



\$~23

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

+ RFA 916/2019

RAJVIR TYAGI

..... Appellant

Through: Mr. Abhinav Bajaj and Mr.
Saksham Ojha, Advs.

versus

COMMISSIONER OF POLICE & ORS Respondents

Through: Mr. Divyan Nandrajog, Adv.
with Inspector Vijay Kumar, SHO, P.S. S.B.
Dairy, SI Sunil Kumar, Todapur Traffic, SI
Suman, SHO, P.S. Civil Lines, ASI Sanjay
Pal Singh, Special Cell, South Western
Range, Janakpuri, ASI SAtrujeet, P.S.
Modal Town, ASI Gajraj Singh, P.S. Seema
Puri, ASI Bal Hussain, P.S. Kashmere Gate

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

%

25.07.2022

1. The order, dated 27th July 2019, passed by the learned Additional District Judge (hereinafter “the learned ADJ”) in CS 297/2018, under challenge in this appeal under Section 96 of the Code of Civil Procedure, 1908 (hereinafter “CPC”), reads thus:

“CS No. 297/2018

Rajvir Tyagi Vs. Commissioner of Police & Ors.

27.07.2019

Present: Sh. Mohd. Iqbal, Ld. Counsel for the plaintiff.
Ms. Arpita, Ld. Counsel for defendant.



Inspector Vijay Kumar, ATO, Sadar Bazar
ASI Bal Hussain, No.517/N, PS-Kashmiri Gate.
HC Sanjay, No.-232/Special Cell.
HC Shatrujeet, No.-886/C, PS-IP Estate.
ASI Sunil Kumar, No. 3253/D, Kalyanpuri
Traffic Circle.

Replication on behalf of the plaintiff filed, same is taken on record.

At this juncture, one preliminary issue is framed as under:

“Whether the suit filed by the plaintiff is barred by limitation?”

Arguments on preliminary issue heard.

It is submitted on behalf of the plaintiff that they have served a notice upon all the defendants prior to filing the present suit in the year 03.07.2017 and secondly on 20.11.2017. It is stated that cause of action for filing the present suit starts thereafter and the suit has been filed within a year. It is further stated that the suit is very much within the period of limitation.

Ld. Counsel for the defendant, on the other hand has stated that impugned judgment is dated 28.10.2016, vide which plaintiff, who was also one of the accused along with other accused persons have been acquitted and as per Limitation Act, suit for malicious prosecution should be filed within one year. However, the present suit has been filed on 22.01.2018.

Heard. Record perused.

As per Article 74 Part 7 of Schedule to the Limitation Act, 1963, it is mentioned that the limitation period for filing a suit for damages for malicious prosecution is one year from the date when plaintiff is acquitted or the prosecution is otherwise terminated. In the present case the plaintiff herein along with other accused persons was acquitted on 28.10.2016, this fact is not disputed.

Further, as per Section 3 of the Limitation Act, 1963



the onus to show that the suit is within the period of limitation is always upon the plaintiff. Also, Section 5 of the Limitation Act, says that in a suit delay in filing, cannot be condoned, as per law.

Apart from the above, Section 9 of the CPC further shows that once the limitation period starts running, it cannot be stopped by subsequent disability unless and until mentioned in the act itself.

Thus, on joint reading of the above facts and provisions it reflects that the limitation period in the present case has started after 28.10.2016. The limitation period for filing the suit for malicious prosecution, therefore, is that it can be filed within one year i.e. till 28.10.2017. The present suit, however, has been filed on 22.01.2018. Apparently the suit filed by the plaintiff, therefore, as per record itself is hopelessly time barred and is not maintainable. Thus, this issue stands decided in favour of the defendant and suit filed by the plaintiff is dismissed accordingly.

File be consigned to record room, after due compliance.”

2. Mr. Bajaj, learned Counsel for the appellant, submits that the impugned order dated 27th July 2019 displays undue haste. He drew my attention to the fact that the defence of the respondents (as the defendants in the suit) was struck off on 11th July 2018 and that, as a matter of indulgence, the learned ADJ, on 11th April 2019, set aside the order striking out the defence of the respondents and allowed the written statement to be taken on record.

3. Mr. Bajaj submits that, surprisingly, on the next date of hearing, i.e. 27th July 2019, when the matter was actually fixed for taking on record the replication of the appellant, the learned ADJ proceeded not only to frame a preliminary issue as to whether the suit of the



appellant was barred by limitation or not, but went ahead to decide the issue on the very same day. He submits that, having chosen to frame the issue of limitation on 27th July 2019, the learned ADJ ought to have granted some time to the appellant to advance submissions on the issue.

4. Mr. Bajaj also relies, in this regard, on Section 15(2) of the Limitation Act, 1963¹ as well as Order VII Rule 6 of the CPC².

5. The suit filed by the appellant alleged malicious prosecution of the appellant by the respondents. The appellant was acquitted in the criminal proceedings instituted against him at the instance of the respondents on 28th October 2016. Notice under Section 80 of the CPC was issued by the appellant on 3rd July 2017. Given the benefit of Section 15(2) of the Limitation Act, Mr. Bajaj submits that the *terminus ad quem* for filing the suit would be 28th December 2017.

¹ 15. **Exclusion of time in certain other cases—**

(2) In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation—In excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted.

² Grounds of exemption from limitation law—Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the ground upon which exemption from such law is claimed:

Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.



6. The suit came to be filed on 22nd January 2018. Mr. Bajaj submits that his client would, on the facts of the present case, be entitled to claim exemption from applicability of limitation under Order VII Rule 6 of the CPC, but was divested of his right to so urge as the impugned order was been passed on the very day when the issue of limitation was framed.

7. Without entering into the intricacies of the above arguments, given the fact that the respondents themselves had shown some degree of recalcitrance in the proceedings, their defence having first been struck off and later permitted to be taken on record, I am of the opinion that the learned ADJ ought not to have decided the preliminary issue of limitation on the very day when he chose to frame it, i.e. 27th July 2019. Though the impugned order does state that arguments on the said preliminary issue were heard, that by itself, in my view, would not suffice as due compliance with the principles of natural justice and fair play. The learned ADJ ought to have been conscious of the fact that he was completely non-suited the appellant as a result of the decision that he was taking. The appellant ought, therefore, to have been granted some time to advance submissions on the preliminary issue framed by the learned ADJ on 27th July 2019 and, if he so chose, to move an application under Order VII Rule 6 of the CPC.

8. Needless to say, I do not express any opinion on the preliminary issue framed by the learned ADJ. This order is not to be treated as even a tentative opinion on whether the issue is to be decided for or



against the appellant. Nor is it to be treated as an expression of opinion on whether the appellant would be entitled, if at all, to the benefit of Order VII Rule 6 of the CPC.

9. It is only in order ensure wholesome dispensation of justice and a free and fair opportunity to all parties that I deem it appropriate to set aside the impugned order dated 27th July 2019 and remand this matter to the learned ADJ to give an opportunity to the appellant to advance submissions on the preliminary issue of limitation framed by him on 27th July 2019.

10. Learned Counsel for the respondent submits that Order VII Rule 6 of the CPC has not been pleaded by the appellant in the plaint, and is being raised for the first time in the present proceedings. That, however, in my view, cannot be a legitimate objection given the peculiar manner in which Order VII Rule 6 of the CPC is worded and the latitude that the provision allows. A plea of exemption from limitation may be taken, under Order VII Rule 6 of the CPC, either on grounds contained in the plaint or on grounds not set out in the plaint, but not inconsistent with the grounds set out in the plaint. No specific time period is prescribed within which the application under Order VII Rule 6 of the CPC is required to be moved. The plea of limitation having been framed by the learned ADJ on 27th July 2019, *prima facie*, it would be open to the appellant, if he so chooses, to move an application under Order VII Rule 6 of the CPC.

11. The appeal is allowed to the aforesaid extent with no order as to



costs.

12. For the aforesaid purpose, the appellant is permitted, if he so chooses, to move an application under Order VII Rule 6 of the CPC within a period of ten days from the receipt, by the appellant, of the certified copy of the order passed today. The parties shall appear before the learned ADJ on 16th August 2022, on which date, the learned ADJ would hear both sides on the preliminary issue framed by him on 27th July 2019 and take a reasoned decision thereon.

13. Needless to say, the learned ADJ is free to decide the issue as he deems appropriate in accordance with law, uninfluenced by the observations contained in the order passed today.

JULY 25, 2022
r.bararia

C. HARI SHANKAR, J

न्यायमेव जयते