to hold that the Suit is barred by limitation. It seems to us that we are duty bound to take into consideration pleaded events which transpired in New Delhi three years previous to the date on which the Suit was filed. Unhappily worded and verbose though the pleadings may be, the Plaintiff asseverates as follows:-

(xv) Thereafter, the Defendant No.1 became the Chief Minister of Uttaranchal in the year 2002 and may be because he was afraid that the Plaintiff might try to cause some problem for him, he agreed to meet the Plaintiff occasionally. This continued for a while, but thereafter, the defendant No.1 again started avoiding the Plaintiff and absolutely refused to see him for the last number of years.

(xvi) The Plaintiff submits that after the Defendant No.1 became Chief Minister of Uttaranchal, the Petitioner and his mother visited the Defendant No.1 number of times and some of the photographs of the functions attended by the Plaintiff and his mother after

2002 and upto 2005 are filed separately in the present suit. It was on 7th December, 2005 when the Plaintiff approached Defendant No.1 with his maternal grandmother at the airport in Delhi to seek an appointment with him that the Defendant No.1 avoided to meet the Plaintiff. Thereafter, many attempts have been made by the Plaintiff to contact the Defendant No.1 but he has refused to meet the Plaintiff.

9. We are unable to find any room for contention that the cause of action that has been pleaded pertains to a period in respect of which the *lis* cannot be entertained because of the statute of repose. Whether the Plaintiff succeeds in proving the events of 7.12.2005 or, if proved, whether these constitute a triable cause of action, is a matter which will have to await the reception of evidence and Final Judgment of the Suit. Since the rejection or repudiation of parentage by Defendant No.1 is stated to have occurred in Delhi on a date, which is within limitation, it is meritless to contend that Courts in Delhi do not possess territorial jurisdiction.

Is The Suit Barred By Limitation

10. Some of the salient sections of the Plaint have already been narrated by us above. The learned Single Judge has travelled into the merits of the case despite the conclusion that Courts in Delhi do not enjoy territorial jurisdiction over the dispute. As has been said in a plethora of precedents, including

Liverpool, at the stage of the proceedings when only an application under Order VII Rule 11 of the CPC was being decided, the averments had to be presumed to be correct. The narration in the Plaint is that between 1980 and 1995 there was warmth in the relations between Defendant No.1 and Defendant No.2 and the Plaintiff. There are several photographs showing the presence of all the three parties to the Suit at different events. Learned Senior Counsel for Defendant No.1 has not controverted or challenged the veracity of these photographs, and in the absence of a Written Statement, it is difficult to challenge the contents of the Plaint. At the present stage of the litigation, it must be assumed that differences continued to ebb and fall through the years 1995 and 2005 between Defendant No.1 on the one side and the Plaintiff and his mother on the other. Let us consider the hypothetical case of 'A' physically assaulting 'B' in the year 2000, in connection with which 'B' took no legal action. The right to claim redress would be foreclosed on the ground of prescription after three years. If 'A' was to again assault 'B' in 2005, would the factum of the previous event not having been taken to Court prohibit the second suit. It seems to us obvious that the answer would be in the negative. In the circumstances brought before us, on a parity of reasoning, the mere fact that the Plaintiff had not filed

a suit within three years of 1995 or 2002 on the ground that Defendant No.1 was not fulfilling his paternal duties would not result in the present Suit becoming time barred, even in the face of a subsequent repudiation. Human relations cannot be treated in the same manner as commercial or civil transactions. An infidelity by a spouse is condoned by a subsequent conjugation. By the same yardstick Defendant No.1 had renounced the Plaintiff between 1995 and 2002, would the Plaintiff be expected to file a suit if relations had mended thereafter? We do not have before us an explicit and public statement made by Defendant No.1 at any stage prior to the filing of the application under Order VII Rule 11 of the CPC, denying or disowning his fatherhood of the Plaintiff. Could it then be expected that on feeling neglected, the Plaintiff should have immediately run to Court. We think that in the vicissitudes of personal relations this is an untenable position to adopt. Furthermore, the Court cannot, at the incipient stage, delve into the mind of the Plaintiff in order to ascertain the time at which he felt that he had no alternative but to go to the extreme of moving the Court which is always a point of no return. The Plaintiff has pleaded that Defendant No.1 had declined to meet him and his maternal grandmother in 2005 which could very

well have led the Plaintiff to believe that the point of no return had been reached.

11. Mr. Nayyar contends that after 2002 an overt act of acknowledgement of fatherhood should be manifest in order to bring the Suit within limitation. This would be true only if Defendant No.1 had overtly, unequivocally or publicly disowned the Plaintiff which appears not to have transpired. In the present case, the pleaded rapprochement between 2002 and 2007 cannot but be seen as an acknowledgment. No reasonable person would expect a suit to be filed in the duration of the resumption of even lukewarm relations. The matter would have to be decided upon after evidence had been led.

12. In *Bengal Waterproof Limited -vs- Bombay Waterproof Manufacturing Company*, AIR 1997 SC 1398 the question that had arisen before their Lordships was whether Order II Rule 2 of the CPC applied to disallow an infringement action. Noting that infringement was a continuing tort, it was held that failure to make a grievance of it in the previous suit did not preclude the Plaintiff from making a subsequent invasion of its rights as the subject matter of a suit. Each and every time such a tortuous act is committed by the Defendant, the Plaintiff gets a fresh cause of action to come to the Court by appropriate proceedings. Section 22 of the Limitation Act, 1963 was found

to be applicable. Mr. Patwalia has submitted that the question of parenthood, and its denial, would inherently lead to a continuing cause of action whenever the denial occurs. He places reliance on *Bhoop Singh -vs- Tarif Singh*, AIR 1952 Allahabad 392 where a learned Single Judge had affirmed the view of the trial Court to the effect that each denial of the Plaintiff's status constitute a a fresh encroachment on his rights giving rise to a fresh cause of action in his favour. Pithily, it has been observed that –“A man may have reveled in slanderous attacks on another for a time, but he acquires no license by their mere frequency or the long period of their duration to resume his role, after a certain period, with impunity. It would be fallacious to imagine any artificial barrier to the power of the Court to grant redress on any ground of anciency of the offence first committed. The person traduced would on each repetition of the libel have a right to challenge it and claim relief”.

13. Both learned Senior Counsel for the adversaries before us have laid great store on *Rukhmabai -vs- Lala Laxminarayan*, AIR 1960 SC 335 wherein the law has been expounded in these words:-

33. The legal position may be briefly stated thus: The right to sue under Article 120 of the Limitation Act accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by

the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right.

14. So far as the case in hand is concerned, the important feature is that the Plaintiff's claim that Defendant No.1 is the natural father has been repudiated for the first time in the subject application under Order VII Rule 11 of the CPC. At this stage, we must take it that the contesting Defendant has admitted that between 1980 and 1995 relations between Defendant No.1 and Plaintiff and his mother were cordial and affectionate and that, therefore, there was no reasonable cause for the Plaintiff to be anxious that the contesting Defendant would not continue to perform all the duties expected of a natural father. We are also of the view, at this stage of the proceedings, that the frigid relations between the parties, for which the contesting Defendant alone was responsible, did not necessitate the filing of a suit to the extent that failure to do so would forever put a lid on the claim. We think the acceptable approach is to ascertain where and when the natural father has explicitly and publicly disclaimed paternity. If this had not been followed by a rapprochement, however ephemeral that may

have been, three years limitation would have to be computed from its end. At this stage of the proceedings, without the reception of evidence, in our view the learned Single Judge fell into error in rejecting the Plaint. The situation is exacerbated by the fact that findings on the merits of the case have been articulated in the wake of a conclusion that the learned Single Judge did not possess jurisdiction over the *lis*. Having arrived at that conclusion, he could do no more than return the Plaint.

15. The Appeal is allowed. The impugned Order is set aside. The Suit is remanded to the appropriate Court for adjudication. Parties to appear before the learned Single Judge on 7.4.2010.

(VIKRAMAJIT SEN)
JUDGE

March 17, 2010
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(MANMOHAN SINGH)
JUDGE