

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

OP(C).No. 2229 of 2014 (O)

**ORDER dated 8.6.2006 IN IA.1287/2005 IN OS 136/2003 OF MUNSIF COURT,
KANJIRAPPALLY**
.....

PETITIONER(S)/PLAINTIFF:

**JOY @ K.C. JOSEPH, AGED 64 YEARS,
S/O.CHACKO, KAVUNKAL, ERUMELY SOUTH VILLAGE.**

**BY ADVS.SRI.P.CHANDRASEKHAR
SRI.S.PRASANTH
SRI.SOORAJ T.ELENJICKAL**

RESPONDENT(S)/DEFENDANT:

**BHARAT SANCHAR NIGAM LTD.,
(B.S.N.L) A GOVERNMENT OF INDIA ENTERPRISE,
HAVING ITS REGISTERED OFFICE AT B.S.N.L BHAVAN,
NEW DELHI, REPRESENTED BY ITS MANAGING DIRECTOR,
PIN - 110 001.**

**BY ADVS. SRI.T.SANJAY, SC
SRI.MATHEWS K.PHILIP, SC**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 30-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

OP(C).No. 2229 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF THE ORDER DATED 8.6.2006 IN IA 1287/2005 IN OS 126/2003 ON THE FILE OF THE MUNSIFF COURT, KANJIRAPPALLY.

EXT.P-2: TRUE COPY OF THE PLAINT IN O.S.NO.136 OF 2003 ON THE FILE OF THE MUNSIFF COURT, KANJIRAPPALLY.

EXT.P-3: TRUE COPY OF JUDGEMENT DATED 30.7.2005 IN O.S.NO.136/2003 ON THE FILE OF THE MUNSIFF COURT, KANJIRAPPALLY.

EXT.P-4: TRUE COPY OF DECREE DTD 30.7.2005 IN O.S.NO.136/2003 ON THE FILE OF THE MUNSIFF COURT, KANJIRAPPALLY.

EXT.P-5: TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY DR.C.D.RADHAKRISHNAN, SANTHI NIKETHAN HOSPITAL AND MATERNITY HOME, KOLLAM DATED 12.12.2011.

EXT.P-6: TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY DR.K.S.SEBASTIAN, CHIEF MEDICAL OFFICER, ASSISI HOSPITAL, MUKKOOTTUTHARA, KOTTAYAM DATED 21.7.2014.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.BHAVADASAN, J.

O.P.(C) No. 2229 of 2014

Dated this the 30th day of March, 2015

J U D G M E N T

Unfortunate is the case on hand whereby, the petitioner suffered an injury having fallen into a pit said to have been dug by the BSNL.

2. The facts absolutely necessary for the disposal of this original petition are as follows:

The petitioner claims to have fallen into a pit dug by the BSNL on 02.05.2000 and he suffered serious injuries. In the plaint it was alleged that the injuries so suffered by the plaintiff were the direct consequence of the fall as a result of the negligent act on the part of the defendant and defendant was liable to make good the loss. On the basis of these allegations, the suit was laid for damages.

3. The defendants resisted the suit. Their main contention was that the suit was bad for non joinder of necessary parties and they denied the claim of fall made by

the plaintiff. They pointed out that the plaintiff had gone to a hospital about 40 Km away from place where he was alleged to have fallen which would show that in all probabilities, it was not due to the fall that he had suffered injuries, but due to some other cause. They denied that the plaintiff had suffered any injury as a result of any act committed by them and prayed for a dismissal of the suit.

4. The trial court raised necessary issues for consideration. The evidence consists of the testimony of PWs 1 to 4 and Exts. A1 to A6 were marked from the side of the plaintiff. The defendants had DW1 examined and Ext. B1 marked.

5. On an appreciation of the evidence in the case, the court below came to the conclusion that the story of fall and suffering of injuries as a result of the negligent on the part of the defendant has proved. However, the trial court non suited the plaintiff on the ground of limitation. It was held that the incident had occurred on 02.05.2000 and the

suit was laid only on 29.05.2003 beyond the period of three years as provided under Article 113 of the Limitation Act.

6. The plaintiff sought review of the judgment and decree on the ground that the finding of limitation was erroneous and that the suit was filed soon after the court opened after summer vacation and if that period is excluded, the suit is within time. The review petition was considered by the court below and found that the claim that the suit was filed on the day of re-opening of the court after summer vacation was not correct. It was filed beyond that time also. Accordingly, the review petition was dismissed.

7. This Court is given to understand that the matter was carried in revision by the petitioner which later was found to be not maintainable and therefore it was converted into an O.P.

8. The learned counsel appearing for the petitioner contended that the court below was not justified in coming to the conclusion that the suit is barred by limitation and

also in non-suited the plaintiff on that ground. For the above proposition, reliance was placed on the decision reported in **KSEB v. Bhaskaran Nair** [2002 KHC 778] and **Anandan V. v. State of Kerala** [2009 KHC 5085]. The learned counsel went on to point out that the court below has not addressed itself to Section 23 of the Limitation Act which mentions that the cause of action begins to run when a specific injury is suffered even though the incident might have occurred earlier. If that principle had been applied, it could have been found that suit was within time. This would be evidenced from plaintiff allegation which was not contradicted by the defendant. The learned counsel went on to point out that this is a case where serious injustice have been caused to the plaintiff and that needs to be redressed.

9. The learned counsel appearing for the respondent pointed out that the case put forward at the time of review was not that the suit was not barred by limitation, but the claim was that the suit was filed within time and it was

asserted that it was only due to the intervening summer vacation that the suit appeared to be barred by limitation. There was no claim based on Section 23 of the Limitation Act nor was any grievance voiced in that regard. The assertion at the time of review petition was that the suit having been filed on 29.05.2003 was within time.

10. After having heard the counsel on both sides, one can only say that it is quite an unfortunate case where things have been not put across in the proper manner. It is surprising to note that there were no issue regarding limitation raised by the trial court. The trial court has answered the question of limitation under issue No.3 which going by the judgment of the court below reads as follows:

“4. xxxxxxxxxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

3. Whether the plaintiff is entitled to realize the amount as damages from the defendant? If so, what is the quantum?”

11. A perusal of the judgment of the trial court shows that there was no issue raised regarding limitation at all.

And still the court went on to decide that the suit is barred by limitation.

12. The learned counsel appearing for the plaintiff contended that it was a mixed question of law and facts and the court below should not have rested its finding solely based on the dates that was available in the case.

13. It must be noticed at once that all issues were raised as per the contentions in the written statement and those which were disputed have to be answered. But as already noticed, there was no issue regarding the question of limitation at all raised by the trial court. It must presumably be due to the reason that there was no such contention in the written statement.

14. One would have expected the petitioner to raise that aspect as a strong ground at the time of review and project the illegality and impropriety done by the court below in deciding an aspect which is not raised as an issue before the court on which the plaintiff was not put on notice.

Of course, Section 3 enables the court to dismiss the suit or the appeal as the case may be, on the basis that it was barred by limitation. Order XIV Rule 2 enables the court to dispose of the suit on a preliminary issue regarding the question of law, if it could be decided on pure question of law also. Whatever that be, without raising an issue regarding limitation which had far reaching consequences, the plaintiff with no notice of such a contention, it is rather difficult to accept that finding. But unfortunately, the plaintiff does not appear to have any grievance or complaint in that regard.

15. It is also surprising to note that even though in Paragraph 6 of the plaint, it was contended that the plaintiff was under treatment as an in patient till 2.06.2000 and later was treated an out patient, no emphasis was given to that aspect to contend for the position that the period of limitation begins to run from the date on which the injury is detected and not from the date of fall. The plaintiff has

produced documents to show that he has been undergoing subsequent treatment also. But surprisingly enough, none of the doctors were examined to show that subsequent complication developed by the plaintiff is as a result of the fall which he suffered in 2000 and was the aftereffects of that fall.

16. It is rather shocking to note that the court below decided on the question of limitation without specific issue in that regard. It is more even shocking to note that it was not highlighted at the time of review also. Application of Section 23 of the Limitation of Act is also an issue which would have been raised by the petitioner for whatever worth it had, but not done.

17. To crown this all, a review order was passed in 2006 to be more precise on 8th June, 2006. This original petition under Article 227 has been filed only on 29th September, 2014. This Court is not forgetting the fact that C.R.P. had been filed and it was found to be not

maintainable. That was also filed in the year 2014. There is no explanation for the long delay in approaching this Court for redressal of the grievances.

For the above reasons, this petition is found to be without merits and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge