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Court : Rajasthan

Decided On : Feb-09-2000

Reported in : AIR2000Raj377; 2000(4)WLC218; 2000(2)WLN551

Judge : V.S. Kokje, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 35A

Appeal No. : Civil Revision Petition No. 983/1996

Appellant : Daya Ram and ors.

Respondent : Ganesh Ram

Advocate for Pet/Ap. : Salil Trivedi, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

V.S. Kokje, J.

1. This is a revision petition filed by defendant in a suit filed by the non-petitioner claiming damages for malicious proceedings against the petitioner. The petitioner moved an application under Order 7, Rule 11, CPC for rejection of the plaint contending that such a suit was not entertainable in view of Section 35A of the

Code of Civil Procedure. The trial Court rejected the application against which this revision petition has been filed.

2. The learned counsel contended that suit claiming-damages for malicious proceedings would not lie in view of the provisions of cost and special costs made in the Code of Civil Procedure.

3. A perusal of the plaint would show that it was alleged that the revision petitioner-had complained to the City Improvement Trust about an encroachment on public land. According to the plaintiff he had to appear before the authorities several times and suffered inconvenience and expenses in that, It is also averred in the plaint that the Municipal Council, Jodhpur and City Improvement Trust, Jddhpur issued notices to the plaintiff and he had to suffer a loss of Rs. 1.000/- on defending the actions. It is also contended that a civil suit was filed by the revision-petitioners against the plaintiff in which an injunction was claimed. The temporary injunction application was dismissed and the suit was also ultimately dismissed. Revision applications also had to be fought by the plaintiff. Total damages for malicious proceedings is claimed at Rs. 24,000/-, the break-up of which is given in paragraph 9 of the plaint.

4. The contention of the revision petitioners is that Section 35A of the Code of Civil Procedure is exhaustive and any compensatory cost in respect of false or vexatious claim can be claimed only under that section and no separate suit could be filed for recovering damages on account of expenses of the litigation. This contention does not take into account the pecuniary limitation prescribed by Sub-section (2) of Section 35A of the Code of Civil Procedure where outer limit for such costs has been placed at Rs. 3.000/- or the limits of the pecuniary jurisdiction of the Court, whichever amount is less. Thus, whatever would be the actual loss suffered the Court is not empowered to grant compensatory cost beyond Rs. 3.000/- at the maximum. This cannot be said to be a substitute for a civil suit for damages in an action in Torts for malicious proceedings.

5. In *Bachha Pandeyv. Mt. Deo Sunder Devi*, AIR 1968 Pat 248 in paragraph 13 it is observed as follows (at pages 252-253) :--

'(13) Cost is awarded in a civil or a quasi criminal action to compensate the winning party for the expenses incurred in that action. For a case of vexatious nature, there is a provision in the Code of Civil Procedure for award of cost by way of compensation. The cost so allowed is to be taken into account in any suit for damages in respect of such vexatious claim. But in awarding cost no account is taken of any injury to property right. Person suffering injury to property right cannot be left without any remedy. A person, who is deprived of exercising the acts of ownership over his property by a direct act of another person or through a motion in a law Court at his instance, is certainly entitled to such damages as are necessary and proximate result thereof. When such act of that other person was intentional it is of no avail to him to urge that he acted bona fide for which he had reasonable ground. It is not necessary for the person injured to prove any malice or want of reasonable or probable cause. Any person should not be allowed to suffer for an intentional act of other. All these are based upon sound principles of equity and justice.'

6. In Bachha Pandey's case (supra) reference to a Privy Council decision in Mohd. Amin v. Jogendra Kumar Bannerjee, AIR 1947 Privy Council 108 is also made. In that case, the Privy Council was dealing with an action for malicious prosecution and not for an action arising out of a civil suit for damages for filing a false and vexatious civil suit. To understand the correct implications of the excerpts quoted in paragraph 10 of Bachha Pandey's case from this judgment, it would be necessary to reproduce the entire paragraph 16 of the judgment to understand the observations in their proper context. It is reproduced hereunder :--

'(16) The action for damages for malicious prosecution is part of the common law of England, administered by the High Court at Calcutta under its letters patent. The foundation of the action lies in abuse of the process of the Court by wrongfully setting the law in motion and It is designed to discourage the perversion of the machinery of Justice for an improper purpose. The plaintiff must prove that the proceedings instituted against him were malicious, without reasonable and probable cause, that they terminated in his favour (if that be possible), and that he has suffered damage. As long ago as 1698 it was held by Holt C. J. In 1 Ld. Raym 374 that damages might be claimed in such an action under three heads.

(1) damage to the person.

(2) damage to property, and

(3) damage to reputation, and that rule has prevailed ever since. That the word 'prosecution' in the title of the action is not used in the technical sense which it bears in criminal law is shown by the fact that the action lies for the malicious prosecution of certain classes of civil proceedings, for instance falsely and maliciously presenting a petition in bankruptcy or a petition to wind up a company : (1883) 11 QBD

674. The reason why the action does not lie for falsely and maliciously prosecuting an ordinary civil action is, as explained by Bowen L. J. In the last mentioned case, that such a case does not necessarily and naturally involve damage to the party sued. A civil action which is false will be dismissed at the hearing. The defendant's reputation will be cleared of any imputations made against him, and he will be indemnified against his expenses by the award of costs against his opponent. The law does not award damages for mental anxiety or for extra costs incurred beyond those imposed on the unsuccessful party. But a criminal charge involving scandal to reputation or the possible loss of life or liberty to the party charged does necessarily and naturally involve damage and in such a case damage to reputation will be presumed.'

7. It is, therefore, clear that the observations made by the Privy Council as to non-maintainability of an action for falsely and maliciously prosecuting an ordinary civil action were actually not of the Judges deciding Mohd. Amtn's case but were from a decision of Bowen L.J. In (1883) 11 QBD 674 Quartz Hill Consolidated Gold Mining Co. v. Eyre. Discussing the arguments in favour and against the question of maintainability of the action assuming that a civil suit did not lie for recovering damages for false and vexatious civil proceedings the Privy Council observed that the reason why the action does not lie for falsely and maliciously prosecuting an ordinary civil action is that such a case does not necessarily and naturally involve damage to the party sued. Similarly, It was observed that a civil action which is false will be dismissed at the hearing, the defendant's reputation will be cleared of any imputations made against him and he will be indemnified against his

expenses by the award of costs against his opponent. It was further observed in the context that the law does not award damages for mental anxiety or for extra costs incurred beyond those imposed on the unsuccessful party. This, was not an authoritative pronouncement on the maintainability of a civil suit for damages for false and vexatious civil proceedings. The Privy Council was only meeting an argument that when such a suit cannot be, in respect of civil proceedings, how could it be in respect of criminal proceedings.

8. There is one more reason, which it appears, was not present before the Privy Council for upholding the maintainability of the civil suit of such nature and that is the limitation placed by section 35A on the Court not to make an order for payment of an amount exceeding Rs. 3,000/- or the limit of the pecuniary jurisdiction of the Court whichever amount is less. If this restriction is taken into consideration even in cases in which the Court deciding the suit was of the opinion that the quantum of damages should have been larger and the amount of costs to be awarded should have been in excess of Rs. 3,000/- it could not have awarded it and the parties would be left remediless.

9. Moreover, not only that there is no express bar to the maintainability of such a suit but Sub-section (4) of Section 35A, C. P. C. makes it clear that the amount of any compensation awarded under Section 35A shall be taken into account in any subsequent suit for damages or compensation in respect of claim in respect of a false or vexatious claim or defence. This is a clear indication that such a suit is maintainable.

10. For the aforesaid reasons the revision petition has no force. It is accordingly dismissed.