

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1707 of 2018

Date of Decision: May 14, 2018

Sheela Devi & others

...Petitioners

Versus

Manohar Lal Lagah

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.G.S.Bedi, Advocate,
for the petitioners.

Mr.Sandeep Arora, Advocate,
for the respondent.

AMIT RAWAL, J.

The present revision is directed against the order dated 6.11.2017 (Annexure P-1), whereby the application submitted by the petitioner-defendants for rejection of the plaint being, *prima-facie*, barred under Article 74 of the Limitation Act, has been dismissed.

Mr.Gurmohan Singh Bedi, learned counsel for the petitioner-defendants submitted that the respondent-plaintiff instituted the civil suit on 3.2.2017 claiming the following relief:-

“It is, therefore, respectfully prayed that a decree with cost may kindly be passed in favour of the plaintiff and against the defendants for recovery of amount to the extent of Rs.5,00,000/- towards compensation and damages on account of defamation, loss of income, loss of reputation, litigation expenses, mental agony, etc.with future interest from the date of filing the suit till recovery. It is further prayed that future interest from the date of filing the suit till recovery, AND/OR

any other relief which this Hon'ble court deems fit and proper may kindly be granted to the plaintiff, in the interest of justice, equity and fair play.”

During the course of the hearing, learned counsel for the petitioners drew the attention of this court to Para 14 of the plaint to submit that the suit, *ex-facie*, was barred by limitation as the limitation for filing the suit for malicious prosecution under Article 74 of Limitation Act is one year when the judgment has been rendered. As per averment in the plaint, it was alleged that Dhirat Ram NRI, being resident of UK, appointed his nephew, i.e., plaintiff to file the civil suit, for, a criminal complaint was filed by the petitioner-defendants titled as “Sheela Devi Versus Manohar Lal and others” under Sections 323, 341, 354, 382, 148 and 149 IPC. Vide order dated 15.10.2012, the aforementioned complaint was dismissed by the Judicial Magistrate Ist Class, Jalandhar. The petitioner-defendants filed criminal revision before the Additional District Judge, which was also dismissed vide order dated 3.2.2014 and in view of the aforementioned Para 14 of the plaint, cause of action accrued which resulted into filing of the suit on 3.2.2017. He submitted that even if the pith and substance of the suit is not treated as malicious for damages, the limitation is 3 years, for, complaint was dismissed on 15.10.2012, whereas the suit has been filed on 3.2.2017, i.e., after almost 4 years and 4 months.

The claim in the suit is essentially for malicious prosecution and the limitation is one year. Reference has been made to the judgment rendered by Bombay High Court in **Malabai w/o Pralhad Bhoyar Versus Sumanbai w/o Narayanrao Dubey, 2007(1) ALL MR 102** and, thus, urged this Court for setting-aside the impugned order.

On the other hand, Mr.Sandeep Arora, learned counsel for the

respondent submitted that the suit aforementioned had not been filed against petitioner Sheela Devi as defendant (complainant in the aforementioned private complaint) but against other defendants also and, therefore, the suit cannot be thrown summarily as the question of limitation would be a mixed question of fact and law. At the best, the Court can, after framing issues, treat the issue of limitation as preliminary issue. Respondent-plaintiff was not summoned in the complaint. In other words, the complaint was dismissed without summoning and the revision petition was also dismissed. There is a specific averment in this regard in the plaint and, thus, cannot be brushed aside for the purpose of adjudication of application under Order 7 Rule 11 CPC and, thus, urged this Court for dismissal of the revision petition.

I have heard the learned counsel for the parties and appraised the paper book.

Articles 74, 75 and 76 of the Limitation Act prescribe the limitation of one year for filing the suit for malicious prosecution. On cumulative reading of Para 14 of the plaint and relief clause, concededly respondent-plaintiff was aware of the order dated 15.10.2012 whereby the private complaint was dismissed. There was no interim stay or any impediment or hurdle for the plaintiff to claim the damages. In the first blush, it looked like that the present case was falling within the aforementioned parameters, but on meticulous reading of the contents of the complaint, it is simpliciter case of damages and not for malicious prosecution. The limitation for claiming the damages would be 3 years from the date of cause of action.

The question which is posed is as to which would be the actual

date for accrual of the cause of action. In my view, it would be 15.10.2012 when the complaint without summoning the respondent-plaintiff was dismissed. No explanation has come forth in not filing the suit within the period of 3 years, i.e., 15.10.2012. Filing of the revision petition and its dismissal on 3.2.2014 would not enlarge the period of limitation. In case such proposition is accepted, then there would not be any end to the litigation. A person can always come out with the plea of accrual of cause of action after the decision by the Apex Court. All these factors, in my view, have not been taken into consideration by the Court below, resulting into fallacious and perverse findings.

The judgment relied upon by Mr.Bedi would not apply to facts and circumstances of this case as I am treating the case for claiming damages and not for malicious prosecution.

As an upshot of my aforementioned observations, the impugned order is hereby set-aside. The application filed under Order 7 Rule 11 CPC is allowed. The suit is dismissed.

Revision petition stands allowed.

May 14, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No