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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No. 54/2003

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25th November, 2011

SH. BALRAJ BHASIN

..... Appellant

Through : Mr. Rohit Jain, Advocate.

versus

SH. MAN MOHAN SINGH & OTHERS

..... Respondents

Through : None for Respondent Nos. 1 and 2.

Mr. V.K. Tandon, Advocate for
Respondent Nos. 3 and 4.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the Trial Court dated 9.8.2002, by which, the Trial Court disposed of the preliminary issue by holding that the suit is not maintainable. Actually, the suit has been dismissed really applying the provision of Order 12 Rule 6 CPC on the basis of admitted facts. The provision applied actually is Order 12 Rule 6 CPC because after considering the admitted facts and legal position, which emerged on record, it transpired that the suit was

liable to be dismissed by virtue of Order 27 Rule 5A CPC and the provision of Section 140 of the Delhi Police Act, 1978 read with Section 80 CPC.

2. The facts of the case are that the appellant / plaintiff filed a suit for recovery of ₹4,90,000/- against four defendants. Whereas the defendant Nos. 3 and 4 were police officials, the defendant Nos. 1 and 2 were private persons, all of whom were said to have in collusion caused loss to the appellant by taking away the bitumen drums of the appellant / plaintiff stored in the plot of the appellant / plaintiff. In the plaint, there were allegations of joint and several liability of the private persons, defendant Nos. 1 and 2 and the police officials, defendant Nos. 3 and 4.

3. To the extent that the Trial Court has dismissed the suit as against defendant Nos. 3 and 4, being the concerned sub-inspector and Commissioner of Police respectively, no fault can be found with the judgment inasmuch as the provision of Order 27 Rule 5A CPC is clear that where a suit is instituted against a police officer for damages for an act said to have been done in an official capacity the Government was necessarily to be made a party. Admittedly, the Government was not made a party. Further, the misappropriation of the bitumen drums as alleged by the appellant / plaintiff was to the knowledge of the appellant / plaintiff at least

on 18.4.1999 when an application moved by the appellant / plaintiff for return of the goods came up before the concerned Metropolitan Magistrate and, where the defendant No.3 took up a stand that from the disputed property / plot, only 55 drums were seized and not 392 full drums and 22 empty drums as was alleged by the appellant / plaintiff. Under Section 140 of the Delhi Police Act, 1978 a suit has to be filed within three months of arising of the cause of action for an act done in an official capacity. Hence, the suit ought to have been filed by 18.7.1999, however, the suit was filed only on 24.11.1999 and, therefore, the suit was also barred by limitation so far defendant Nos. 3 and 4 are concerned.

4. The impugned order of the Trial Court is, therefore, upheld to this extent that the suit will stand dismissed against the defendant Nos. 3 and 4 meaning thereby that the defendant Nos. 3 and 4 shall stand deleted from the array of the defendants by dismissing the suit as against thereof.

5. However, in my opinion, the Trial Court committed an error in dismissing the suit even against the defendant Nos. 1 and 2. Admittedly, there did not take place any trial in the case and the suit has only been disposed of on a preliminary issue. Once the appellant / plaintiff in the plaint pleaded that the defendant Nos. 1 and 2 were also guilty of

misappropriation of the drums, then, whether or not the defendant Nos. 1 and 2 were liable was a disputed question of fact requiring trial, and therefore, this issue could only have been decided at the stage of final arguments after evidence was led by the plaintiff on the one hand and the defendant Nos. 1 and 2 on the other hand.

6. In view of the above, the appeal is allowed to the limited extent of reviving the suit qua the defendant Nos. 1 and 2. The impugned judgment is sustained to the extent that it dismissed the suit qua the defendant Nos. 3 and 4. Parties are left to bear their own costs. Trial court record be sent back.

VALMIKI J. MEHTA, J.

NOVEMBER 25, 2011

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