

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION No.134 of 2016

Maruti Shamrao Patil and Ors. .. Applicants
Versus
Sanjit Chandrasen Lokhande .. Respondents

Mr. Ramesh R. Badi for applicatns.

CORAM : K.K. TATED, J.

DATE : 7 JANUARY 2019.

P.C:-

. Heard learned Counsel Mr. Ramesh Badi for the applicants.

2. By this Civil Revision Application, the applicants/original defendant Nos.2 to 6 challenges the order dated 19.09.2015 passed by the trial Court rejecting application dated 20.03.2014 filed by original defendant No.6 and another application dated 20.03.2014 filed by original defendant Nos. 4 and 5 for framing preliminary issue of limitation.

3. It is to be noted that applicant Nos. 1 and 2 original defendant Nos. 2 and 3 have not filed any application in the trial

Court and in spite of that they joined in present Civil Revision Application challenging the impugned order.

4. Learned Counsel Mr. Ramesh Badi appearing on behalf of applicants/original defendants submits that, in the present matter Summary Criminal Case No.343 of 2011 was registered against respondent original plaintiff under Section 509 of the Indian Penal Code. That Criminal matter was decided by Judicial Magistrate First Class, Court No.5, Kolhapur on 29.10.2012 and acquitted respondent original plaintiff. Operative part of order dated 29.10.2012 reads thus:

“1. Accused Sanjit Chandrasen Lokhande and Chandrasen Nanasaheb Lokhande both R/o. Kolhapur are hereby acquitted of the offence punishable under Section 509 of Indian Penal Code vide section 255(1) of the Code of Criminal Procedure.

2. Their bail bonds stands cancelled.
Pronounced in open Court.”

Hence, plaintiff filed Regular Civil Suit No.113 of 2014 before Civil Judge, Senior Division, Kolhapur for damages on 30.12.2013. He submits that the Court below failed to consider the fact that as per Section 161 of the Bombay Police Act, 1951, if the suit is filed beyond one year from the date of cause of action,

same is required to be rejected on the ground of barred by limitation. He submits that in the present proceedings the respondent-original plaintiff filed suit for damages after more than one and half years. Therefore, the trial Court ought to have framed the preliminary issue about the limitation. In support of his contention, he relies on the judgment of the Apex Court in the matter of **Virupaxappa Veerappa Kadampur Vs. State of Mysore, reported in AIR 1963 SC 849**. On the basis of these submissions, the learned Counsel for the applicants submits that the impugned order is required to be set aside and preliminary issue to be framed about the limitation.

5. I heard learned Counsel Mr. Ramesh Badi for applicants at length. It is to be noted that bear reading of the copy of Plaint in Regular Civil Suit No.133 of 2014 shows that the respondent/original plaintiff has filed suit for recovery of damages of Rs.2,00,000/-. Nowhere it is stated in the said plaint that, plaintiff is filing the suit as per the provisions of the Bombay Police Act, 1951. Apart from that trial Court has rightly held that the issue of limitation is a mixed question of facts and law and that is required to be decided after leading evidence by both the parties. Therefore, I do not find any reason to entertain the

present Civil Revision Application. Therefore, following order :

- a) Civil Revision Application stands rejected.
- b) No order as to costs.

(K.K.TATED, J.)