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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 18.5.2018

(1) CR-5486-2016 (O&M)

Amardeep Singh Randhawa and another Petitioners

Versus

Alamjit Singh Mann and another Respondents

(2) CR-5492-2016 (O&M)

Jasleen Randhawa Petitioner

Versus

Alamjit Singh Mann and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Ms. Divya Sharma, Advocate for the petitioners.

Mr. J.S. Brar, Advocate for the respondent No. 1.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

This order of mine shall dispose of above mentioned two civil revision petitions i.e. ***CR-5486-2016*** titled as ***Amardeep Singh Randhawa and another Versus Alamjit Singh Mann and another*** and ***CR-5492-2016*** titled as ***Jasleen Randhawa Versus Alamjit Singh Mann and others***. For brevity, the facts are being taken from ***CR-5486-2016***.

Impugned in the present revision petition is the order dated 25.5.2016 passed by learned Civil Judge (Junior Division), Chandigarh vide which an application filed by defendants-petitioners under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of the plaint was dismissed.

Heard.

The short controversy is that plaintiff-respondent had filed a suit for damages along with interest against the present petitioners-defendants stating that in the criminal miscellaneous application No. 32563-2009 titled as 'Amardeep Singh Randhawa and another versus Alamjit Singh Mann and another' filed before this Court for quashing of the complaint filed under Section 420 of the Indian Penal Code and summoning of the order dated 28.10.2006, the allegations were leveled against the plaintiff to the effect that he is notorious for his dubious antecedents and land grabbing antics. The said petition was filed on 16.11.2009 and was ultimately allowed on 13.5.2016. A civil suit was filed in the year 2011. The grounds on which the rejection of the plaint is sought under Order VII Rule 11 of the Code of Civil Procedure 1908 is that *firstly* the suit is time barred; *secondly* there is no cause of action and; *thirdly* that proper Court fees has not been affixed on the suit. So far as the Court fee is concerned in a suit for damages, the tentative valuation is to be made and the actual Court fee is to be affixed at the time of final decision when the Court determines the damages. So far as the limitation is concerned, according to the present petitioners, the petition was filed on 16.11.2009. The limitation under Article 75 of the Limitation Act, 1963 is one year, therefore, the suit filed on 5.8.2011 is time barred.

The plea of the opposite party is that the limitation starts from the date of publication which took place later on when the petitioners received the summons. It was further contended that it is the case of continuing publication and that every publication amounts to defamation.

I am of the view that primarily it is a question of fact to be determined after the trial, as to from which date, the limitation will start. Therefore at the very threshold of the case, the suit cannot be thrown out only on the ground that it is time barred. The next ground is that no cause of action has arisen.

Learned counsel for the petitioners-defendants contended that the averments made in the petition are covered under the doctrine of privilege. Therefore, it cannot be treated as defamatory. For this purpose, reliance is placed upon the authority of Delhi High Court delivered in **B.C Rana (Retd.) (Brig) versus Ms. Seema Katoch and others**, 2013 (2) AD (Delhi) 481 and he further placed reliance upon an authority of Bombay High Court delivered in **Govind Shantaram Walavalkar versus Pandharinath Shivram Rege**, 1985 (2) Civil J 101.

I am of the view that the applicability of the doctrine of privilege is itself debatable and it is deemed proper that it should not be commented upon or decided in an application under Order VII Rule 11 of the Code of Civil Procedure, 1908. Let the defendants-petitioners raise such pleas before the trial Court at the time of final arguments and let the same be decided considering the facts of the case that whether the said doctrine is applicable to the facts of the case and is attracted? Therefore, said question is left to be decided at the first instance by the trial Court.

Learned counsel for the petitioners further refers to the judgment of Divisional Bench of Allahabad High Court delivered in **2014 ADJ 667** titled as **Aziz Uddin versus Laxmi Devi and others** to contend that if the suit is time barred by limitation, plaint can be rejected.

However, in the present cases, it is a question of fact to be determined only after recording the evidence.

Needless to say that if the petitioners-defendants are able to prove that the suit was false and frivolous, they can always claim compensatory costs from the plaintiff-respondent.

As a result of the foregoing discussion, I do not find any force in both the revision petitions and the same are accordingly dismissed.

Since the main petitions are dismissed, the miscellaneous application pending, if any, also stands disposed of.

A photocopy of this order be placed on the connected file.

(KULDIP SINGH)
JUDGE

18.5.2018
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Whether speaking / reasoned	Yes
Whether Reportable:	No