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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 13th May, 2019

+ C.R.P. 96/2019

MOHD RAFAT KHAN

..... Petitioner

Through: Petitioner in person

versus

M/S TECHINFO SOLUTIONS PVT LTD & ORS.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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1. The revisionist has challenged a judgment dated 15.03.2019 by which the Trial Court has dismissed his application for recall of an order dated 14.09.2017 (by which he had withdrawn an application for review of a judgment dated 28.09.2016), and allowing his application for refund of excess court fees, but without interest thereupon.

2. The revisionist filed a suit in the year 2013, against the respondents herein, claiming damages on account of defamation and distress. The defamation alleged by the revisionist included statements made by the respondents in the course of legal proceedings. The suit was dismissed by a judgment of the Trial Court dated 28.09.2016 holding that, to the extent the revisionist relied upon statements contained in written statements and other pleadings filed by the respondents, they were entitled to absolute privilege. The Trial Court also held that the suit of the plaintiff was barred by limitation.

3. The revisionist filed an application for review of the aforesaid judgment, which was dismissed as withdrawn by an order dated 14.09.2017 with the following observations:

“Applicant submits that he does not want to proceed with the present application U/O 47 Rule 1 r/w Section 114, 151 & 152 CPC for review of judgment dt. 28.09.2016 as he intends to approach Hon’ble Delhi High Court against the said judgment as such he be allowed to withdraw the present application. Separate statement of applicant recorded to this effect.

In view of the statement of applicant, the application U/O 47 Rule 1 r/w Section 114, 151 & 152 CPC for review of judgment dt. 28.09.2016 stands dismissed as withdrawn.

At this stage, applicant submits that his another application u/Section 151 CPC for return of extra court fee paid by him is also pending for disposal.

Put up the matter for consideration on said application, on 1.11.2017.”

The statement of the revisionist, recorded in Court on 14.09.2017, was as follows:

“14.09.2017

Statement of Mohd. Rafat Khan, s/o Mr.Mohd. Zaheer Khan, r/o A 64, Ashoka Enclave II, Sector 37 Faridabad.

On SA:

I do not want to proceed with the present application u/O 47 Rule 1 r/w Section 114, 151 & 152 CPC for review of judgment dt. 28.09.2016 as I indent to approach Hon’ble Delhi High Court against the said judgment. I may be allowed to withdraw the present application.

RO & AC

Sd/-

(Applicant)

Sd/-

*ADJ-02: Dwarka Courts
New Delhi/14.09.2017”*

4. After withdrawal of the review application, the revisionist approached this Court under Article 227 of the Constitution, challenging the judgment dated 28.09.2016. The said petition [CM(M) 1439/2017] was dismissed by the following order dated 13.03.2018:

“The civil suit (Suit No.516800/2016) of the petitioner against the respondents instituted on 15.01.2013 for recovery of damages of Rs.19,72,000/- on account of defamation and distress was dismissed by the additional district judge (ADJ) by judgment dated 28.09.2016 on the basis of findings returned on two issues (issues nos. 4 and 6) treated as preliminary issues, they including the question of limitation, it having been held that the suit was barred by limitation.

The petitioner has sought to challenge the judgment dated 28.09.2016 of the trial court by the present petition invoking the supervisory jurisdiction of this court under Article 227 of the Constitution of India.

The question of propriety of filing the present petition under the writ jurisdiction in the face of statutory remedy of regular appeal arose. By order dated 18.12.2017, the petitioner, who claims to be a law graduate conversant in law insisting on representing his case, was asked to address the court on the issue of maintainability. He has submitted brief submissions which have been taken on record. He relies on Jagdamba Industries vs. Krishan Pratap, ILR (2011) II Delhi 122, the focus of his arguments being that the trial court has fallen into error by treating disputed questions of facts as preliminary issues and has failed to adjudicate upon the other issues.

Pertinent to note the decision in Jagdamba Industries (supra) was rendered on an appeal presented under Section 96 of the Code of Civil Procedure, 1908 (CPC). The contentions about propriety of treating questions of fact (assuming the submissions of the petitioner in this regard are correct) as preliminary issues and leaving the other issues unaddressed can also be adjudicated in the course of regular appeal under

Section 96 CPC which, given the fact that the suit stands dismissed, is the appropriate remedy.

The petition and the application filed therewith stand dismissed with above observations.”

5. However, instead of filing an appeal against the judgment dated 28.09.2016, the revisionist approached the Trial Court for recall of the order dated 14.09.2017 and restoration of his application for review. In the said application for recall, the revisionist has contended that he had withdrawn the review petition on account of the observations of the Court hearing the review application that court fees have to be paid in excess of ₹2, which, according to the revisionist, was the court fee payable.

6. By the impugned order, the Trial Court has recorded that at the time the review application was dismissed, the statement of the revisionist was recorded that he did not wish to proceed with it. The Trial Court has also noticed the aforesaid order dated 13.03.2018, passed by this Court, wherein it has been specifically observed that the proper remedy for the revisionist would be to file a regular appeal against the judgment dated 28.09.2016. The Trial Court has held that the application for recall was also filed beyond the time prescribed by the Limitation Act, 1963. In addition to these observations, the Trial Court has also considered the revisionist's contentions (although the said contention is not borne out of the order dated 14.09.2017) that he had withdrawn the review application in view of an observation of the Court hearing the same that he would have to pay court fees equal to one-half of the fees leviable on plaint or the memorandum of appeal.

7. Having heard the revisionist in person, I am of the view that the application for recall of the order dated 14.09.2017, filed by the revisionist, was itself misconceived. Having approached this Court, under Article 227 of the Constitution, and this Court having dismissed the said petition on the ground that the issues raised ought to be raised by him in the course of a regular appeal, the revisionist ought to have taken recourse to that remedy instead of seeking to revive the review application, which he had already withdrawn. The order of the Trial Court dated 14.09.2017 and the statement of the revisionist recorded on that day do not make reference to any controversy regarding the court fees payable in an application for review, but record the revisionist's statement that he intended to approach this Court against the judgment dated 28.09.2016. The revisionist did just that and his petition was dismissed on 13.03.2018. It is not open to the revisionist to thereafter raise an argument that his review application had been withdrawn on an erroneous appreciation of the legal position. This ground raised by the revisionist is, therefore, rejected.

8. The second prayer prayed by the revisionist is for award of interest on the amount of excess court fees which was directed to be refunded by the impugned judgment. The revisionist filed an application on 10.03.2014, for refund of excess court fees of ₹ 39,950/- in accordance with the Court Fee (Delhi Amendment) Act, 2012, which was struck down by the judgment of this Court dated 09.10.2013 in W.P.(C) 4770/2012 (*Delhi High Court Bar Association and Anr. vs. Govt. of NCT of Delhi and Anr.*). By the impugned judgment, this application was allowed but no interest has been ordered upon the excess court fees.

9. The revisionist is unable to point out any provision of the statute by which interest is payable on excess court fees. In fact, the application dated 10.03.2014 made by the revisionist for this purpose also did not contain any such prayer. In view of the aforesaid, this ground of revision is also rejected.

10. In view of the aforesaid, the revision petition is dismissed. However, it is made clear that the revisionist is at liberty to challenge the judgment dated 28.09.2016 by way of a regular appeal which will be considered on its own merits, subject to satisfaction of the Court on the point of limitation.

Dasti.

MAY 13, 2019
'j'/s

PRATEEK JALAN, J

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