



2024:DHC:5297



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

% **Date of order: 10th July, 2024**

+ **C.R.P. 198/2019 & CM APPL. 40216/2019**

RAJBIR SINGH & ANRPetitioners

Through: **Mr.Ujjwal Jha & Mr.Rohan Gupta,**
Advocates

versus

SANJEEVAN PRAKASH & ANRRespondents

Through: **In-person**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 62299/2023 (Delay in filing of rejoinder)

1. This is an application under Section 5 of Limitation Act, 1963 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter “CPC”) for condonation of delay in filing the rejoinder to the reply filed on behalf of respondent No.1.

2. For the reason stated in the application, the delay of 11 days in filing the rejoinder to the reply filed on behalf of respondent No.1 is condoned.

3. The application is disposed of.

C.R.P. 198/2019

1. The instant civil revision petition under Section 115 of the CPC has



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been filed on behalf of petitioners seeking setting aside of the impugned order dated 1st June, 2019 passed by the learned ADJ-04, Patiala House Court, New Delhi in civil suit bearing no. 59359/2016.

2. The respondents/plaintiffs had filed the above said civil suit against the petitioners/defendants stating that the parties are neighbours and have been maintaining strained relations.

3. It is stated that a series of events which allegedly include physical and verbal altercations among the parties led to the institution of various complaints and litigations by both the parties against each other, ultimately leading to filing of the aforesaid civil suit by the respondents/plaintiffs against the petitioners/defendants seeking recovery of Rs. 25 Lakhs on account of damages caused due to alleged mental harassment and torture along with *pendent lite* and future interest @ 18% per annum.

4. In the above said civil suit, the petitioners/defendants had filed an application under Order VII Rule 11 (d) of the CPC seeking rejection of the plaint on the ground of the same being barred by limitation. Whilst adjudicating the said application, the learned Trial Court passed the order dated 1st June, 2019 (hereinafter “impugned order”) dismissing the petitioners’ application along with cost of Rs. 5,000/-.

5. Being aggrieved by the impugned order, the petitioners have filed the instant civil revision petition.

6. Learned counsel appearing on behalf of the petitioners submitted that the impugned order is bad in law and is liable to be set aside as the same has been passed without taking into consideration the entire facts and



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circumstances.

7. It is submitted that the learned Trial Court failed to appreciate that Section 23 of the Limitation Act, 1963 (hereinafter “the Act”) is the foundation for any suit seeking damages and there cannot be continuing cause of action as observed by the learned Trial Court.

8. It is submitted that in the present case, any injury that has allegedly been occasioned to the respondent no. 1 is not personal but to her husband. Further, the alleged date of occurrence of injury is stated to be 18th June, 2008 and the present suit having been filed in the year 2014 is time barred and therefore, against the law of limitation.

9. It is submitted that the learned Trial Court failed to appreciate that as per Article 75 of the Act, the limitation period to file a civil suit seeking damages for defamation is one year. It is further submitted that in terms of the said provision, the case title of the civil suit clearly suggests that the same is for damages, therefore, any conclusion arrived by the learned Trial Court with respect to non-applicability of Article 75 of the Act, is erroneous.

10. It is submitted that the learned Trial Court erred in construing the observations of Metropolitan Magistrate while dismissing the application for cancellation of bail, wherein, liberty was given to take legal action against the respondent no. 2 and not against the petitioners as projected by the learned Trial Court in the impugned order.

11. It is submitted that the impugned order is contrary to the settled position of law and has been passed arbitrarily without taking into consideration the contents of the plaint as per which the aforesaid civil suit is



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liable to be dismissed outrightly.

12. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and the reliefs be granted as prayed for.

13. *Per Contra*, the respondent no. 1, appearing in person, vehemently opposed the instant petition submitted to the effect that the same is liable to be dismissed being devoid of any merits.

14. It is submitted that there is no infirmity in the impugned order wherein the learned Trial Court has rightly observed that the present suit, being not filed for defamation/*libel*, does not invite the applicability of Article 75 of the Act.

15. It is submitted that the cause of action in the present suit accrued on 18th June, 2008 when the respondent no. 1 was abused and her husband was beaten mercilessly. The cause of action again accrued on 7th August, 2008 when a false case of was registered by the petitioners against the respondent no. 1 and her husband.

16. It is submitted that the cause of action further accrued between 23rd July, 2008 and 21st November, 2011 when several false complaints were lodged by the petitioners against the respondent no. 1 and her husband.

17. It is submitted that the cause of action further accrued when the respondent no. 1 lodged the complaints with the police against the petitioners from 29th December, 2009 and 13th October, 2012.

18. It is further submitted that the cause of action also accrued on 20th November, 2013 when the respondent no. 1 was given liberty by the Metropolitan Magistrate to take legal recourse against the petitioners afresh.



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Moreover, the cause of action again accrued on 4th February, 2014 when the husband of respondent no. 1 lodged a complaint in the Court of law. The cause of action further accrued on 17th April, 2014 when a legal notice was served upon the petitioners and they were called upon to pay Rs. 25 Lakhs towards the damages. The cause of action again accrued on 21st June, 2014, when a vague reply to the notice dated 17th May, 2014 was sent by the petitioners and no payment was made as was called upon them.

19. It is further submitted that the cause of action further accrued on 29th August, 2014 when a fresh notice was sent upon the defendant no. 3 in the original suit filed by Sh. Veersain, and he was called upon to pay the amount as mentioned above w.r.t. the said damages but it has not been responded so far. Moreover, the cause of action still subsists as till date the petitioners have not paid the amount as was called upon from them, and hence the suit for compensation has been filed as per the provision of law.

20. It is submitted that there is no illegality or errors of jurisdiction in the impugned order and the instant petition is liable to be dismissed since the same is merely a misuse of process of law.

21. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed.

22. Heard the arguments advanced by the parties and perused the material available on record.

23. At this stage, this Court finds it appropriate to peruse the impugned order, relevant extracts of which are as under:



“..8. Having considered the grounds urged for rejection of plaint, I observe that the application of the defendants deserves dismissal. I may state that the applicants pray for dismissal of the suit being barred under Order 7 Rule 11 (d) CPC, whereas the suit cannot be dismissed and it is the plaint which has to be rejected, In case the prerequisites thereunder are found to be attracted. In the Instant suit, the plaintiff, a Senior Finance and Accounts Officer posted at IARI (Indian Agriculture Research Institute) Pusa, New Delhi has filed a suit for recovery of Rupees twenty five Lakhs as compensation alleging that defendant no.1 and 2, neighbors of the plaintiff are harboring strained relations with her. The plaintiff has stated various incidents. In her plaint starting from 18.06.2008 when defendant no.1 stated to have fractured Mandible (dislocated Jaw) of the plaintiff's husband, leading to the registration of F.I.R. against defendant no.1 bearing number 91/08 under Section 325, 506, 509 IPG Which is pending trial. The plaintiff then narrates a cross F.I.R. bearing number 99/08 registered under Section 506, 509 read with Section 34 I.P.C at P.S. Inderpuri dated 07.08,2008 against her husband on the complaint of defendant no.2. The plaintiff avers that in the said cross case, the Ld. Trial Court discharged the husband of the plaintiff (arrayed as an accused) with certain observations against the defendants as detailed In para no.5 of the plaint. The plaintiff states that the subsequent incidents i.e. filing of numerous complaints by defendants against the plaintiff and her husband gave rise to cause of action in her favor, The plaintiff avers In her plaint that the cause of action again accrued when her application for cancellation of bail of accused persons (Defendants herein) in FIR 91/08 P.S. Inderpuri was dismissed by Ld. MM, Patiala House Courts on 20.11.2013 while granting liberty to her to avail appropriate legal recourse in respect of allegation of harassment. I observe that in view of the aforestated factual scenario and looking into the averments of the plaint,' the present suit being not filed for



defamation or libel, thus, the provisions of Article 75 of the limitation act cannot be made applicable. Therefore, the submission of ld. Counsel for the defendants that the suit is time barred or that the same should have been filed within one year from the date of 20.10.2012 i.e., filing of application by plaintiff before Ld. MM is clearly misconceived and misplaced.

9. So far as the grounds of limitation concerns, I am of the view that the cause of action being a conglomerate of facts has not to be determined only from the date when it lastly accrued but also has to be considered in totality and thus has to be taken to be accrued in continuity, given a legal notice was served upon to the defendants on 17.05.2014 which was replied by them on 21.06.2014.

10. In view the totality of facts and circumstances as discussed above, the application of the defendants deserves dismissal. The same stands dismissed with Cost of Bs.5000/- upon the defendants...”

24. Perusal of the above extracts of the impugned order shows that the revisionist had argued before the learned Trial Court that the plaint is liable to be rejected in terms of Article 75 of the Act, as per which any suit for defamation/*libel* is to be filed within a period of one year. It was argued that the plaint is liable to be rejected under Order VII Rule 11 (d) of the CPC as the said plaint was filed in the year 2014 on the basis of a complaint lodged in the year 2008 and hence, filed beyond the prescribed limitation period of one year.

25. It was submitted that that the cause of action as asserted in the plaint accrued lastly on 20th November, 2013, i.e., when the order was passed by



the Metropolitan Magistrate and that cannot be taken into consideration since the said order was passed on the application filed on 20th October, 2012 and even from the said date, the suit of the respondent no.1/plaintiff is barred by limitation as stipulated in Article 75 of the Act.

26. In rival submissions, it was asserted that the civil suit filed by her was not to seek damages due to defamation/*libel*, rather, the same was filed seeking the relief of compensation and damages against the mental harassment and torture as is discernible from the contents of the plaint and thus, the period of limitation stipulated under Article 75 of the Act has no applicability.

27. In paragraph no. 8 and 9 of the impugned order, the learned Trial Court took into consideration the altercations and series of events that took place among the parties that led to the filing of various litigations on both sides, ultimately leading to filing of the civil suit seeking damages for mental harassment and torture by the petitioners/defendants. The plaintiff therein/ respondent no. 1 claimed that complaints filed by the defendants/petitioners therein against her and her husband led to additional causes of action. The cause of action was also cited when the plaintiff's application for cancellation of the defendants' bail in FIR bearing no. 91/08 was dismissed on 20th November, 2013, by the Metropolitan Magistrate at Patiala House Courts, New Delhi, whereby, it was advised to the respondent no. 1 to seek appropriate legal recourse for the alleged harassment.

28. Vide the impugned order, the learned Trial Court noted that the civil suit filed by the respondent no. 1 is not for defamation/*libel*, and thus Article



75 of the Act does not apply. Therefore, the petitioners' claim that the suit is time-barred was rejected. Furthermore, taking into consideration the legal notice served to the petitioners on 17th May, 2014, and their reply dated 21st June, 2014 to the said legal notice, the learned Trial Court emphasized that the cause of action is to be viewed in its entirety and as per the factual matrix of the instant case, it accrued continuously. In view of the above, the learned Trial Court dismissed the petitioners' application filed under Order VII Rule 11 (d) of the CPC.

29. At this juncture, this Court finds it imperative to state the proposition of law with regard to principle of cause of action and limitation.

30. At the outset, it is pertinent to mention here that in order to reject a plaint under Order VII Rule 11 of the CPC, the focus should be solely on the averments made in the plaint, without considering the defendant's pleas in the written statement.

31. Further, during the scrutiny of the averments made in a plaint, it is the bounden duty of the Courts to ascertain the material for highlighting and showing the cause of action for filing the suit.

32. It is also worthwhile to find out the meaning of the words 'cause of action'. Cause of action is a bundle of facts which, along with the application of the law prevailing, gives the plaintiff the right to seek relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree is to be set out in clear terms. A cause of action must include some acts/omissions done/omitted to be done by the defendant. In the absence of such an act/omission being contended and shown in the



pleadings, no relief can possibly accrue to the parties that have approached the Court of law.

33. In the case of ***T. Arivandandam vs. T. V. Satyapal***, (1977) 4 SCC 467, the Hon'ble Supreme Court held that the cause of action is an essential and indispensable ingredient for accepting a plaint and granting a relief thereunder. Relevant paragraphs of the said judgment are as under:

“5....The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them....”

34. It is a settled position of law that that while determining cause of action that led to institution of a litigation, the entire facts and circumstances has to be taken into consideration that ultimately led the concerned party to approach the Court of law and not any single event. Furthermore, if upon a bare reading of the averments made in the plaint, the Court is of the view that it is not liable to be rejected and that proper trial ought to be conducted to determine the rights of the parties, the plaint may not be rejected outrightly.



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35. Moreover, the issue of limitation in a civil suit is a mixed question of facts and law and may only be adjudicated with a due process of a trial by allowing parties to lead evidence and arguments. In ***Raghwendra Sharan Singh v. Ram Prasanna Singh, (2020) 16 SCC 601***, the Hon'ble Supreme Court observing the same, held that a plaint can be rejected under Order VII Rule 11 (d) of the CPC, if by considering the averments of the plaint, it is found that the suit is clearly barred by the law of limitation.

36. In the captioned civil revision petition, it has been contended that the plaint is liable to be rejected in terms of Article 75 of the Act, which states that any suit for defamation/*libel* is to be filed within a period of one year and the plaint was filed in the year 2014 on the basis of a complaint lodged in the year 2008, hence, way beyond the prescribed limitation period.

37. This Court has perused the Lower Court's Record and upon perusal of the plaint, it is made out that in paragraph nos. 18 and 19, the respondent no. 1 had stated the cause of action in detail which led her to the filing of the civil suit against the petitioners. It is perceptible from the reading of the plaint as well as from the observations made by the learned Trial Court that the cause of action not only arose in the year 2008 when the initial altercation occurred among the parties but the plaintiff has also mentioned that the cause of action lastly arose when her application was dismissed by the Metropolitan Magistrate, Patiala House Court, New Delhi and she was asked to approach the appropriate forum of law seeking legal recourse, and the cause of action further arose when the plaintiff sent a legal notice and the same was responded by the petitioners.



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38. The petitioners had filed the application under Order VII Rule 11 (d) of the CPC seeking rejection of the plaint on the grounds that the same is for compensation due to defamation/*libel*, however, upon bare reading of the averments made in the plaint, the same cannot be ascertained and it is observed by this Court that the plaintiff therein has sought for damages due to the harassment she suffered by the continuous altercations and various alleged litigations instituted by the petitioners/defendants. Nowhere has the plaintiff alleged defamation/*libel* and thus, Article 75 of the Act is clearly not applicable in the facts of the instant case and the same has been rightly observed by the learned Trial Court.

39. This Court is of the view that the petitioners are seeking rejection of the plaint on the ground that the cause of action arose in the year 2008 whereas upon reading of the plaint, it is observed by this Court that the plaintiff has narrated the series of events that led to the filing of the civil suit. Therefore, the submission of the petitioners that the suit is time barred or that the same should have been filed within one year from 20th October, 2012 i.e., filing of application by the plaintiff before the Metropolitan Magistrate is clearly misconceived and misplaced as rightly held by the learned Trial Court.

40. This Court is of the considered view that the learned Trial Court did not commit any error of law in holding that the cause of action, being a conglomerate of facts, is not to be determined only from the date when it lastly accrued but has to be considered in totality and thus, it has to be taken to be accrued in continuation.



41. In the preceding paragraphs, this Court has observed that only the averments made in the plaint are germane and with regard to the facts of the matter at hand, it is observed that the cause of action accrued on multiple occasions thereby making it continuous and the veracity of the same may not be determined at the stage of deciding the application made under Order VII Rule 11 of the CPC, and that the petitioners/defendants shall have the opportunity to defend their case during trial.

42. As discussed in the foregoing paragraphs, the learned Trial Court in the instant case considered the arguments raised on behalf of the petitioners in their application under Order VII Rule 11 (d) of the CPC, and rightly appreciated the law laid down *qua* the objections so raised.

43. There is nothing in the impugned order which suggests that there is any error of jurisdiction or other error which goes to the root of the matter and invites the intervention of this Court while exercising its revisional powers. It is not to be seen at this stage whether the suit itself will be successful, since the merits of the case itself need not be entered into at the stage of deciding an application under Order VII Rule 11 of the CPC.

44. This Court is of the view that no case of revision as defined under Section 115 of the CPC has been made out by the petitioners. It is held that neither has the learned Trial Court acted illegally in exercising its jurisdiction nor is there any material irregularity in the impugned order.

45. In view of the foregoing discussions on facts as well as law, this Court finds no infirmity in the impugned order dated 1st June, 2019 passed by the learned ADJ-04, Patiala House Court, New Delhi in civil suit bearing no.



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59359/2016 and the same is hereby upheld.

46. Accordingly, the instant petition stands dismissed. Pending applications, if any, also stand dismissed.

47. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 10, 2024

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Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed By: PRAVEEN
KUMAR BABBAR
Signing Date: 10/07/2024
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