

23.02.2022
Ct. 21
D/L 12

C.O. 1073 of 2020
(Via Video Conference)

Smt. Sulata Das
-Vs-
Sri Ranjit Kumar Kalapahar

Mr. Chittaranjan Chakraborty,
Mr. Gobinda Mondal,
Mr. Dip Jyoti Chakraborty,

... for the petitioner

Mr. Avijit Ghoshal

...for the Opposite Party

The present application under Article 227 of the Constitution of India is at the instance of the petitioner/ defendant being aggrieved by order passed by learned Civil Judge (Senior Division) 1st Court Alipore in Money Suit No. 1 of 2013 whereby the petition under Order 7 Rule 11(b) C.P.C was rejected.

The facts necessary for determination of the present application in gist is that the opposite party has filed Money Suit No. 1 of 2013 against the defendant towards damage for malicious prosecution and defamation after being acquitted from Complaint case no. 81 of 2010 filed by the defendant against the plaintiff before the learned Judicial Magistrate 2nd Court, Diamond Harbour.

It has been alleged that due to malicious criminal prosecution brought by the defendant against the plaintiff he lost all respect and reputation in the society and which has also damaged his career. Thereby, filing the money suit he has claimed damaged to the tune of

Rs.50,000/- for malicious prosecution and has claimed Rs.1,00,00,000/- for defamation and has paid Court fees of Rs.2,900/- only.

The defendant by filing an application under Order 7 Rule 11(b) of C.P.C has prayed for rejection of the plaint only on the ground that no proper Court fees has been paid on the amount of damage claimed by the plaintiff and as such the plaint is liable to be rejected. By passing the impugned order the learned Court below rejected such application.

It has been contended by the learned lawyer for the petitioner that a suit for compensation for libel should be filed within 1 year when the libel is published as per Article 75 of the Limitation Act. In the present case the plaintiff has filed the Money Suit in 2013 against the Complaint case of 2010 and as such the Money Suit filed by the opposite party is barred by limitation.

Perused the application under Order 7 Rule 11(b) of C.P.C, but I do not find any averments to such effect. However, this Court is of view the matter relating to limitation is to be decided by the learned Court below at the time of final hearing.

He further contended that as per Section 21 of the West Bengal Court Fees Act, 1970 and Schedule 1 of the Court Fees Act the plaintiff is bound to pay maximum Court fee of Rs.50,000/- and which the plaintiff has failed to do so.

He in support of his contention referred to Krishnarao Jagoba Parkhi Vs Firm Radhakisan Ramsahai and another reported in AIR 1956 Nagpur 264, Dharendra Nath Mukherjee Vs State reported in AIR 1985 Calcutta 148 and Buta Singh Vs Union of India reported in AIR 1995 Supreme Court 1945.

On the other hand learned lawyer for the opposite party / plaintiff draws my attention to section 7 (i) of

West Bengal Court Fees Act, 1970 and which provides that in a money suit for damage no fee shall be payable in suits for damages for defamation.

In the present case no doubt the plaintiff has prayed compensation for malicious prosecution to the extent of Rs. 50,000/- and he appears to have paid Court fee of Rs.2,900/-. He has claimed compensation of Rs.1,00,00,000/- for defamation and in view of proviso contained in Section 7(i) he need not have to pay any Court fee.

Therefore, this Court does not find any infirmity and material irregularity in the order impugned passed by the learned Court below.

Accordingly **C.O. 1073 of 2020 is dismissed.**

Interim order, if any, stands discharged.

In view of the order made above Affidavits are not invited. Allegations made shall be deemed to be denied. There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J.**)