

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1048 OF 2018
(Raosaheb s/o Keshavrao Deshmukh and others Vs. Punjab Babarao
Deshmukh and another)

Mr.R.R.Shaikh, Advocate for the petitioners.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/01/2018

PER COURT :

1. The petitioners are aggrieved by the order dated 31/10/2017 by which application Exh.37 filed by the petitioners praying for rejection of the plaint on account of the Law of Limitation under Order 7 Rule 11(c) of the CPC, has been rejected.

2. Contentions of the petitioners are that a suit for damages was filed and their father and had prosecuted it for defamation and damages against the plaintiff. Initially, the respondents were convicted and later on were acquitted by the judgment of the Appellate Court dated 04/03/2008. RCS No.40/2012 has been filed by the original defendants, who succeeded before the Sessions Court on 04/03/2008, for damages for malicious prosecution. Further contention is that under Article 74 of the Limitation Act, the suit for seeking damages for malicious prosecution is only one year. Even if

Article 83 is said to have an applicability in the peculiar facts of the case, the suit can be filed within 2 years.

3. I have gone through the petition paper book with the assistance of the learned Advocate for the petitioners in the light of his submissions.

4. Article 74 prescribes a limitation of one year for lodging the suit for seeking compensation for malicious prosecution within one year from the date of acquittal. Under Article 83, the limitation period is of two years, while entertaining such a suit. It is to be considered if the facts of the case indicate that it would fall under the Legal Representatives Suits Act, 1855. The Trial Court has therefore ruled by the impugned order that, whether Article 74 or 83 is applicable, would be a mixed question of facts and Law.

5. I find that the Trial Court has observed in the impugned order that the litigating sides would lead evidence in support of their respective stands and the suit would then be adjudicated upon, keeping in view whether Article 74 or 83 of the Limitation Act is applicable.

6. I also find that in the said suit, which was lodged on 06/03/2010, application Exh.37 praying for rejection of the plaint under Order 7 Rule 11(d) of the CPC has been filed after 7 years on 09/03/2017. On this count, as well, I do not find that the impugned order passed by the Trial Court, which is of a discretionary nature, could be termed as being perverse or erroneous. The Trial Court has noted that the parties can lead evidence and the issue of limitation would be considered after recording of evidence.

7. In the light of the above, this petition, being devoid of merit, is therefore, dismissed.

8. Learned Advocate for the petitioners prays that as the suit is practically 8 years old, the same may be expedited. Considering the same, the said request is accepted and the Trial Court would make an endeavour to decide Spl.C.S.No.50/2010 as expeditiously as possible and in any case before the end of February 2019.

9. Needless to state, all the contentions of the litigating sides are kept open.

(RAVINDRA V. GHUGE, J.)