

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 1782 of 1989

Date of decision: 28.5.2016

Jai Narain

.....Appellant.

Versus

Anchal Singh

.....Respondent.

CORAM: - HON'BLE MR. JUSTICE AMIT RAWAL

Present: - Mr. Suvir Sehgal, Advocate with
Mr. Raman Dhir, Advocate for the appellant.

None for respondent

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AMIT RAWAL, J.

Appellant-defendant is aggrieved of the judgment and decree dated 7.4.1989 passed by the lower Appellate Court, whereby, the suit of the plaintiff-respondent for damages had been decreed by awarding compensation to the tune of ₹ 3,000/- along with interest @ 6% per annum from the date of institution of the suit till realization.

Learned counsel for the appellant submits that the respondent-plaintiff filed the suit claiming damages on account of false and malicious prosecution for a recovery of ₹ 7322.50/- on the basis of discharge order dated 17.11.1980 passed in a criminal complaint filed under section 324, 504 506 of the Indian Penal Code. The contention of the learned counsel for appellant is that the plaintiff-respondent instituted

a suit on 6.1.1982 whereas the period of limitation for instituting a suit for malicious prosecution is one year as prescribed under Article 74 of the Limitation Act. He further submits that the limitation had to be counted from the day of discharge and it is rightly held that the suit is time barred. Hence, the basis of institution of the suit was only of the order of discharge and no other independent evidence has been led. On the basis of the evidence led by both the parties, the trial Court returned the findings that the suit of the plaintiff is barred by law of limitation but gave findings qua damages in favour of the defendant against the plaintiff. The First appellate Court enhanced the compensation with the finding that the revision was dismissed on 1.5.1981 then the limitation would have reckoned from the date when the revision was disposed of and not from the date when the discharge. Even the cross objections at the instance of the appellant-defendant before the lower Appellate Court were dismissed. In support of his aforementioned contentions, he has relied upon judgment of the Hon'ble Apex Court in West Bengal State Electricity Board vs. Dilip Kumar Ray, 2007 AIR (SC) 976, another judgment of this Court in Tarwinder Kumar Bedi vs. Jit Parkash 2015 (2) PLR 92, a judgment of Bombay High Court in Bhaskar Narhar Deshmukh vs. Kisanlal Sadasukhdas and another 1968 AIR(Bombay) 21 and another judgment of Andhra Pradesh High Court in Wipro Products Ltd vs. Akbar S. Noori, 2014 (13) RCR (Civil) 1647 to contend that mere

furnishing of discharge order would not entitle the aggrieved party. Plaintiff to claim damages until and unless the same are proved by pleading a direct and cogent evidence. However, the statement of the respondent-plaintiff i.e. Anchal Singh & PW-2 (Ranjeet Singh and the another witnesses who deposed about the enmity were not witnesses in the criminal proceedings. He thus, urges this Court to formulate the following substantial questions of law for determination:

- “1. Whether in the absence of any direct and cogent evidence and the suit of the respondent-plaintiff in the absence of malicious prosecution on the basis of discharge order is maintainable?
2. Whether the suit is barred by law of limitation?”

Learned counsel for the respondent-plaintiff had been represented by Mr. A.S. Tewatia, Advocate, whose presence has been marked on two dates earlier but for the last three dates no representation has been made on behalf of respondent-plaintiff. Since appeal is of year 1989, I deem it appropriate to decide the present case.

I have heard learned counsel for the appellant-defendant and perused the paper book and of the view that there is a merit in the submissions of Mr. Sehgal, for Article 74 of the Act provides the period of limitation for instituting the suit for malicious prosecution is one year.

Concededly, the discharge order is dated 17.11.1980 and the suit was filed on 6.1.1982. The trial Court found that the plaintiff did not file the suit within a period of one year from the order of discharge i.e. 17.11.1980 and accordingly held that the suit of the plaintiff was barred by law of limitation. The lower Appellate Court though enhanced amount of compensation but erroneously enlarged the scope of limitation by taking reckoning date of cause of action from the date of dismissal of revision petition at the instance of the complainant-appellant. Such is not the scope of provisions of Section 74 of the 1963 Act. Even otherwise, no independent or corroborative evidence except discharge order has been led to substantiate claim qua damages which is not permissible in view of the settled law supra.

In view of the said fact, the judgment and decree passed by lower Appellate Court is set aside as the respondent-plaintiff failed to prove any cogent evidence. Accordingly, the questions of law as noticed above are answered in favour of the appellant-defendant against the respondent-plaintiff. Resultantly, suit is dismissed.

Regular Second Appeal stands allowed.

(AMIT RAWAL)
JUDGE

28.5.2016
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