

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 493 OF 2017

Arumugam Pichikaran	...Appellant
<i>Versus</i>	
The State of Maharashtra	...Respondent

Mr Noman A Jafri, *for the Appellant.*
Ms Anamika Malhotra, *AGP, for the Respondent-State.*

CORAM: G.S. PATEL, J
DATED: 28th June 2017

PC:-

1. Heard. By consent, taken up forthwith for hearing and final disposal at the stage of admission.

2. The Appeal is directed against an order dated 24th November 2016 by which the Bombay City Civil Court dismissed the Plaintiff's Suit brought under Section 108 of the Indian Evidence Act , 1872 for a declaration that the Plaintiff's father one Pichikaran Kumaran ("**Kumaran**") having been missing since 3rd June 2002 for a period of more than seven years and must be presumed to be dead.

3. The State was joined as the Defendant. It contested the suit. It said that there was nothing whatever adduced by the Plaintiff to

reflect that any search had been made for Kumaran. It entered a written statement denying the Plaintiff's contention.

4. The Court found that the Plaintiff had not made any police complaint at the time of the alleged disappearance. There is a complete record annexed to the Appeal paper-book and I have studied this.

5. It is the plaint itself that is telling. The plaint claims that Kumaran has been missing since 3rd June 2002. At that time, he worked in the Naval Dockyard, Bombay. He lived at E-Sector, K-1 Line, Room No. 03, Cheetah Camp, Trombay, Mumbai 400 088. His bank account has not been operated since that date. The real problem is that the averments in the plaint. There is not a single mention anywhere in the plaint of the Plaintiff, his wife, or other family members ever having lodged a police complaint or a missing person's complaint till 16th June 2015, a good 13 years later. No reason is given for this prolonged and quite extraordinary lapse of time.

6. Paragraph 9 of the plaint says that Kumaran 'was in the habit of consuming alcohol'. That in itself is meaningless. Consuming alcohol does make a person an alcoholic. Alcohol evaporates; alcoholics do not. There is no linkage between drinking and disappearance, liquor and liquidation. The plaint does not say Kumaran frequently went missing in the past. We do not know if he left for work that day, clocked in at his work place, the Naval Dockyard, or clocked out at the end of that day. There is no

statement that he left for work but never returned home, or that he never made it to work; or that he went to visit a friend and never came back. No mention is found of any attempt to contact the Naval Authorities and get an attendance report of that date. There is no statement of the Plaintiff or any of his family ever contacting any of Kumaran's friends to see whether he was at their place. Indeed, as regards the date of disappearance there is not a single averment in the plaint at all other than saying that he went missing on that date and that a complaint was made after 13 years later.

7. The Court could not have been expected to speculate about all these matters of fact and matters of proof. Bank account statements showing inactivity do not establish that a person is missing. It is equally possible that the bank account was simply abandoned and another one was used instead.

8. The evidence of the Plaintiff's wife Dhanlaxmi is on record. The Plaintiff was unable to give evidence because he was abroad. She gave evidence on the basis of a Power of Attorney. Again this is problematic. I have no means of telling whether Dhanlaxmi was married to the Plaintiff in 2002 when Kumaran went missing. We do not know if she had any personal knowledge of his habits or even of his going missing. Her date of marriage to the Plaintiff is not stated. It is difficult to understand how this evidence could be relied on. The evidence itself says that Dhanlaxmi filed a police complaint for the first only 13 years after the alleged disappearance. The Affidavit of Evidence is a mere reproduction of the plaint with only cosmetic changes.

9. In addition, Exhibit “7” is the reply from Senior Police Inspector of the Trombay Police Station. The Police Authorities clearly said that in the 13 years that intervened, no complaint had ever been made about the so-called missing person. The only complaint came from Dhanlaxmi, who claimed to be Kumaran’s daughter-in-law. For this reason, the police were unable to register a missing person’s complaint.

10. In my view, the Trial Court absolutely correctly concluded that there was nothing to support the Plaintiff’s contention that his father was missing for 13 years. The Trial Court correctly declined to decree the Suit.

11. There is no reason to interfere with the impugned judgment and order. I will have to dismiss the Appeal.

12. The Appeal is dismissed. There will be no order as to costs.

13. It will have to be left open to the Plaintiff to apply afresh with complete and cogent material and full explanation for the intervening delay. There cannot be a question of *res judicata* in a matter seeking such a declaration.

(G. S. PATEL, J)