



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 3 OF 2024

Dhairyadhar Yadhavrao Jayakar
Age : 66 yrs, occ : retired
R/o Survey No. 71/81, Plot No.3,
and 4, Morge Vasti, Ward No.7,
Shrirampur, Dist. Ahmednagar

Applicant

Versus

Pratibha Dhairiyadhar Jayakar
Age : 58 yrs, occ : service
R/o Survey No. 71/81, Plot No.3,
and 4, Morge Vasti, Ward No.7,
Shrirampur, Dist. Ahmednagar

Respondent

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Mr. P.R. Katneshwarkar, Advocate for the applicant.
Mr. Manoj D. Shinde, Advocate for the respondent.

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CORAM : SANDIPKUMAR C. MORE, J.

Dated : 5 AUGUST 2024

Order :

1. The present applicant, who is the original defendant in Special Civil Suit No.21/2023 filed by his wife i.e. original plaintiff and respondent herein, has taken an exception to the order dated 08.09.2023 below Exh.12 in the aforesaid suit passed by the learned trial Court i.e. Civil Judge (Senior Division), Shrirampur. Under the impugned order, the learned trial Judge has rejected application (Exh.12) filed by the present applicant/defendant for rejection of plaint in the said suit.

2. Brief facts are as under :

The respondent / plaintiff is wife of present applicant and she has filed suit for declaration that she is having one-half share in the suit properties and thereby claimed injunction against the applicant for not to alienate the suit properties during pendency of the suit. The applicant/defendant in his application (Exh.12) for rejection of plaint contended that the said suit was not tenable and the plaint was to be rejected on various counts, such as wrong description of the suit properties, under valuation of the claim, barred by non-joinder of necessary parties and being filed after prescribed period of limitation. Though the applicant / defendant had claimed rejection of the plaint on various grounds, but during the course of argument the learned Counsel for the applicant made it clear that the applicant, at this stage, is claiming rejection of plaint only on the basis of limitation.

3. Learned Counsel for the applicant pointed out that the present suit is governed by Article 58 of the Limitation Act wherein limitation of three years from the cause of action first accrued, is provided for getting such declaration as claimed in the suit. He pointed out that the respondent/plaintiff herself

in her plaint has stated that the cause of action first accrued in the year 2016 and thereafter continued from time to time. Learned Counsel for the applicant thus by relying upon Article 58 of the Limitation Act tried to interpret that when cause of action first accrued in the year 2016, then the plaintiff was under an obligation to file present suit within the period of three years from such cause of action, but she in fact filed the suit in the year 2023 which is hopelessly time barred. For that purpose, he relied on the following judgments :

- (i) Dahiben vs Arvindbhai Kalyanji Bhanusali (2020) 7 SCC 366*
- (ii) Union of India vs West Coast Paper Mills Limited 2004 AIR (SC) 1596*
- (ii) State of Punjab & another vs Balkaran Singh 2007 AIR (SC) 641*
- (iv) Judgment of Apex Court in Civil Appeal No.500 of 2022 and others (C.S. Ramaswamy vs V.K. Senthil)*

4. On the contrary, learned Counsel for the respondent/plaintiff supported the impugned order of learned trial Court wherein it is observed that limitation being a mixed question of law and facts, an evidence to that effect is required to determine as to whether the plaint is to be rejected or not. He also placed reliance on the following judgments :

(i) ***Shakti Bhog Food Industries vs Central Bank of India***
AIR 2020 SC 2721

(ii) ***Saranpal Kaur Anand vs Praduman Singh Chandhok***
(2022) 8 SCC 401

5. Heard rival submissions. Also perused the documents on record alongwith citations relied upon by the rival parties.

6. After going through all the judgments relied upon by the learned Counsel for the applicant, it is clearly evident that as per Article 58 of the Limitation Act, a period of three years is provided for obtaining any other declaration which includes the declaration as claimed by respondent/plaintiff in the instant matter. Further, it is clearly mentioned that such period of limitation starts to run from the date when the right to sue first accrues. In all these judgments the interpretation of the term “right to sue first accrues” is elaborately done and it has been observed that “right to sue first accrues” means the date on which the cause of action had occurred for the first time and not from the subsequent cause of action which continued thereafter. It is observed by the Hon’ble Apex Court in the case of ***Dahiben vs Arvinbhai Kalyanji Bhanusali*** (supra) as under :

“Articles 58 and 59 of the Schedule to the 1963 Act, prescribe the period of limitation for filing a suit where a declaration is sought, or cancellation of an instrument, or rescission of a contract, which reads as under :

Description of suit Period of Time from which limitation period begins to run

58. To obtain any Three years When the right to other declaration. sue first accrues.

59. To cancel or set Three years When the facts aside an instrument entitling the plaintiff or decree or for the to have the rescission of a instrument or decree contract. cancelled or set aside or the contract rescinded first become known to him.

The period of limitation prescribed under Articles 58 and 59 of the 1963 Act is three years, which commences from the date when the right to sue first accrues.

In Khatri Hotels Pvt. Ltd. & Anr. v. Union of India & Anr.,¹² this Court held that the use of the word ‘first’ between the words ‘sue’ and ‘accrued’, would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. That is, if there are successive violations of the right, it would not give rise to a fresh cause of action, and the suit will be liable to be dismissed, if it is beyond the period of limitation counted from the date when the right to sue first accrued.

A three-Judge Bench of this Court in State of Punjab v. Gurdev Singh,¹³ held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words “right to sue” means the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted”.

Same observation is reiterated in the subsequent judgments.

7. Learned Counsel for the applicant, therefore, relying on the aforesaid observation, has made a reference to para-9 of the plaint wherein cause of action is given. He pointed out that since the plaintiff has clearly stated in the said para that cause of action for filing the suit firstly arose in the year 2016, then the present suit filed in the year 2023 has definitely violated Article 58 of the Limitation Act and therefore, the plaint needs to be rejected under the sole ground of limitation. As against this, learned Counsel for the respondent/plaintiff also relied on the judgments as mentioned above wherein it is observed that the factum of suit being barred by limitation would be a mixed question of fact and law, and therefore, plaint cannot be rejected in this matter as it requires evidence. He also submitted that para-9 of the plaint cannot be read in isolation, but on meaningful reading of the entire plaint, it is required to determine as to when the cause of action for filing the suit had firstly arisen.

8. It is settled position that for considering the application for rejection of plaint only the averments in plaint are to be taken into consideration and to limited extent the

documents annexed to the plaint. Moreover, though certain date is given being cause of action, but to ascertain the actual date of cause of action, the entire plaint is to be read.

9. Admittedly, in para-9 of the plaint the plaintiff has clearly mentioned that cause of action for filing the suit first accrued in the year 2016. Thus, if the contents of para-9 are considered, then obviously as per the observation of the Hon'ble Apex Court in the case of *Dahiben* (supra), the suit appears to be barred by limitation since it has been filed much after limitation period of three years which expired in the year 2019. However, in para Nos.4 and 5 it is contended that the applicant after retirement in the year 2016 involved in an extra-marital affair with one lady and the said fact came to the knowledge of respondent/plaintiff in the year 2018 for the first time. Though she tried to give understanding to the applicant, but the applicant did not pay any heed to that. Further, it is mentioned that during Covid-19 period when son of applicant came home in the month of December 2020, he personally saw the applicant and the said lady on 3 to 4 occasions. Then son Yash had also told the applicant to stop such behaviour, but the applicant ignored the same. Then it has been mentioned in the complaint that after giving

understanding to the applicant by respondent/plaintiff and her son Yash and when the applicant ignored the same, a third attempt was made by the plaintiff and her son by telling the sisters of the applicant about such affair and to give understanding to him by them. However, when the sisters of applicant took stance that their brother would behave as per his own wish, then the applicant got inspiration and started threatening the plaintiff and children for disposing of the properties including the suit property either by sale or by transferring it to the said woman.

10. Thus, on reading the plaint in entirety, it appears that the threatening for disposing the suit property alongwith other properties was given by the applicant after the month of December 2020, and therefore, though it is claimed by the plaintiff/respondent that the cause of action firstly arose in the year 2016, but it is actually took place after the month of December 2020. Thus, the present suit being filed on 30.04.2023 appears to be in limitation even after considering Article 58 of the Limitation Act. Therefore, considering all these aspects, the impugned order passed by the learned trial Court ultimately appears proper even in the absence of discussion in respect Article 58 of the Limitation Act. As

such, no interference is required in the impugned order and resultantlly the present Civil Revision Application stands dismissed.

(SANDIPKUMAR C. MORE, J.)