



2025:DHC:6891



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

% ***Date of Decision: 22.07.2025***

+ **C.R.P. 172/2022, CM APPL. 44494/2022, CM APPL. 18921/2023
& CM APPL. 2155/2024**

DR. P.K. DAVE

.....Petitioner

Through: Mr. Mukul Gupta, Sr. Adv. with Mr.
Tushar Gupta, Advocate.

versus

KRISHAN RAI & ORS.

.....Respondents

Through: Dr. Pankaj Garg, Mr. Yaksh Garg,
Ms. Yashna Ahuja & Mr. Rahul
Senapati, Ms. Himanshul Tyagi &
Ms. Preeti, Advocates for R-1.
Mr. Vibhor Garg, Mr. Sumit Mishra,
Mr. Keshav Tiwari & Ms. Diksha
Kakkar, Advocates for R-2/AIIMS.
Mr. Arun Batta & Mr. Abdul Vahid,
Advocates for R-3.

+ **C.R.P. 190/2022, CM APPL. 48506/2022 & CM APPL. 875/2024**

AIIMS

.....Petitioner

Through: Mr. Vibhor Garg, Mr. Sumit Mishra,
Mr. Keshav Tiwari & Ms. Diksha
Kakkar, Advocates.

versus

SH. KRISHAN RAI & ORS.

.....Respondents

Through: Dr. Pankaj Garg, Mr. Yaksh Garg,
Ms. Yashna Ahuja & Mr. Rahul
Senapati, Ms. Himanshul Tyagi &
Ms. Preeti, Advocates for R-1
Mr. Mukul Gupta, Sr. Adv. with Mr.



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Tushar Gupta, Advocates for R-2.
Mr. Arun Batta & Mr. Abdul Vahid,
Advocates for R-3.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petitions have been filed on behalf of the Petitioners under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as “CPC”] against the two orders dated 18.05.2022 passed by learned Additional District Judge-03, South District, Saket Courts, New Delhi both in CS DJ/289/2018 captioned ***Krishan Rai v. AIIMS & Ors.*** [hereinafter referred to as “Impugned Order”].
2. By the Impugned Order, the two Applications, both under Order VII Rule 11 of the CPC filed by the Petitioner in C.R.P. 172/2022 (Defendant No.1 before the learned Trial Court) and Petitioner in C.R.P. 190/2022 (Defendant No.2 before the learned Trial Court) have been dismissed by the learned Trial Court giving a finding that the objections raised by the Petitioners/Defendants are a matter of trial.
3. The Applications that were filed by the Petitioners/Defendants were *para materia* in nature as are the two Impugned Orders.
4. Briefly the facts are that a suit for award of compensation and damages in the sum of Rs.60 lacs was filed by Respondent No.1/Plaintiff against the Petitioners/Defendants. It is the case of the Respondent No.1/Plaintiff that he was an employee of the Petitioner in C.R.P. 190/2022 [hereinafter referred to as the “AIIMS”] as a hospital attendant.



4.1 It is the case of the Respondent No.1/Plaintiff that he was an office bearer of a trade union of AIIMS employees for several years and was popular amongst the Class III and Class IV employees of AIIMS. However, and in pursuance of two complaints registered by the Petitioner in C.R.P. 172/2022 [hereinafter referred to as the “PKD”], two FIRs were registered against the Respondent No.1/Plaintiff being FIR Nos.18/1997 dated 12.04.2013 and 620/1998 dated 04.05.2013, both with the Police Station Defence Colony, New Delhi. The Respondent No.1/Plaintiff was acquitted by final orders dated 12.04.2013 passed in *State v. Shri Kishan Rai* and 04.03.2013 in *State v. S.K. Rai* by the Court of the learned Metropolitan Magistrate, South East District, Saket Courts, New Delhi.

4.2 It is the case of the Respondent No.1/Plaintiff that in view of these false complaints, the Respondent No.1/Plaintiff has undergone tremendous mental torture and harassment at the hands of the Petitioners/Defendants from the year 1997. It is further his contention that his dignity and the dignity of his family members has been publicly damaged since he was portrayed as a criminal in the eyes of the society. The Respondent No.1/Plaintiff has also stated that the pendency of the criminal cases against him led to the loss of his employment, and thus, the Respondent No.1/Plaintiff has sued filed a suit for damages for:

- (i) Loss for character assassination: Rs.25 lacs
- (ii) Loss of career prospect: Rs.35 lacs
- (iii) Loss of career of four children To be awarded.

5. While, it is the case of the Petitioners/Defendants that the Respondent No.1/Plaintiff was guilty of insubordination and indulgence in improper and



unlawful acts. It is further the case of the Petitioners/Defendants that Respondent No.1/Plaintiff would use his position to organize and spearheads strikes at the AIIMS Hospital, which would lead to entire machinery of the institute to come to a standstill. The Respondent No.1/Plaintiff was dismissed from his services after a disciplinary action was initiated against him on grounds of being absent from work, insubordination, abusing the Management and creating problems in running the Establishment. It is further the case of the Petitioners/Defendants that Respondent No.1/Plaintiff has not challenged his dismissal.

6. Learned Senior Counsel for the Petitioners/Defendants has made two submissions. It is submitted that the plaint as filed by the Respondent No.1/Plaintiff is barred under the provisions of Order VII Rule 11(d) of the CPC, being barred by limitation.

6.1 Learned Senior Counsel submits that the suit that has been filed has been filed seeking recovery of damages in the sum of Rs.60 lacs by the Respondent No.1/Plaintiff on account of malicious prosecution as well as on account of compensation. It is contended that the right to sue for malicious prosecution under Article 74 of the Schedule to the Limitation Act, 1963 [hereinafter referred to as the “Limitation Act”] provides that to file proceedings seeking relief for malicious prosecution, is one year from the date when the plaintiff is acquitted or the prosecution is terminated.

6.2 Learned Senior Counsel submits that so far as concerns the provision for compensation for damages, Article 113 of the Limitation Act would apply, which provides for limitation where no other period is provided as three years from the date when the right to sue accrues.



6.3 Learned Senior Counsel relies upon the list of dates the he has placed on record to submit that the Respondent No.1/Plaintiff was dismissed from his services in 1998 and after two FIRs bearing Nos.18/1997 and 620/1998, both were registered in Police Station Defence Colony, against him, these FIRs resulted in an acquittal for the Respondent No.1/Plaintiff on 12.04.2013 and 04.05.2013 respectively. Thus, the right to sue for malicious prosecution would have accrued with one year from these dates and the suit filed in the year 2018 is barred under the provisions of Article 74 of the Limitation Act.

7. Secondly, learned Senior Counsel for the Petitioners contends that on the other ground taken in the plaint, which is the damages for grant of compensation for loss of career prospects and the career of his children, the cause of action arose in the year 2013, when the Respondent No.1/Plaintiff was acquitted by the learned Trial Court. Learned Senior Counsel submits that even by applying Article 113 of the Limitation Act, the limitation for filing the plaint would have come to an end in the year 2016 and the suit filed in 2018 is barred by limitation.

8. Learned Counsel for the Respondent No.3 submits that he adopts the arguments that have been made by the learned Senior Counsel for the Petitioners.

9. Learned Counsel for Respondent No.1/Plaintiff, on the other hand, has contended that the Impugned Order does not suffer from any infirmity. It is submitted that the issues as raised by the Petitioners would be subject matter of trial. It is further submitted that looking at the plaint in totality, as is the settled law, there is a “continuous cause of action accruing on a day-



to-day basis”. Lastly, it is contended by the learned Counsel for Respondent No.1/Plaintiff that the challenge in the present Petitions is under the revisionary jurisdiction and the facts cannot be examined by this Court.

10. As stated above, the Petitioners/Defendants filed two separate Applications under the provisions of Order VII Rule 11 of the CPC, wherein it was contended that the averments in the plaint themselves state that the cause of action arose in the year 2002 and thereafter arose in the year 2013. Relying on Article 74 of the Limitation Act, it has been contended that the period of limitation for malicious prosecution is one year from the date when the Plaintiff is acquitted or the prosecution is terminated, and thus, the suit filed in the year 2018 is barred by limitation. Article 74 of the Limitation Act provides a one-year limitation period in the following terms:

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

11. The learned Trial Court discussed the law under Order VII Rule 11 of the CPC including the judgment of the Supreme Court in ***Kamala & Ors. vs. K.T. Eshwara Sa and Ors.***¹, which states that for a suit to be barred under Order VII Rule 11(d) of the CPC, it must be shown that the suit is barred by law. The learned Trial Court has held that in paragraphs 11 and 12 of the plaint, the Respondent No.1/Plaintiff is seeking damages for loss of career and that this would be covered under Article 113 of the Limitation Act,

¹ (2008) 12 SCC 661



where the period of limitation is three years. However, the learned Trial Court has given a finding that since the objection raised in the Applications under adjudication are “contentious issues” and are matters which require trial, no *prima facie* ground is made out for rejection of the plaint.

11.1 The learned Trial Court has also given a finding that the question of limitation is mixed question of fact and law which can only be adjudicated after a trial and the pleadings are yet to be completed as the matter is still at an initial stage and has thus dismissed the Applications.

12. The Supreme Court in the ***Kamala & Ors.*** case has held that barred by law means barred by a specific law and such a conclusion has to be drawn from the averments made in the plaint. The relevant extract is reproduced below:

“21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

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24. It is one thing to say that the averments made in the plaint on their face discloses no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by a law.”

[Emphasis Supplied]

13. It is also well settled law that limitation is usually a mixed question of fact and law, however, in cases where from a plain reading of the plaint and



the documents filed with the plaint, the plaint is seen to be barred by any law. The Courts should not hesitate to grant relief. The Supreme Court in the case of *Shri Mukund Bhavan Trust v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle*² had held where it is glaring from the averments of the plaint that the suit is appears barred by limitation, the Courts should not be hesitant in granting the relief in an Application under Order VII Rule 11, CPC since forcing the defendants to undergo the ordeal of leading evidence would cause more harm to the defendants. The relevant extract of *Shri Mukund Bhavan Trust* case is below:

“26. At this juncture, we wish to observe that we are not unmindful of the position of law that limitation is a mixed question of fact and law and the question of rejecting the plaint on that score has to be decided after weighing the evidence on record. However, in cases like this, where it is glaring from the plaint averments that the suit is hopelessly barred by limitation, the Courts should not be hesitant in granting the relief and drive the parties back to the trial Court. We again place it on record that this is not a case where any forgery or fabrication is committed which had recently come to the knowledge of the plaintiff. Rather, the plaintiff and his predecessors did not take any steps to assert their title and rights in time. The alleged cause of action is also found to be creation of fiction. However, the trial Court erroneously dismissed the application filed by the appellants under Order VII Rule 11(d) of CPC. The High Court also erred in affirming the same, keeping the question of limitation open to be considered by the trial Court after considering the evidence along with other issues, without deciding the core issue on the basis of the averments made by the Respondent No. 1 in the Plaint as mandated by Order VII Rule 11(d) of CPC. The spirit and intention of Order VII Rule 11(d) of CPC is only for the Courts to nip at its bud when any litigation ex facie appears to be a clear abuse of process. The Courts by being reluctant only cause more harm to the defendants by forcing them to undergo the ordeal of leading evidence. Therefore, we hold that the plaint is liable to be rejected at the threshold.”

[Emphasis Supplied]

14. As stated above, two FIRs bearing Nos. 18/1997 and 620/1998 were

² 2024 SCC OnLine SC 3844



registered against the Respondent No. 1/ Plaintiff which resulted in an acquitted on 12.04.2013 and 04.05.2013 respectively. In terms of Article 71 of the Schedule of Limitation Act, the period of limitation would have expired on 11.04.2014 and 03.05.2014 respectively.

15. Undisputedly, the suit was filed by the Petitioners/Defendants. A Civil Suit bearing No.CS/289/18 captioned **Krishan Rai v. AIIMS & Ors.** was filed on 23.03.2018 by the Respondent No.1/Plaintiff. The Applications under Order VII Rule 11 of the CPC were filed in the first instance in July, 2018 [hereinafter referred to as “Application”], however, these Applications were decided by the Impugned Order on 18.05.2022. The Applications set out that the suit as filed was hopelessly barred by limitation since it was filed seeking damages for malicious prosecution.

16. The Respondent No. 1/Plaintiff has set out in the plaint that the cause of action has arisen in the year 1997 and 1998 when the FIRs were registered, and thereafter, the cause of action arose in 2013 when the Respondent No. 1/Plaintiff was acquitted by the learned Trial Court. However, the Plaint then sets out that the cause of action is continuing on a day-to-day basis without clearly specifying as to how the cause of action would occur on a day-to-day basis. Paragraph 17 of the plaint is set out below:

*“17. For the purpose the Suit the cause of action arose in 1997 for the first time when **FIR No.17/1997 was got registered against the Plaintiff. Further cause of action arose in 1998,** when second FIR was got registered against the plaintiff. Further cause of action arose when the Plaintiff was dismissed from service on 22.07.1998 without inquiry. The further cause of action arose when the Appellate Authority found the dismissal order illegal and ordered Plaintiffs reinstatement in service. Further cause of action arose when the chargesheet was filed in the criminal case. **Further cause of action arose in the year 2013 when the Plaintiff has been acquitted of the***



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cases by the Trial Court, *since then cause of action is continuing on day to day basis till date.”*

[Emphasis supplied]

17. The Impugned Order however holds that the plaint has got sufficient pleadings in respect of specific causes of action, and when read as a whole, reflects disputed questions of facts and contentions. It further holds that the objections raised by the present Application are contentious issues, thus are a matter of trial. The Impugned Order other than these generalised findings does not address the issue as to how the suit would not be barred by limitation given or how limitation would be extended to the date of filing the suit or how the cause of action is continuing on a day to day basis, given the facts in issue in the present case.

18. Given the admission by the Respondent No.1/Plaintiff that the cause of action having arisen in 2013, the averments in the plaint are glaring enough to show that the suit appears to be barred by limitation. Thus, the finding of the learned Trial Court cannot be sustained.

19. The Impugned Order is accordingly set aside.

20. The Petitions and pending Applications are disposed of.

21. The parties shall appear before the learned Trial Court on the date fixed.

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

TARA VITASTA GANJU, J

JULY 22, 2025/ ha/g.joshi