

Ashok Kumar Parmar Vs. B.D.C. Sankiila and ors.

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Court : Delhi

Decided On : Oct-06-1994

Reported in : ILR1995Delhi60; 1995RLR85

Judge : R.C. Lahoti, J.

Acts : Delhi High Court (Original Side) Rules, 1967

Appeal No. : Suit No. 2281 of 1987

Appellant : Ashok Kumar Parmar

Respondent : B.D.C. Sankiila and ors.

Advocate for Pet/Ap. : N.N. Agarwal,; Raj Kishore and; S.K. Puri, Advs

Judgement :

R.C. Lahoti, J.

(1) This order would decide the following preliminary issue :

'whether the suit is barred by Imitation ?'

(2) The suit is for recovery of damages for the tort of libel. The alleged insinuation is said to have been made on 11-9-1986 in a' newspaper. The plaint was prepared on 10-9-1987 and presented before the officer authorised to receive the plaint on the same day. The relevant office noting arc illegible to a large extent. However,

whatever can be ascertain is briefly stated hereinafter.

(3) The office found the presentation of the plaint to be defective on three counts :
(i) the certified copy of the order accompanying the plaint did not bear the court fee stamp of 75 paise (ii) photo copies of documents accompanying the plaint were not attested as true copies (iii) a photo copy of the document was in Hindi and was not accompanied by translation in English nor the translation charges were paid.

(4) On 15-9-1987. the plaint was returned to the plaintiff for rectifying the objections. It appears to have been represented on 16-10-1987. On 17-10-1987 the office again returned the plaint pointing out objection No. 3 having not been removed. The plaint was represented on the same day and directed to be listed before the Registrar for hearing on admission on 29-10-1987, where after summons were directed to be issued to the defendants.

(5) It is submitted on behalf of the defendants that the initial presentation on 10-9-1987 was defective and the plaintiff consumed unnecessary time in representing the-plaint after removing the defects which period he has neither explained as having been lost bona fide. nor sought to be condoned by making an appropriate application and hence cannot be excluded for 'the purpose of counting the period of limitation. It is further submitted that the plaint would be deemed to have been presented on 16-10-1987 on which day the suit was barred by limitation Rules 1 and 2 of Chapter 4 of Delhi High Court (Original Side) Rule, 1967 framed in exercise of powers conferred 'by Sections 122 and 129 of Cpc and Section 7 of the Delhi High Court Act. 1966 read as under :

'1.Presentation at the counter.All plaints, petitions, applications and documents including application for leave to sue in forma pauperis shall be presented by the plaintiff, petitioner applicant, defendants or respondent in person or by his duly authorised agent or by an advocate duly appointed by him for the purpose, at the filing counter. All such documents filed in Court shall be accompanied by an index in duplicate containing their details. The amounts of court fee affixed or paid on any such document shall also be indicated at the index. Sufficient number of copies of the plaint, petition or application shall also be filed for service on the opposite party.

2. Endorsement and scrutiny of document.-(a) The officer in charge of the filing counter shall endorse the date of receipt on the plaint, petition, application, or proceedings and also on the duplicate copy of the index and return the same to the party. He shall enter the particulars of all such documents in the register of daily filing and thereafter cause it to be sent to all the office concerned for examination. If on scrutiny, the document is found to be defective, such document shall, after notice to the party filing the same, be placed before the Registrar. The Registrar may for sufficient cause return the said document for rectification or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary.'

(B) Where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing decline to register the document.

(E) Any party aggrieved by any order made by the Registrar under this rule may, within fifteen days of the making of such order, appeal against it to the judge in Chambers.

(6) The presentation of the plaint is its receipt at the filing counter. The date has to be endorsed on the plaint and it will be decided to be the date of presentation. However, if on scrutiny it is found to be defective, it has to be placed before the Registrar. The Registrar may return the same for rectification or amendment. The Registrar has to appoint and allow to the party concerned such reasonable time as he may consider necessary for removal of the defects. Representation after compliance within the appointed time would relate back to original presentation. Failure to comply with the order of the Registrar may result into declining by the Registrar of registration of the plaint. For that purpose reasons have to be assigned. Any party aggrieved by the order of the Registrar has a right to file a chamber appeal.

(7) The learned counsel for the defendant has relied on two decisions of this Court. In *S.V. Khadekar v. Sri Ram Scientific and Industrial Research Foundation* : 38(1989)DLT10 (1) an earlier decision in *Smt. Parvati v. Anand Parkash* : AIR1987 Delhi90 has been followed. Both are the cases of appeals. A distinction between

defects of substantial charade; and defects otherwise has been drawn. It is also held that once an appeal was filed within the limitation' then refileing of the appeal cannot entail dismissal as time barred if there was a formal defect pointed out by the Registry and compliance was made within the time appointed for the purpose.

(8) In *Union Bank of India v. M/s. Sunpack Corporation.* : AIR1986 Bom353 a distinction has been drawn between presentation of plaint and admission of plaint. It has been observed:

'after the presentation the plaint is scrutinised. If there are any defects in the same, the plaintiff is required to remove them. The removal of defects is a matter of procedure. It is only after the defects are removed that it becomes eligible for an entry and a number, in the register of suits. So long therefore as the plaint is not admitted and entered in the register of suits all 'defects including that of the absence of leave under the said clause can be removed without returning the plaint. There is no question of returning the plaint which is not admitted. It simply remains under objection till it is admitted.'

(9) In *Sukh Nandan Parshad v. Babu Ram-* Air 1952 V.P. 12 it has been held:

'in proper way of ascertaining the date of institution is to find out, whether, while tendering the plaint the plaintiff has done all that he has to do in compliance with Orders 4, 6 and 7. If he has done this, and has nothing more to do. then the tendering of the plaint to the proper officer should be treated as institution. Any delay in office for non-laches of the plaintiff should naturally not be put at his door, if on the other hand, there is some defect to be removed or some deficiency in the court fee to be made up. then it becomes an important question whether the suit is instituted on the date of the tender, or on the date the defect is remedied by the plaintiff. When the court grants time for the removal of the defect, and the defect is remedied, then the suit would normally be deemed to have been instituted not on the latter day but the day of the tendering itself, because the court in its discretion has, as it were condoned the delay. This condensation of the time taken to remove the defects is at the discretion of the court, but it cannot exercise it ex parte so as to deprive the defendant of any right he might have acquired in this interval under the Jaw of limitation. At all events the other party should have the right of urging

that the court's granting time for removal of effect has not affected the advantage he might have gained in the interval.'

(10) Looking to the language of the Rules framed by Delhi High Court, it appears that the emphasis is on the nature of defects found in the plaint. If the defects are of such character as would render a plaint, a no-plaint in the eye of law, then the date of presentation would be the date of refiling after removal of defects. If the defects are formal or ancillary in nature not effecting the validity of the plaint, the date of presentation would be the date of original presentation for the purpose of calculating the limitation for filing the suit.

(11) The Registrar while returning the plaint for rectification has to appoint a reasonable time as he may deem fit. If the compliance is not made within the time appointed, discretion is vested in the Registrar to register or not to register the plaint; recording of reasons in writing being necessary in case of declining to register a plaint. The order of the Registrar if not challenged in appeal becomes final.

(12) In the case at hand, the defect pointed by the office were defects not so substantial in character as would reduce the plaint to a non-plaint, if the accompanying documents were defective, it could have been deemed as if the defective documents were not filed with the plaint and the consequences contemplated by Order 7 Rule 14, 18 Civil Procedure Code would follow. The Registrar also did not appoint any time for removal of the defects and refiling of the plaint. The plaintiff cannot be made to suffer for the omission on the part of the Registry. The order of the Registrar registering the plaint has not been appealed against by any of the defendants by filing an appeal to the Judge in Chambers. Thus representation of plaint would relate back to original presentation. For the purpose of limitation, the suit would be deemed to have been filed on the date on which the plaint was first presented at the filing counter i.e. on 10-9-87.

(13) The suit is held not barred by limitation. The issue is decided against the defendant and in favor of the plaintiff. For further directions to be listed, on 25-1-95.

