

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CMI No. 8/2017**
CMI No. 9/2017
CMI No. 10/2017

% **Reserved on: 23rd November, 2017**
Pronounced on: 28th November, 2017

+ **CMI No. 8/2017**

RAHUL

..... Petitioner

Through: Ms. Samai Malik, Advocate.

versus

MCD & ORS.

..... Respondents

Through: Mr. Rakesh Mittal, St. Counsel
with Ms. Kamlesh Anand and
Ms. Yamini Mittal, Advocates
for R-1/NDMC.

Ms. Sakshi Popli, Advocate for
R-2/GNCTD.

+ **CMI No. 9/2017**

RAJENDER THANKUR

..... Petitioner

Through: Ms. Samai Malik, Advocate.

versus

MCD & ORS.

..... Respondents

Through: Mr. Rakesh Mittal, St. Counsel
with Ms. Kamlesh Anand and
Ms. Yamini Mittal, Advocates
for R-1/NDMC.

Ms. Sakshi Popli, Advocate for
R-2/GNCTD.

+ **CMI No. 10/2017**

SURENDER SHAH

..... Petitioner

Through: Ms. Samai Malik, Advocate.

versus

MCD & ORS.

..... Respondents

Through: Mr. Rakesh Mittal, St. Counsel
with Ms. Kamlesh Anand and
Ms. Yamini Mittal, Advocates
for R-1/NDMC.
Ms. Sakshi Popli, Advocate for
R-2/GNCTD.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

C.M. Appl. No. 40360/2017 (for exemption) in CMI No. 8/2017

C.M. Appl. No. 40363/2017 (for exemption) in CMI No. 9/2017

C.M. Appl. No. 40366/2017 (for exemption) in CMI No. 10/2017

1. Exemptions allowed, subject to all just exceptions.

CMs. stand disposed of.

C.M. Appl. No. 40362/2017 in CMI No. 8/2017

C.M. Appl. No. 40365/2017 in CMI No. 9/2017

C.M. Appl. No. 40368/2017 in CMI No. 10/2017

(for condonation of delay of 6 days in re-filing)

2. For the reasons stated in the applications the same are
allowed and the delay of six days in re-filing the CMIs stand
condoned.

C.M. Appl. No. 40577/2017 in CMI No. 8/2017

C.M. Appl. No. 40576/2017 in CMI No. 9/2017

C.M. Appl. No. 40575/2017 in CMI No. 10/2017

(for condonation of delay of 1142 days in filing)

3. Since the petitioners were pursuing the remedy of review petitions, and delays have occasioned in filing of these CMIs on account of pendency and disposal of the review applications, delays in filing the CMIs are condoned.

C.Ms. stand disposed of.

CMI No. 8/2017 and C.M. Appl. No. 40361/2017
CMI No. 9/2017 and C.M. Appl. No. 40364/2017
CMI No. 10/2017 and C.M. Appl. No. 40367/2017
(under Order XLIV Rule 1 CPC)

4. These applications are allowed and appellants/plaintiffs are allowed to sue as pauper. It is noted that as per Order XXXIII CPC if in a suit permission is given to the plaintiff to sue as an indigent/pauper then such permission continues for the appeal.

5. These CMIs are therefore allowed and the matters be categorized as RFAs and be numbered accordingly.

6. C.Ms. stand disposed of.

RFA No. /2017 (to be numbered as ordered in CMI No.8/2017

7. This first appeal is filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) by the plaintiff in the suit impugning the judgment of the trial court dated 11.8.2014. By the impugned judgment the suit filed by the appellant/plaintiff seeking compensation

and damages against Municipal Corporation of Delhi (MCD)/respondent no.1/defendant no.1, Government of National Capital Territory of Delhi (GNCTD)/respondent no.2/defendant no.2 and Sh. Tilak Raj Khanna the owner of the factory R.K. Plastics Factory/respondent no.3/defendant no.3 has been dismissed as it was barred by time. The suit plaint was rejected by allowing the application under Order VII Rule 11 CPC filed by the defendant no.1 in the suit i.e MCD and which entity is the respondent no.1 in this appeal.

8. The facts of the case are that the appellant/plaintiff is a minor and he filed the suit through his father and next friend seeking damages on account of fact that on 28.12.2002 at about 8 AM a fire broke out in the factory of the respondent no.3/defendant no.3. It was pleaded in the plaint that the factory was illegally and unauthorizedly being run by the respondent no.3/defendant no.3 without any licence. The factory of respondent no.3/defendant no.3 was pleaded to be manufacturing glasses and was being run unauthorizedly in a residential area. The fire occasioned in the factory of respondent no.3/defendant no.3 was on account of blast of boiler which was installed in the factory. The appellant/plaintiff is pleaded to have

severe burn injuries to the extent of 80%. It was pleaded in the plaint that the respondent nos.1 and 2/defendant nos.1 and 2 ought to have ensured that the factory of the respondent no.3/defendant no.3 was not allowed to function from the residential area in violation of law but the respondent nos.1 and 2/defendant nos. 1 and 2 failed to take any action. Appellant/plaintiff was pleaded to be around 10 years at the time of accident. In the plaint, it was therefore pleaded that because of negligence of the respondent nos. 1 and 2/defendant nos.1 and 2 as also the respondent no.3/defendant no.3, the appellant/plaintiff has sustained burn injuries, therefore, a sum of Rs. 15 lacs damages be awarded in favour of the appellant/plaintiff and against the respondents/defendants.

9. The injury of the appellant/plaintiff was occasioned on account of fire in the factory of the respondent no.3/defendant no.3 on 28.12.2002. The subject suit was filed on 4.6.2010. The suit was therefore filed after around 7 ½ years of the incident on 28.12.2002. The issue is that whether the suit is time barred, and therefore, the suit should be rejected under Order VII Rule 11 CPC.

10. It is seen that the appellant/plaintiff had filed a civil writ petition in this Court bearing no.748-50/2006 on 17.1.2006 and which

was allowed to be withdrawn vide order dated 25.8.2009 with liberty to file a suit. The period of pendency of the writ petition in this Court from 17.1.2006 till 25.8.2009 is excluded by giving the appellant/plaintiff benefit of Section 14 of the Limitation Act, even then the subject suit which was filed on 4.6.2010 was barred by limitation because the limitation period for filing the present suit would be either one year or three years in terms of Articles 72 and 113 of the Limitation Act, and which Articles read as under:-

Article	Description of suit	Period of Limitation	Time from which period begins to run
72	For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in the territories to which this Act extends	One year	When the act or omission takes place.
113.	Any suit for which no period of limitation is provided elsewhere in this Schedule	Three years	When the right to sue accrues.

11. As per Article 72 of the Limitation Act, when a suit is filed seeking compensation on account of omission by an authority to do an act in pursuance of any enactment, then the suit has to be filed within one year when the act or omission took place. The act or

omission in this case would be the date of the accident i.e 28.12.2002 when the fire took place in the factory of the respondent no.3/defendant no.3 which was said to be running without requisite license or permission, and which are required under the relevant Statutes. The suit, therefore, should have been filed within one year of 28.12.2002. Even assuming that suit could have been filed under Article 113 of the Limitation Act after injuries were treated, such a suit should have to be filed within three years of the injuries being treated. In the suit plaint, there is no averment as to when were the injuries treated and what are the dates of treatments. In the subject suit once damages are claimed for injuries then the suit ought to have pleaded a cause of action with respect to the expenditure incurred for treatment, however, there is no such cause of action laid down in the plaint where only a figure of Rs.15,00,000/- in lumpsum is arbitrarily claimed without giving reasons and cause of action as to how the amount of Rs.15,00,000/- is arrived at. The suit plaint therefore in fact lacks cause of action of a claim of damages on account of expenditure incurred on the injuries pleaded to be caused to the appellant/plaintiff.

12. Therefore, looking at it in any manner of the suit being a cause of action under Article 72 of the Limitation Act and had to be

filed within one year of the date of the incident on 28.12.2002 or even if the suit had to be filed within three years of the date of the incident and that the plaint is completely silent as regards the cause of action of the details of the injuries and expenditure on treatment, the suit therefore filed on 4.6.2010, even if it is taken to have been filed when the writ petition was filed on 17.1.2006, such a suit having been filed beyond three years of arising of the cause of action was hence time barred. In fact, the suit can be at best said to have been instituted on 17.1.2006 when the writ petition was filed plus the period from 25.8.2009 (when the writ petition was withdrawn) till 4.6.2010 (when the subject suit was filed) and therefore, effectively the suit is filed after around 3½ years of the incident. Trial court has therefore committed no illegality in holding the suit to be barred by time by making the following observations:-

4. That to decide the application under consideration, the brief material facts of this suit are that the plaintiff has filed the suit for damages and compensation against the defendant No.1,2 and 3 stated therein that the plaintiff (master Rahul) has sustained injuries in the fire accident took place on 28.12.2002 at about 8 a.m. in the factory of the defendant No.3 namely M/s R.K. Plastic at Samay Pur, Badli, Delhi and the accident took place due to criminal negligence on the part of defendant No.1 and 2 as permitted by the defendant No.3 to run an illegal factory at Samay Pur, Badli, Delhi. It is further stated that on 28.12.02 at about 8:00am the fire took place in the factory M/s R.K. Plastic which is run by the defendant No.3 herein illegally and unauthorisedly and the defendant No.3 was running the said factory without any licence from MCD or from Delhi Police and because of

the negligence of the defendants the plaintiff sustained burn injuries on his person.

5. That by way of the aforesaid application U/o 7 rule 11 of CPC the defendant No.1 who is MCD has prayed that suit of the plaintiff beyond period of limitation and the same may kindly be dismissed.

6. Having heard the arguments advanced by the Ld. counsel for the parties and also perused the case file. This court is of the considered view that the fire incident took place on 28.12.02 as mentioned in the para No.1 of the suit of the plaintiff and a Civil Writ was filed in the Hon'ble High Court of Delhi on 17.01.06 but the said Civil Writ was dismissed as withdrawn on 25.08.09 and as per the provisions of law in the case of damages and compensation the limitation to file the suit is of "three years" starts from the date of incident the incident admittedly took place on 28.12.02 the plaintiff ought to have file the suit for damages and compensation till 27.12.05 but they have file the present suit on 04.06.10 and even if the period from filing the Civil Writ and the date when Civil Writ was withdrawn from the Hon'ble High Court is calculated and reduced from total period of limitation even then this suit is barred by the period of limitation.

7. Admittedly, the fire incident took place on 28.12.12 and the Civil Writ was filed on 17.01.06 and to file the writ itself has no period of limitation but suit has to be filed within period of 3 years from the date of incident i.e. 28.12.02.

8. Perusal of record it reveals that an application U/s 5 for condonation of delay to file the present suit has been filed by the plaintiff with this suit and as per Provisions of Sec.5 of Limitation Act, it applies only on application and appeals and not for filing of the suit.

9. Therefore, in view of the discussion the application U/o 7 rule 11 r.w.s. 151 of CPC being moved by the defendant no.1 is hereby allowed and the suit of the plaintiff is beyond Limitation therefore, plaint of the plaintiff is hereby rejected being barred by limitation."

13. In view of the aforesaid discussion, I do not find any merit in the appeal and the same is hereby dismissed.

RFA No. /2017 (to be numbered as ordered in CMI No.10/2017

14. Adopting the reasons already given above *mutatis mutandis*, this appeal also has no merit and is accordingly dismissed.

RFA No. _____/2017 (to be numbered as ordered in CMI No.9/2017

15. This appeal is dismissed while adopting the reasons given while dismissing the aforesaid RFA which was registered as CMI No. 8/2017. This appeal is also liable to be dismissed because this appeal is filed by the father of the deceased Sh. Brij Kishore who died on 28.12.2002. Once there is death, the entitlement to sue would arise from the date of the incident when the death took place and therefore for this additional reason, besides the reasons given in aforesaid RFA/CMI No.8/2017, this appeal is liable to be and is accordingly dismissed.

NOVEMBER 28, 2017
ib/AR

VALMIKI J. MEHTA, J

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