IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

Present:
The Hon'ble Justice Sugato Majumdar

CS/321/2004
IA NO: GA/1/2014(Old No: GA/1124/2014)

NEMAI CHANDRA GHOSH
VS
C. E. S. C. LTD.

For the Plaintiff	:	Mr. Sarathi Das Gupta, Adv. Mr. Rohit Banerjee, Adv. Mr. M. Shehaboddin, Adv.
For the CESC	:	Mr. Debraj Bhattacharya, Adv. Mr. Zulfiqar Ali, Adv. Ms. S. Thard, Adv.
Hearing concluded on	:	06.09.2023
Judgment on	**:**	**21.09.2023**

Sugato Majumdar, J.:

The instant suit is instituted by the Plaintiff praying for decree for damages of a sum of Rs.4,10,20,000/- or such other sum as may be found due and payable; decree for damages for providing permanent employment to thirty employees under the Defendant No. 1 who were working for the Plaintiff along with other reliefs.

The sum and substance of the Plaintiff's case is summarized as follow:

The Plaintiff is a licensed electrical contractor since 1980 and was carrying on business as such in Kolkata and part of the district North 24 Parganas. The Plaintiff carries on business under name and style of M/s. Chabi Electrical Works.

The Defendant No. 1 is a Company registered under the Companies Act, 1956 having its registered office at CESC House, Chowringhee Square, Kolkata – 700001 within jurisdiction of this Court. The other Defendants are employees of the Defendant No. 1.

The nature of works which the business of the Plaintiff include works relating to electric connections to various consumers works for supply and continuance of such electricity supplies to such consumers; to develop areas for providing new electricity connection using innovative ideas; finding out feasibility, for providing electricity connection; measure physically the distance from the source of electricity and others. Because of his hard work the Plaintiff acquired reputation and goodwill among people. The Plaintiff, for the purpose of his works employed about thirty persons. These apart, the Plaintiff carried out all repairing and maintenance works in or around Prantik area of Ichapur in the district of North 24 Parganas.

Local people of Prantik Bidhan Pally area of Ichapur was to be supplied with electricity by the Defendant No. 1 in accordance with directions passed by the State Consumer Dispute Redressal Commission. The Plaintiff and the intending consumers came to an understanding that the Plaintiff will take steps and would be conducive to obtain electricity connection from the Defendant No. 1. If the Plaintiff is successful in obtaining electricity connection then the electrical installation woks would be done by the Plaintiff. For this end the Plaintiff visited the office of the Defendant No.1, on 03.06.1992, when the Plaintiff was asked to arrange for expenses and fees for providing the prospective customers with electricity connections. The Plaintiff accordingly collected money from such customers and paid the same to the Defendant No. 1 through the Defendant No. 2 – 5. Money was handed over to the Defendant No.2 in the office of the Defendant No. 1. Inspite of payment of money, electricity supply was not made, nor was money refunded. Some persons of the locality got electricity connection to which the Plaintiff was not instrumental.

On 14.05.1993 at about 12 noon when the Plaintiff was roaming at a local fair, the Defendants and many other persons attacked the Plaintiff and caused bleeding injury to his person for which he had to be treated in a hospital. On 14.05.1993, the Plaintiff was arrested on the basis of a complaint and criminal case was initiated against him being P.S. Case No. 106/1993 dated 14.05.1993 under Section 39 of the Indian Electricity Act read with Sections 379/109 of the Indian Penal Code. The Defendants implicated the Plaintiff in the criminal case for alleged act of the Plaintiff of illegal and dishonest obstruction of electrical energy, on the basis of the complains made by some localities.

On completion of investigation charge sheet was filed. Ultimately the Plaintiff was discharged by the Judicial Magistrate, 5th Court, Barrackpore in terms of the Order dated 05.06.1998 observing that no *prima facie* case was made out against the Plaintiff.

The Plaintiff was also assaulted by the Defendant No.2 outside the office of the C.E.S.C. on 16.09.2003 although the matter was not connected with the present suit.

Due to pendency of the criminal prosecution, the Defendants did not encourage or accept any work of the Plaintiff. This caused business loss to the Plaintiff immensely. Inspite of discharge from prosecution, the Defendants did not accept the works of the Plaintiff causing him further business loss, damage, detriment and injury. This contained for a period of five years causing damage to business, property, work and mental agony.

> On 06.01.2004, the Plaintiff came to learn that the Defendant No. 2 – 4 are inimical to the Plaintiff as he enjoys lion's share of the business of electrical contract; they intended to ruin the business of the Plaintiff as they were interested with the other electrical contractors who used to pay 'kick back'/commission to the Defendant No. 2 – 5. In furtherance of common intention and in conspiracy with each other, the Defendants launched false and malicious prosecution against the Plaintiff the effect of which is damage to reputation of the Plaintiff among the intending customer. The Plaintiff's damage, detriment and loss are detailed in the plaint itself.
>
> The Plaintiff earlier filed a suit being C.S. No. 188 of 2003 which was withdrawn with liberty to file a suit afresh. Hence the present suit is filed praying for damages as detailed in the plaint.

The Defendants appeared and contested the suit by filing written statement. Additional written statement was filed after amendment of the plaint. The written statement denied each and every allegation contained in the plaint. It is denied that the plaintiff undertook any work on behalf of the Defendants. It is denied that the Plaintiff gave any money to the Defendants as alleged. According to the Defendants money can only be received from a consumer on raising bills. It is also denied that any criminal prosecution was initiated by the defendants against the Plaintiff. Evil motive for malicious prosecution is also denied. The Defendant No. 1 is not authorized to supply electricity connections to persons residing outside area of operation. It is also averred in the written statement that the cause of action of the suit was barred by the law of limitation. According to the written statement the suit is liable to be rejected.

Issues initially framed, were recast at the time of argument. The following issues were framed on recast of the earlier issues:

1. Whether the suit is maintainable in the eye of law as well as in fact?
2. Whether the suit is barred by any law, limitation, and estoppels or otherwise?
3. Whether the suit discloses any cause of action?
4. Whether the Plaintiff was actually prosecuted by the Defendant?
5. Whether the Plaintiff was prosecuted maliciously and falsely by the Defendant or any of the Defendants?
6. Whether there was malice or ill-will or falsity in lodging prosecution against the Plaintiff by the Defendant or any of the Defendants?
7. Whether the Plaintiff has suffered any pecuniary as well as non-pecuniary loss, injury, damage or detriment? If so, to what extent?
8. Whether the Plaintiff is entitled to any damage? If so on what accounts such damages are payable and what is the quantum of such damages/compensation?

9. If the Plaintiff is entitled to any damages and compensation who is liable to pay the same?

On behalf of the Plaintiff, the Plaintiff deposed as P.W. 1, and one Subrata Dhar was examined as P.W. 2.

On behalf of the Defendants Jahar Kumar Gupta, the Defendant No. 2 deposed as D.W. 1.

The Plaintiff produced various documents which were admitted in evidence, marked and exhibited.

Issues No. 1, 2 and 3 should be considered together as these issues address the maintainability of the suit, going to it's root.

The Learned Counsel for the Defendants argued that it is averred in the written statement that the suit is barred by law of limitation. The suit is for damages on account of malicious prosecution. Prescribed period of limitation is one year from the date of acquittal or discharge. Admittedly the Plaintiff was discharged on 05.06.1998. The suit was instituted in the year 2004. Clearly, according to the Learned Counsel, the suit is barred by the law of limitation.

The Learned Counsel for the Plaintiff, on the other hand, argued that the suit has multiple cause of action as detailed in the plaint. The Defendants were inimical to the Plaintiff and continued to cause loss, damage, detriment to the business, properties as well as to reputation of the Plaintiff. He further submitted that it is in the plaint that the Plaintiff continued to suffer damage for a continuous period of five years. Cause of action is a continuous one and had been arising every day till the institution of the suit. Therefore, the suit is not barred by the law of limitation.

Prayer (a) and (b) of the plaint is for decree for damages as detailed at Para. 13 of the plaint. Para.13 of the plaint is hereby quoted below:

> *"The effect of the said false and malicious prosecution has therefore damaged to the Plaintiffs reputation, which he suffered amongst the intending consumers and present consumers within the District of 24 Parganas (North) and also Plaintiff and avoiding the Plaintiff in public and even in private, as a result of the said allegations."*

Further damages are claimed which resulted from canard floated by the Defendants by way of malicious prosecution. Thus Para.13 makes it clear that all the claims for damages under various heads and for various reasons, as mentioned, therein spring from the malicious prosecution.

Para.14 summarized the whole case which avers that (a) the Plaintiff was prosecuted by the Defendants and each of them particularly the Defendants No. 1 and 2; (b) the proceedings complained of terminated in favour of the Plaintiff; (c) the prosecution was instituted against the Plaintiff without any reasonable or probable cause; (d) the prosecution was instituted with a malicious intention, that is, not with the mere or any intention of carrying the law into effect, but with an intention which was wrongful in point of fact; (e) the plaintiff has suffered damages to his reputation to the safety of his person and/or to the security of his property. Clearly allegation of malicious prosecution and recovery of consequent damages is the foundation of the suit. The suit has no existence except the alleged malicious prosecution.

Admittedly the Plaintiff was discharged by the Judicial Magistrate, 5th Court, Barrackpore, on 5th June, 1998. In terms of Article 74 of Limitation Act, 1963, the period of limitation is one year, in respect of suit for compensation for a malicious prosecution. Period of limitation starts when the Plaintiff is acquitted or the prosecution is otherwise terminated. The phrases otherwise terminated are applicable in the instant case. Discharge of the Plaintiff comes within ambit of these phrases. Therefore, period of limitation starts from this date of discharge and ends on expiry of one year. Although argued by the Counsel for the Plaintiff that suit is for damages on different causes of action, Paragraph 13 and Paragraph 14 of the plaint are very clearly and unequivocally shows that all the actions and claims for damages owe their origin to the prosecution in question. Therefore, I cannot accept the argument made by the Learned Counsel for the Plaintiff.

It is clear finding of this Court, therefore, that the suit is barred by law of limitation and the suit is accordingly not maintainable.

Issue No. 1 and 2 are, therefore, decided against the Plaintiff.

Once it is decided that the suit is maintainable as barred by the law of limitation, other issues need not be considered. Consideration of Issue No. 3 – 8 are accordingly dispensed with.

In nutshell, the instant suit fails.

Hence it is ordered that the instant suit is dismissed as time barred without any cost.

(Sugato Majumdar, J.)