



2025:DHC:4757



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 14.05.2025
+ **C.R.P. 73/2024, CM APPL. 10391/2024**

JASLEEN KAUR

.....Petitioner

Through: Mr. Hehmood Pracha Sanawr, Mr.
Jatin Bhatt, Mr. Kshitij Singh, Ms. N.
Naseem, Mr. Sikander Raza, Advs.

versus

SARVJEET SINGH

.....Respondent

Through: Mr. Kuldeep Jauhari, Mr. Amish
Aggarwala, Mr. Anubhav Tyagi, Mr.
Karan Ahuja, Mr. Sahil Ahuja, Advs.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed on behalf of the Petitioner under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] against the order dated 24.08.2023 passed by learned ADJ-02, West Delhi District, Tis Hazari Courts, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Application under Order VII Rule 11 of the CPC filed by the Petitioner (Respondent before the learned Trial Court) has been dismissed by the learned Trial Court.
2. A Coordinate Bench of this Court had by an order dated 15.05.2024 directed that the proceedings before the learned Trial Court be kept in abeyance.
3. Briefly, the facts are that a Suit for recovery of damages in the sum of



2025:DHC:4757



Rs.10 lacs on account of malicious prosecution was filed by the Respondent/Plaintiff against the Petitioner/Defendant. It was stated therein that on 23.08.2015, the Respondent/Plaintiff filed a complaint alleging that the Respondent/Plaintiff had made sexually suggestive and lewd statements, which made her feel uncomfortable and threatened.

3.1 Pursuant to the complaint, the proceedings were initiated and the Respondent/Plaintiff faced a trial for offences punishable under Section 354A/506/509 of the Indian Penal Code, 1860. The Respondent/Plaintiff was acquitted by the Court of learned MM, Mahila Courts, Tis Hazari, Delhi by judgment dated 28.09.2019.

4. After being acquitted, the Respondent/Plaintiff filed a Civil Suit seeking damages for malicious prosecution stating that the prosecution initiated by the Petitioner/Defendant was intended with malice and without any reasonable and probable cause. It was stated in the Plaint that on account of the suffering and agony caused to the Respondent/Plaintiff as well as loss of goodwill, the Respondent/Plaintiff sought damages in the sum of Rs.10 lacs due to mental harassment and loss of reputation caused by the acts of the Petitioner/Defendant.

4.1 The Written Statement was filed by the Petitioner/Defendant. Along with the Written Statement, an Application under Order VII Rule 11 of the CPC was filed seeking rejection of the Plaint. The said Application was dismissed by the Impugned Order dated 24.08.2023, which is the subject matter of challenge in the present Petition.

5. Learned Counsel for the Petitioner/Defendant has contended that the



2025:DHC:4757



Suit as filed by the Respondent/Plaintiff is without any merit and is to be dismissed since it does not disclose any cause of action. In addition, it is submitted that the Plaint is barred by limitation. It is stated that the cause of action to file the Suit arose in the year 2015 and the Suit was filed on 25.09.2020. It is contended that as per the Limitation Act, 1963 [hereinafter referred to as the "Limitation Act"], the limitation period for such a Suit is one year and thus the Suit filed on 25.09.2020 is barred by limitation.

5.1 It is further contended by the learned Counsel for the Petitioner/Defendant that although the Suit sets out that the Suit is for malicious prosecution, the Plaint does not reflect that it arises as a result of malicious prosecution, since the prayers in the Plaint are prayers for a decree of damages in the sum of Rs.10 lacs along with interest at the rate of 12% per annum.

5.2 Although other objections were taken under the Application under Order VII Rule 11 of the CPC, the Petitioner/Defendant has confined his arguments to two pleas, firstly that there is no cause of action to file the Suit and secondly, that the Suit as filed is barred by limitation.

6. Learned Counsel for the Respondent/Plaintiff on the other hand has contended that so far as concerns the contention of the Petitioner/Defendant that the Suit has no cause of action and has only been filed for recovery of damages, the same is not borne out from the Plaint. Learned Counsel seeks to rely upon several prayers of the Plaint including the title of the Plaint to submit that the Suit has in fact been filed for malicious prosecution.

6.1 It is further contended by the learned Counsel for the



2025:DHC:4757



Respondent/Plaintiff that the limitation as is set out in Article 74 of the Schedule to the Limitation Act provides that a suit seeking damages for malicious prosecution can be filed within one year from when the plaintiff is acquitted or the prosecution is otherwise terminated. Given that the Petitioner/Defendant was acquitted on 28.09.2019, the Suit filed on 03.10.2020 was within the prescribed time in view of the judgment of the Supreme Court in *In Re Cognizance for Extension of Limitation*¹.

6.2 Thus, it is contended that the Application filed by the Petitioner/Defendant was rightly dismissed by the learned Trial Court.

7. The contentions raised by the Petitioner/Defendant before this Court were also raised by the Petitioner/Defendant before the learned Trial Court. The learned Trial Court examined the Complaint and found that the averments that criminal prosecution was lodged without reasonable cause form part of the Complaint. It was further held that the Complaint when read as a whole raises a definitive cause of action to institute the present Suit.

7.1 The learned Trial Court also gave a finding that the prescribed time period to be calculated for filing such Suit, would be calculated from the date of the acquittal, which is 28.09.2019 and that the present Suit which is filed on 03.10.2020 would be covered by the extension of limitation as provided in *In Re Extension of Limitation* case. It is apposite to extract paragraph 5 of the Impugned Order below:

“5. The necessary averments disclosing a cause of action for instituting the present suit for seeking compensation for malicious prosecution are contained in Para 5 of the complaint. It has been specifically averred that criminal prosecution was launched without any reasonable cause.

¹ (2022) 3 SCC 117



2025:DHC:4757



Whether or not the plaintiff will be able to lead evidence to prove his assertion will be a matter of trial. The plaint when read as a whole raises a definite cause of action to institute the present suit. As far as the issue of limitation is concerned, the plaintiff was acquitted on 28.09.2019 and present suit has been filed on 03.10.2020. As per Article 74 of The Schedule of the Limitation Act 1963, a suit for seeking compensation for malicious prosecution must be filed within one year from when the plaintiff is acquitted or the prosecution is otherwise terminated. No doubt, the suit has been filed after one year from date of acquittal of the plaintiff but the limitation to institute the present suit expired during the height of pandemic. Hon'ble Apex Court in Suo Motu [sic: moto] Writ Petition (C) No.3 of 2020 vide order dated 10.01.2022 had extended the period of limitation for all proceedings w.e.f. 15.03.2020 till 28.02.2022. Present suit is thus covered by the order of Hon'ble Apex Court referred to above since the plaint was instituted on 3.10.2020 whereas the limitation expired on 27.09.2020. The present suit would thus be treated as having been filed within the period of limitation."

[Emphasis Supplied]

8. The Supreme Court in the case of *Shakti Bhog Food Industries Ltd. v. Central Bank of India*², while relying on the judgment of the Supreme Court in *Saleem Bhai v. State of Maharashtra*³, has held that the cause of action for filing a suit would consist of a bundle of facts and the factum of the suit being barred by limitation, ordinarily, would be a mixed question of fact and law for which invoking the provisions of Order 7 Rule 11 CPC is ruled out. It has further been held that whether the plea taken by the plaintiff is genuine or legitimate would be a mixed question of fact and law and which would require a response of the defendant. The averments of the written statement in that behalf in an application under Order VII Rule 11 of CPC are wholly irrelevant for the prayers of rejection of the plaint. The relevant extract of the *Shakti Bhog Food Industries* case is reproduced

² (2020) 17 SCC 260

³ (2003) 1 SCC 557



below:

“8...

11. This position was explained by this Court in *Saleem Bhai v. State of Maharashtra* [*Saleem Bhai v. State of Maharashtra*, (2003) 1 SCC 557], in which, while considering Order 7 Rule 11 of the Code, it was held as under: (SCC p. 560, para 9)

‘9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.’

It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the court to scrutinise the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in *Raptakos Brett & Co. Ltd. v. Ganesh Property* [*Raptakos Brett & Co. Ltd. v. Ganesh Property*, (1998) 7 SCC 184] and *Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express* [*Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express*, (2006) 3 SCC 100]...

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22. It is well-established position that the cause of action for filing a suit would consist of bundle of facts. Further, the factum of the suit being barred by limitation, ordinarily, would be a mixed question of fact and law. Even for that reason, invoking Order 7 Rule 11 CPC is ruled out. In the present case, the assertion in the plaint is that the appellant verily believed that its claim was being processed by the regional office and the regional office would be taking appropriate decision at the earliest. That belief was shaken after receipt of letter from the Senior Manager of the



2025:DHC:4757



*Bank, dated 8-5-2002 followed by another letter dated 19-9-2002 to the effect that the action taken by the Bank was in accordance with the rules and the appellant need not correspond with the Bank in that regard any further. This firm response from the respondent Bank could trigger the right of the appellant to sue the respondent Bank. Moreover, the fact that the appellant had eventually sent a legal notice on 28-11-2003 and again on 7-1-2005 and then filed the suit on 23-2-2005, is also invoked as giving rise to cause of action. **Whether this plea taken by the appellant is genuine and legitimate, would be a mixed question of fact and law, depending on the response of the respondents.***

[Emphasis Supplied]

9. A perusal of the Complaint shows that the title of the Suit is a Suit for recovery of damages on account of malicious prosecution. A plain reading of the Complaint shows a definitive cause of action. Paragraph 5 and the paragraphs from paragraph 7 onwards in the Complaint set out the narration of the incidents that happened which led to the Complaint being filed against the Petitioner/Defendant. It further states in paragraph 20 therein that before the Respondent/Plaintiff could lead his defence evidence, he was acquitted by the learned Magistrate giving the reason that no case is made out. Paragraph 23 of the Complaint sets out that the Respondent/Plaintiff has sought damages for the mental suffering and the agony caused to him and for the loss of goodwill. It is apposite to set out the cause title of the Complaint and other paragraphs of the Complaint, below in this behalf:

“SUIT FOR RECOVERY OF DAMAGES ON ACCOUNT OF MALICIOUS PROSECUTION”

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“2. That succinctly stated on 23.8.2015, the above mentioned Defendant lodged an FIR u/s 354A/506/509 IPC against the Plaintiff alleging that the Plaintiff made sexually suggestive and lewd statements to her which made her feel uncomfortable and threatened.”

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“5. The present Civil Suit against the Defendant seeks damages for



2025:DHC:4757



malicious prosecution as the prosecution initiated by the Defendant was intended with malice without any reasonable and probable cause and it eventually led to the termination of the prosecution in the Plaintiff's favour."

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"7. That on 23.8.2015, the Plaintiff was going to Tilak Nagar market in the evening around 08.05 pm and when he was taking left turn at Red Light Near Aggarwal Sweets, the Defendant approached the Plaintiff.

8. The Defendant was managing traffic as part of a Volunteer Group of a political party and tried to stop the Plaintiff as well as several other motorists who were trying to take a left turn at a red light at the intersection. Upon the objection of the Plaintiff and others, the Defendant retorted that the left turn is not free. On the Plaintiff saying that he shall take the left turn and that the Defendant can do what she wants, the Defendant said "she'll teach him a lesson" and clicked his picture.

9. Thereafter, Defendant posted a social media post in which she made up false details about the incident. That the Defendant Ms. Jasleen Kaur posted pictures of Plaintiff on her Facebook handle as follows:

"This man (misnomer) made obscene comments of me today at around 8 pm near Aggarwal. Tilak Nagar, He was on a silver Royal Enfield vehicle number-OL 4S CE 3623. When I told him that I'm clicking his picture and I'm going to file a complaint against him, he responded by posing for the picture and said "Jo kar sakti hai kar le Complaint kar ke dikha, fir dekhiyo kya karta hun main".

But there was something that is disturbing me much more than his obscene remarks- the fact that it was a red traffic signal and 20 other people heard what he was telling me. Yes, no one minded. No one intervened. No one stood up for me, I decided to stand up for myself and lodged a complaint in Tilak Nagar police station with his photo and vehicle number.

Share his picture and vehicle number as much as you can to pin this creep

(only if you care)

Today he had the audacity to say these things to me, tomorrow he will have the audacity to move one step ahead and do it.

PS-I could've written here exactly what he said in his comments, but I don't want FB to remove my post"



2025:DHC:4757



The facebook post of the Defendant is annexed herewith and marked as Annexure P-2.”

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“20. Thereafter, before the Plaintiff could lead his defence evidence, he was acquitted by the Ld. Magistrate citing reasons that no case is made out against the Plaintiff and he is being falsely implicated.

21 That the Defendant has made the said baseless allegations recklessly with an intention to throw a tint and cast a slur on the reputation of the Plaintiff. That such allegations are bereft of any truth, being per-se false, non-existent in addition to being grossly and per-se defamatory and have been made with the sole intention of harming the reputation of the Plaintiff and with full intention and knowledge to defame the Plaintiff.

22. That the Plaintiff is in severe mental agony and distress as the said malicious publications has lowered the moral and intellectual reputation of the Plaintiff. The intention to harm the Plaintiff is evident. There exists both knowledge and reason to believe that the imputation would harm the reputation of the Plaintiff.

23. The mental suffering an agony caused to the Plaintiff as well as the actual loss in goodwill caused to the Plaintiffs is beyond an exact calculation, however, the Plaintiff seeks damages on account of damages due to mental harassment and loss of reputation caused to him by the highly slanderous acts of the Defendant.”

9.1 Cause of action is a set of facts that gives rise to a claim. A perusal of the plaint shows that a detailed cause of action, describing in detail the incident which have led to the filing of the suit. Thus, the averment that the plaint does no disclose a cause is without any merit.

10. This Court also finds no infirmity with the Impugned Order on the aspect of limitation. Article 74 of the Limitation Act provides a one-year limitation period in the following terms:

Article	Description of Suit	Period of Limitation	Time from which period begins to run
74	For compensation for a malicious prosecution.	One year.	When the plaintiff is acquitted or the



2025:DHC:4757



			prosecution is otherwise terminated.
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11. The Supreme Court *In Re Extension of Limitation* has held that in the event that the limitation to file a suit expires in the period between 15.03.2020 and 28.02.2022, the period of limitation shall be extended to 90 days after 28.02.2022. The relevant extract is set out below:

“5. Taking into consideration the arguments advanced by the learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA No. 21 of 2022 with the following directions:

5.1. The order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] is restored and in continuation of the subsequent orders dated 8-3-2021 [Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452 : (2021) 3 SCC (Civ) 40 : (2021) 2 SCC (Cri) 615 : (2021) 2 SCC (L&S) 50], 27-4-2021 [Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231 : 2021 SCC OnLine SC 373] and 23-9-2021 [Cognizance for Extension of Limitation, In re, 2021 SCC OnLine SC 947], it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

5.2. Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.

5.3. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.

5.4. It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

[Emphasis Supplied]



2025:DHC:4757



12. As stated above, the Petitioner/Defendant was acquitted by the learned MM, Mahila Courts, Tis Hazari, Delhi in the proceedings initiated by the Petitioner/Defendant by a judgment dated 28.09.2019. In terms of Article 71 of the Schedule to the Limitation Act, the period of limitation would have expired on 27.09.2020, which is a day, which falls between 15.3.2020 and 28.02.2022 and thus the limitation would stand extended to 90 days after 28.02.2022, and would expire on 29.05.2022.

12.1 Undisputably, the Suit for recovery of damages was filed by the Respondent/Plaintiff on 25.09.2020. Thus, and in terms of the judgment of the Supreme Court *In Re Extension of Limitation* case, the Complaint was within limitation.

13. The Supreme Court in *Ambadas Khanduji Shinde v. Ashok Sadashiv Mamurkar*⁴, has held that the revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of CPC, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. The Supreme Court in *Ambadas Khanduji* case has held:

“14. Apart from the factual aspect, order lacks merit on the ground of jurisdiction. The High Court cannot interfere with the concurrent factual findings while exercising jurisdiction under Section 115 of the Civil Procedure Code. It is settled law that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of the Civil Procedure Code, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. In the facts on hand, the courts below have passed reasoned orders well within the jurisdiction conferred upon them. We arrive at the conclusion that the High Court committed error in interfering with the judgment and decree of the trial court.”

[Emphasis Supplied]

⁴ (2017 14 SCC 132)



2025:DHC:4757



14. The examination by the Court shows that the Impugned Order does not suffer from any infirmity which would merit interference by this Court.

15. The Petition is accordingly dismissed. The pending Application also stands closed.

16. It is, however, made clear that the order passed today will not preclude the Petitioner from raising all contentions and defences before the learned Trial Court. The rights and contentions of both the parties are left open in this behalf.

17. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

MAY 14, 2025/ ha/r

Click here to check corrigendum, if any