

**IN THE HIGH COURT OF BOMBAY AT GOA**

**CIVIL REVISION APPLICATION NO.5 OF 2016**

Shri Hidyatulla Karim Shaik,  
Aged 54 years, service,  
R/o House No.891,  
Sideswar Nagar,  
Tisk Usgao, Ponda Goa.

..... Applicant

V e r s u s

Joaquim Dias,  
S/O Marcelino Dias,  
Aged 43,  
R/O H. No,. 98/B, Duncolim,  
Seraulim, Colva, Goa.

..... Respondent.

Shri Gaurish Agni with Eeshan Usapkar ,Advocates for the Petitioners.

Shri C. Countinho, Advocate for the Respondents.

**CORAM: C. V. BHADANG, J.**  
**DATE: 28th APRIL, 2016.**

**ORAL ORDER:**

By this revision application, the petitioner, who is the original defendant is challenging the order dated 12/1/2016 below Exhibit D-9 passed by the learned Civil Judge, Senior Division at Margao, in Special Civil Suit No.33/2014/III, by which the application for rejection of the plaint filed by the petitioner has been dismissed. The respondent is the original plaintiff before the trial Court.

2. The brief facts are that the respondent had filed the aforesaid civil suit for compensation and for a direction to the petitioner to give

an unconditional apology.

3. The case made out in the plaint is that the petitioner had lodged a F.I.R on the basis of which Criminal Case No.349/S/2011/F was instituted against the respondent before the Court of the Judicial Magistrate First Class at Margao under sections 504, 353, 323 and 506 (II) of I.P.C. It is contended that the contents of the F.I.R were released in the local dailies namely, Herald and The Navhind Times on 23<sup>rd</sup> and 26th August, 2011, making certain false allegations against the respondent. Indisputably, the respondent has been acquitted of the offence vide judgment and order dated 31/7/2013. It is thereafter that the aforesaid suit came to be filed in which the petitioner filed application Exhibit D-9 under Order 7 Rule 11 of C.P.C for rejection of the plaint, inter alia on the ground that the suit was barred by limitation and the same was not disclosing any cause of action. The learned trial Court has found that the defendant in his application (incorrectly recorded as plaintiff) has not specifically stated as to which paras of the plaint "does or does not disclose the cause of action or which para of the plaint shows that the suit is barred by limitation". The learned trial Court also found that " it is not specifically stated in the application as to who are the necessary parties to the suit to whom the plaintiff ought to have arrayed and in the absence of which the suit is bad for non joinder of necessary parties". In that view of the matter, the learned trial Court dismissed the application which brings the

petitioner to this Court.

4. I have heard the learned counsel for the petitioner and the learned counsel for the respondent.

5. It is submitted by the learned counsel for the petitioner that in para 20 of the plaint the respondent has alleged that the cause of action has arisen on 23/8/2011, when the respondent saw the defamatory newspaper report. It is submitted that the suit having been instituted beyond three years from the said date, was barred by limitation. He relies upon Article 75 of the Limitation Act, where under the limitation for seeking compensation for libel is three years from the date of the publication. He submits that the learned trial Court failed to look into the relevant provisions, while rejecting the application.

6. On the contrary it is submitted by the learned counsel for the respondent that the plaint had since been amended by inclusion of para 17-A. The learned counsel submits that it was essentially a suit for compensation for malicious prosecution which will be governed by Article 74 of the Limitation Act where the limitation would start from date of acquittal which is dated 31/7/2013. He thus submits that the suit having been filed within 3 years thereof, was within limitation.

7. I have considered the rival circumstances and the submissions

made.

8. It is now well settled that while considering an application under Order 7 Rule 11 of C.P.C, the Court has to confine itself to the contents of the plaint and any documents filed along with the plaint. For this purpose, the plaint will have to be read as a whole and then the Court will have to find out whether a case for rejection of the plaint is made out under any of the clauses of Rule 11 of Order 7 of C.P.C. In the present case, the plaint has been amended by introduction of para 17-A, in which the respondent claims that he was falsely implicated and maliciously prosecuted. If that be so, I find that it would be appropriate if the learned trial Court reconsiders the application, Exhibit 9, after hearing the parties.

9) The learned counsel for the petitioner submits that if the application is remanded, the trial Court may be directed to decide the same on the basis of the plaint as it stands. He submits that the respondent may file an application for further amendment of the plaint, in order to defeat application at Exhibit 9. I do not find that the parties can be precluded from filing any application. It is not possible to accede to the request that the application shall be decided on the basis of the plaint as it stands also for the reasons that it presupposes that some other application for incorporating the amendment could be filed, which cannot be envisaged at this stage. If any such application is filed,

needless to mention that the trial Court will have to decide the same in accordance with law. It may be mentioned that the object behind the provisions of Order 7 Rule 11 of C.P.C. is that the Court may not be required to entertain and try suits, which are ex facie barred by some provisions of law or which fall under any of categories under Rule 11 Order 7 of C.P.C.

In such circumstances, the following order is passed.

**ORDER:**

- i) The revision application is allowed. The impugned order dated 12/1/2016 is hereby set aside. The application Exhibit 9 is remanded to the trial Court for deciding the same afresh in accordance with law.
- ii) It is made clear that this Court has not expressed any opinion on the merits of the application.
- iii) In the circumstances there shall be no order as to costs.

**C. V. BHADANG, J.**

**Ap/-**