

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**RSA No.6104 of 2016 (O&M)
Date of Decision.11.05.2018**

Jagpal Singh

.....Appellant

Vs

Asha Rani and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Brar, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

The appellant-plaintiff is aggrieved of the judgment and decree dated 18.04.2016 rendered by the lower Appellate Court whereby it reversed the finding of the trial Court decreeing the suit for damaged to the tune of ₹15 lacs on the ground of malicious prosecution.

Mr. Brar, learned counsel appearing on behalf of the appellant-plaintiff submitted that the appellant-plaintiff was acquitted in the year 2002 whereas the suit was filed in the year 2004. The lower Appellate Court has misread and mis-interpreted the documentary as well as oral evidence while reversing the well-reasoned judgment of the trial Court. In the absence of any issue qua limitation, the finding of the lower Appellate Court that the suit of the appellant-plaintiff was time barred is wholly erroneous and perverse, thus, urges this Court for setting aside the judgment and decree under challenge.

In my view, the finding of fact and law arrived at by the lower Appellate Court in reversing the judgment and decree of the

trial Court in the absence of any issue with regard to limitation is fully justified in law, for, as per the provisions of Section 3 of the Limitation Act, objection of limitation even if it is not set up in defence in the absence of issue, can always be taken. For the sake of brevity Article 74 and Section 3 of the Limitation Act reads as under:-

74	For compensation for malicious prosecution.	One year	When the plaintiff is acquitted or the prosecution is otherwise terminated.
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“3. **Bar of limitation.** (1) Subject to the provisions contained in sections 4 to 24 (inclusive) every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as defense;

(1) For the purposes of this Act,

(a) A suit is instituted,

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue is a pauper is made; and

(ii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set-off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted-

(i) in the case of a set-off, on the dame date as the suit in which the set off is pleaded;

(ii) in the case a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.

A cumulative reading of the aforementioned provisions would reveal that the opinion expressed by me is in consonance with the statutory law. I am of the view that the finding arrived at by the lower Appellate Court is perfectly legal and justified and does not

suffer from illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 11, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No