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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA 311/2011

MOHAN BANERJEE

..... Appellant

versus

STATE OF DELHI & ORS

..... Respondent

Date of Decision: 7th December, 2012

Advocates who appeared in this case:

For the Appellant	:	Mr. Asit Kumar Roy, Advocate
For the Respondent	:	Mr. Sachin Chopra, Advocate

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

SUDERSHAN KUMAR MISRA, J.

RFA No. 311/2011

1. This Regular First Appeal has been filed by the appellant against the order dated 24.12.2010 passed by Shri L.K. Gaur, Additional District Judge, New Delhi in Suit No. 384/2010 wherein the suit of the appellant was dismissed on the ground of limitation.

2. The appellant had been facing trial since 1990 on the allegation that he used to give false sureties by impersonation on the basis of forged and fabricated documents. The charge had been framed against the appellant,

along with other accused persons, by a common order dated 6.5.2005. On 4.10.2008, the appellant/plaintiff was acquitted.

3. On 22.12.2009, the appellant sent a legal notice to the State through Lt. Governor for compensation, to which he did not receive any reply. Thereafter, the appellant/plaintiff preferred a Writ Petition No. 1810/2010 before this Court against the State seeking compensation, which was dismissed as withdrawn with liberty to file a suit in the appropriate Court.

4. The appellant then filed a civil suit for compensation of Rs.20,00,000/- for causing harassment, mental agony, economical and physical losses, loss of reputation etc. due to false implication in a criminal case.

5. In that matter, the learned court below concluded that compensation was claimed by the appellant in the suit on the basis of malicious prosecution; for which the period of limitation prescribed is one year under Article 74 of the Limitation Act, to be counted from the date of acquittal from prosecution. It has held that, even after excluding the period when the writ petition was pending before this Court between 10.3.2010 & 23.04.2010; as well as the time spent in obtaining the certified copy of the judgment of the trial court acquitting him, the suit is still barred by limitation.

6. Aggrieved of this order dismissing his suit on the ground of limitation, the appellant has appealed to this Court.

7. Counsel for the appellant states that the appellant is an old man aged above 90 years of age. He has been harassed by the defendants/respondents for more than 19 years by falsely implicating him in a criminal case and making him face many hearings and accusations from which he has been honourably and completely acquitted.

8. He further states that the trial court fell into an error in dismissing his suit on the ground of limitation considering it to be covered under Article 74 of the Limitation Act, being a suit for malicious prosecution.

9. It is the case of the appellant that his suit is not one for malicious prosecution; and that he is only seeking damages for the mental agony and defamation, loss of reputation etc. that he has suffered for so many years at the hands of the respondents. He states that his case cannot be considered under Article 74 of the Limitation Act at all and is covered under some other provision of law.

10. The suit of the plaintiff was thrown out on a preliminary objection with regard to limitation, holding that the appellant had preferred a suit for compensation for malicious prosecution which was covered by Article 74 of

the Limitation Act and the time available to institute such a suit was one year from the date of the accrual of cause of action, which had long expired.

11. Even counsel for the appellant concedes that if Article 74 were to apply, the suit is beyond limitation. Therefore, the only question that remains is under what provision the case of the appellant is covered. His case appears to be that this is not a case for compensation for malicious prosecution; and that it is simply a claim for damages. It is, however, obvious that the basis of that claim for damages appears to be malicious prosecution. In fact, counsel for the appellant is unable to demonstrate any other basis for the suit brought by his client.

12. In this case, the time began to run w.e.f. 4.10.2008, when the appellant was acquitted of the charge leveled against him. It expired on 3.10.2009, i.e. after a period of one year in terms of Article 74 of the Limitation Act. But the appellant had filed the suit on 6.10.2010, which shows that there is a delay of 368 days.

13. Counsel for the appellant, however, contends that a suit of the nature filed by the appellant would, in fact, be treated as one for damages; in which case, the limitation prescribed is three years; and looked at in that perspective, it could not be said that the suit was barred by limitation. In support of this contention that the suit brought by him is one for damages

and therefore covered under some other provision, counsel relies on the decision of a single Judge of this Court in Balbir Singh vs. Government of NCT of Delhi (2005) 85 DRJ 523. To my mind, this decision which examines the bar to a suit for malicious prosecution raised by Section 140 of Delhi Police Act 1978, has no application to the facts at hand. Admittedly, the appellant has not been non-suited because of the bar of Section 140 of the Delhi Police Act, 1978 but because of bar of limitation in terms of Article 74 of the Limitation Act, 1963.

14. Counsel for the appellant points out that even in Balbir Singh's case (supra), the suit for compensation was brought by the plaintiff about 14 months after the acquittal, and therefore, was clearly barred by at least 2 months if Article 74 of the Limitation Act were to be applied. A perusal of the judgment shows that this aspect of the matter never came up for consideration at all. All that was being considered was whether the plea in bar in terms of Section 140 of the Delhi Police Act, which was raised by the respondent/defendant in that case by way of an interim application, was well founded or not; and the Court ultimately disagreed with the defendant on this aspect of the matter. But there is nothing to suggest that having decided that Section 140 of the Delhi Police Act would not operate as a bar to the institution of the suit; it was also decided that the matter was not controlled

by Article 74 of the Limitation Act 1963; or that Article 74 had no application whatsoever to the case as being contended by counsel for the appellant at the bar.

15. Except for a general submission, which is repeated many times, that the period of limitation in such a case is three years; Counsel for the appellant is unable to show any other provision of the Limitation Act, which may apply to the matter instead of Article 74 thereof.

16. In that view of the matter, there appears to be no infirmity in the impugned order, and I do not find any merit in this appeal.

17. The appeal is dismissed.

SUDERSHAN KUMAR MISRA, J.

DECEMBER 07, 2012
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