

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 253/2015

Sukhdeo Pukhraj Gehlot

... Applicant

V/s.

Smt. Swarupa Lodha

... Respondent

Mr. T. D. Deshmukh for the Applicant
Mr. Drupad S. Patil for the Respondent.

CORAM: K.K. TATED, J.
DATED : JULY 5, 2016

PC. :

1. Heard the learned counsel for the parties. By this Civil Revision Application, the applicant defendant challenges the order dated 19.01.2015 passed by the Extra Jt. Civil Judge, Senior Division, Pune below exhibit 12 in special civil suit No. 1067/2013 filed by the defendant for dismissal of the suit on the ground of limitation.

2. The learned counsel for the defendant submits that in the present proceedings the respondent plaintiff filed special civil suit No. 1067/2013 in the court of Civil Judge, Junior Division, Pune claiming damages of Rs.50 lacs on the ground of defamation. He submits that the plaintiff in her entire pleading, nowhere stated that when the defendant defamed the plaintiff. He submits that the plaintiff in para 2 of the plaint stated that she issued a notice to the defendant dated

04.06.2013 calling upon the defendant to pay the amount of Rs.50 lacs towards compensation. As the defendant failed and neglected to pay the same, the cause of action arose when the said notice was duly served on the defendants. He submits that the trial court failed to appreciate the fact that as per the provisions of the Limitation Act under Article 75, a suit is required to be filed within a period of one year from the date of publication of libel. He submits that a suit for compensation can be filed within a year from the date of defamation by words either spoken or intended to be read, or by signs or by visible representations, makes or published any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person. He submits that as the trial court erred in coming to the conclusion that the suit filed by the plaintiff was within limitation, the defendant filed the Civil Revision Application. He submits that the impugned order dated 19.01.2015 passed by the trial court is liable to be set aside only on the ground that the trial court has failed to consider the provisions of Article 75 of the Limitation Act.

3. On the other hand, the learned counsel for the respondent plaintiff vehemently opposed the Civil Revision Application. He submits that the trial court, after considering the provisions of the Limitation Act, rightly held that the issue of limitation is mixed question of law and facts. Same can be decided only at the time of trial after recording of evidence. Hence, there is no question of setting aside the impugned order.

4. In the present proceedings the suit was filed by the plaintiff for the damages on the ground of defamation. In para 7 of the plaint, the respondent plaintiff specifically stated that she issued a notice on 01.06.2013 calling upon the defendant to make compensation of Rs.50 lacs. The plaintiff further stated in para 10 that the cause of action arose only on 04.06.2013 when the defendant failed to make the payment. It is to be noted that, whether the suit filed by the plaintiff within limitation or not is required to be decided after giving liberty to both the parties to lead evidence.

5. Hence, I do not find any substance in the Civil Revision Application. Same stands rejected.

(K.K. TATED, J.)