

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

**CR No.591 of 2018(O&M)
Date of Decision:01.04.2019**

**State of Punjab through Special Secretary Dept. of Revenue
Chd.Petitioner**

Versus

Raj Kumar Nanda and othersRespondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Ms. Ambika Bedi, AAG, Punjab.

Mr. Sandeep Arora, Advocate
for respondent No.1.

Mr. Vikas Singh, Advocate
for respondent No.2.

Mr. P.S. Bajwa, Advocate
for respondent No.3.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner/State has preferred this revision petition against the order dated 29.09.2017 passed by Civil Judge (Senior Division), Jalandhar vide which the application filed by the defendants/State under Order 7 Rule 11 CPC for rejection of the plaint was dismissed.

[2]. Perusal of the record would show that there was a past litigation between the parties which ultimately culminated in RSA No.1930 of 1997. The appeal filed by the State was dismissed

on 27.01.1998 and thereafter, appointment letter was issued to the plaintiff on 08.11.1998 and his seniority was fixed w.e.f 07.10.1991. Thereafter, the petitioner was chargesheeted and order of dismissal was passed after holding departmental enquiry. Order of dismissal in due course came up for consideration before the writ Court in CWP No.11011 of 2012.

[3]. High Court vide order dated dated 11.11.2013 found that the orders dated 08.02.2008 and 07.05.2012 were not legally sustainable. Writ petition was allowed and the plaintiff was directed to be re-instated in service with all consequential benefits. Thereafter, the present suit for recovery of Rs.30 lacs came to be filed on account of damages caused by the defendants by gravely hurting and jeopardizing respect, prestige, honour and for causing mental tension, harassment, humiliation and financial loss to the plaintiff. In the aforesaid suit, application under Order 7 Rule 11 CPC was filed by the defendants.

[4]. Article 72 of the Limitation Act provides for suit relating to suit for compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in the territories to which this Act extends. Limitation for filing the suit is one year from the date when an act or omission takes place. Article 74 of the Act provides for a suit for

malicious prosecution and limitation for filing such a suit from the date on which the plaintiff is charged over the process or otherwise terminated.

[5]. Perusal of the aforesaid Article would show that the suit filed by the plaintiff would remain debatable in the context of Articles 72 and 74 of the Act for giving cause of action as per para No.10 of the plaint. Question of limitation is a mixed question of law and facts.

[6]. In view of legal history and position of law in terms of Articles 72, 74 and 113 of the Act, in my considered opinion, triable issue are involved in the present case and the suit cannot be tested with straight jacket formula as per Article 72 of the Act. If the pleadings have created illusion in respect of cause of action, defendants can resort to Order 10 CPC and respond to the legal requirement and then file appropriate application before the competent Court in accordance with law.

[7]. In view of above, no indulgence can be granted in favour of the petitioners. This revision petition is accordingly dismissed.

01.04.2019

Prince

Whether reasoned/speaking
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No