

241

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7089-2016

Date of decision : 22.01.2018

Kulbhushan Kumar Bagga

... Petitioner(s)

Versus

Hari Kishan

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ankur Bansal, Advocate
for the petitioner.

None for the respondent.

AMIT RAWAL, J. (ORAL)

The petitioner-defendant is aggrieved of the impugned order dated 21.09.2016 (Annexure P-1), whereby in a suit filed on 11.05.2009 claiming the damages to the tune of ₹ 1 Lacs on account of the alleged utterance of defamatory words on 01.03.2008, an application moved under Order 7 Rule 11 CPC, seeking rejection of the plaint and dismissal of the suit being barred by law of limitation, has been dismissed.

Learned counsel for the petitioner submits that the provisions of Article 76 provide the period of limitation of one year for filing the suit of recovery for damages for slander. On going through the averments in the plaint and without looking to defence of the defendant, the plaint is *ex facie* barred by law of limitation. The trial Court while deciding the aforementioned application has not taken care of the aforementioned provisions, but opined as under:-

"Arguments heard. Perusal of the case file reveals that the present case has been filed by the plaintiff for recovery of

damages on 11.05.2009, but as per the version of the plaintiff the cause of action has accrued to the defendants on 01.03.2008, when the defendants uttered defamatory words in presence of various person thereafter complainant send a legal notice to the defendant/present applicant for recovery of damages of ₹1 Lac and when defendant refused to make the payment prior a week before the filing of the suit only then the plaintiff filed the present suit therefore, cause of action in the present suit was a continuous one and the case was instituted only upon the refusal of the defendants to make the payment of the damages, so it cannot be held that the suit is beyond the period of limitation. Keeping in view the aforesaid discussion the application filed on behalf of the applicant/defendant is liable to be dismissed and the case is fixed for cross-examination of the PWs, subject to last opportunity. Now to come upon 30.09.2016 for cross-examination of PWs.”

This Court had already issued notice of motion on 22.10.2016 and the trial Court was also directed to defer the proceedings beyond the date given by this Court. As per the order dated 29.11.2016, the respondent has been served, but there is no representation on his behalf. Accordingly, I proceed to decide the present revision petition on merits.

I have heard the learned counsel for the petitioner-defendant and appraised the paper book.

It would be apt to reproduce the prayer made in the plaint (Annexure P-2) giving the alleged cause of action to the respondent-plaintiff and as well as the provisions of Article 76 of the Limitation Act, which read as under:

"Para 10.

That the cause of action has accrued to the plaintiff against the defendants on 01.03.2008, when the defendants uttered these

defamatory words in the presence of persons on 10.04.2009 when the plaintiff served a legal notice to the defendants for the payment of ₹ 1,00,000/- and again on a week back when the defendants refused to make the payment to the plaintiff.

Article 76 of the Limitation Act;

76.	For compensation for slander.	One year	When the words are spoken or if the words are not actionable in themselves, when the special damage complained of results.
-----	-------------------------------	----------	--

On conjoint reading of the aforementioned averments and the provisions, much less, the observations of the trial Court, I am of the view that the trial court has not taken into consideration the rigors of Article 76 of the Act as well as prayer made in the plaint. It is a settled law that for the purpose of the adjudication of the application moved under Order 7 Rule 11 CPC seeking rejection of the plaint, only the averments of the plaint have to be seen and not the defence of the defendant. This is what precise is matter to be seen in the present case. I am of the view that this is a case, where the trial Court is required to revisit the controversy.

Resultantly, the impugned order dated 21.09.2016 (Annexure P-1) is not sustainable in the eyes of law and the same is hereby set aside. The application moved under Order 7 Rule 11 CPC is restored. The trial Court is directed to decide the application afresh in accordance with law.

The present revision petition in aforementioned terms stands allowed.

22.01.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes**

Whether Reportable **No**