

IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A NO.37/2014

Present: Munib Akhtar & Yousuf Ali Sayeed, JJ

Appellant: Syed Mumtaz Ali & others, through Mr. Abdul Qadir Khan, Advocate.

Respondent: Mst.Khatoon Begum, through Mr. Muhammad Nouman Jamali, Advocate.

Date of hearing: 06-02-2017.

Date of Judgment:

JUDGMENT

YOUSUF ALI SAYEED, J. In terms of this HCA, the Appellants have assailed the Order made on 21.01.2014 (the “**Impugned Order**”) by a learned Single Judge of this Court in Suit No. 486 of 2012 (the “**Damages Suit**”), whereby the Appellants Application under Order 7 Rule 11 CPC, bearing CMA No.11837/2012 (the “**Subject Application**”), was dismissed.

2. Briefly, the Respondent had instituted the Damages Suit on 10.05.2012, which, as mentioned in the very title of the plaint, was inter alia on account of malicious litigation.

3. As per para 20 of the plaint, the cause of action in respect of the Damages Suit is stated to have accrued as follows:

“That the cause of action accrued to the Plaintiff in 1998 when Defendants wrong full Suit was instituted and on each occasion when Defendants file frivolous applications to harass Plaintiffs, on 13.01.2005 when the wrong full Suit of Defendant was dismissed, on 5.07.2011 when Defendants appeal was dismissed and in December 2011 when possession of rear portion of the ground floor of “Suit Property” in deteriorating condition was handed over to Plaintiff”.

4. The Appellants filed the Subject Application seeking rejection of the plaint on the ground that as the cause of action was stated in para 20 to have accrued in 1998, the suit was time barred under Article 23 of Schedule I of the Limitation Act, 1908, which prescribes one year's period of limitation for compensation for a malicious prosecution and the time begins to run "when the plaintiff is acquitted, or the prosecution is otherwise terminated".
5. While adjudicating upon the Subject Application the learned single Judge considered para 20 and regarded the case as one where there was a continuing cause of action. As such, the Subject Application was held to be misconceived and was dismissed in terms of the Impugned Order, hence this Appeal.
6. During the course of arguments learned counsel for the Appellants broadly advanced the same proposition as stated in the Subject Application – that the period of limitation under Article 23 begins to run from the date when the plaintiff was ‘acquitted’ by the trial court, or from the date of acquittal in appeal in the event that there was a conviction at trial. However, the filing of an appeal would not serve to suspend the period of limitation if there was acquittal at trial, which is said to have occurred in the instant case in as much as the wrongful suit was dismissed on 05.07.2011. Reliance was placed on a single-bench judgment of this Court in the case of Messrs Marine Management Company through Proprietor v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi & 2 Others, PLD 2000 Karachi 214 (“**MMC’s Case**”).
7. Learned counsel for the Appellants also contended that if the date of dismissal of the wrongful suit (i.e. 13.01.2005) is not to be taken as the *terminus quo* for reckoning the period of limitation, and is to instead be reckoned from the date of dismissal of the ensuing appeal (i.e. 05.07.2011), then in fact no cause of action existed as on the date of institution of the Damages Suit in as much as the matter of dismissal of the so called wrongful suit remained to be finally adjudicated before the

Honourable Supreme Court, where Civil Petition Nos. 780-K & 781-K of 2011 filed by the present Appellants seeking leave to appeal were pending. It was submitted that in these Petitions, leave to appeal was subsequently granted on 05.07.2012. However, it was conceded that the ensuing Appeals were later dismissed in 2015.

8. In response, it was submitted by learned counsel for the Respondent that Article 23 of the Limitation Act prescribes a period of limitation of one year for filing of suit for compensation for malicious prosecution and the period of limitation starts when the plaintiff is either acquitted or when the prosecution is otherwise terminated. In the present case, whilst Suit Number 1568 of 1998, which is the *lis* termed as the wrongful suit in para 20 of the plaint in the Damages Claim, had been dismissed by a learned single Judge of this Court on 13.01.05, the present Appellants had assailed the dismissal vide High Court Appeal, which was in turn dismissed on 05.07.2011.

9. It was submitted that this HCA, being a regular first appeal, ought to be considered a continuation of the suit and hence the prosecution. As such, a fresh period of limitation of one year would be available from the date of termination of the appeal, which afforded a fresh cause of action. It was contended that the mere fact that Leave to Appeal had been sought by the Appellant from the Honourable Supreme Court, did not effect this subsisting cause of action and even otherwise, the grant of Leave came about on 5.7.2012, subsequent to institution of the Damages Suit. He submits that the grounds taken in support of Subject Application are contradictory and opposed to one another, and further contends that for the purpose of Order 7 Rule 11 CPC, the averments contained in the plaint are to be accepted as correct. Since the cause of action in terms of para 20 of the plaint is stated to also have arisen on 05.07.2011, the Damages Suit filed on 10.05.2012 is within the period of limitation. He submits that the Subject Application was thus misconceived.

10. From a perusal of the Judgment in MMC's Case, it appears that the learned single Judge, has considered certain Judgments of the Allahabad High Court, as well as the erstwhile Chief Court of Oudh and the Honourable Lahore High Court, reported as Madan Mohan Singh v. Ram Sundar Singh AIR 1930 All 326, Bhagat Raj v. Mst. Gurai Dulaiya & Another AIR 1938 All 49 (wrongly mentioned in MMC's case as Jagat Ram v. Mst. Ghani Dulaya & Another), Madho Lal v. Hari Shankar AIR 1963 All 547, Shankar Parshad v. Sheo Narian AIR 1935 Oudh 392, and Abdul Ghani Ghumman v. Province of Punjab PLD 1975 Lah 1238.

11. In Madan Mohan Singh's case (supra), for the purpose of determining the commencement of limitation under Article 23, the Allahabad High Court had interpreted the said Article so as to evolve a distinction between prosecutions ending in acquittal from those cases where the prosecution was otherwise terminated, such as by way of discharge. Thus, it was held that an application for revision of an order discharging an accused person could be deemed to be a continuation of the prosecution, or a fresh prosecution in itself, and therefore when the suit was instituted within one year of the dismissal of the application for revision, it was in time, notwithstanding that more than 12 months had elapsed from the date of discharge. However, the learned Judges remarked that in a case where the prosecution ended in acquittal the language of Article 23 left no room for argument with regard to the commencement of limitation, as the article specifically provides that limitation is to run from the date of acquittal. This Judgment was said to have been reaffirmed in Bhagat Raj's case (supra) and followed by the Lahore High Court in Abdul Ghani Ghumman's case (supra). Accordingly, in MMC's Case, where the criminal proceedings giving rise to the subsequent claim for malicious prosecution had been quashed under S.561-A Cr. P.C., the learned single Judge regarded it as a matter of discharge rather than acquittal and referentially held that the criminal appeal filed before the Honourable Supreme Court analogously amounted to prosecution and the period of limitation of one year would start from the date of its dismissal.

12. Whilst it was subsequently clarified in Bhagat Raj's case (supra), that the observation in Madan Mohan Singh's case (supra) on the aspect of "acquittal" was at best made *obiter* and did not form part of the *ratio decidendi* of that case, the dictum in the earlier Judgment on this point was endorsed and followed by a learned division-bench of this Court in a case based on underlying acquittal, reported as Iqbal Hussain Agha & Others v. Hazrat Nabi & Another, 2009 YLR 1624. MMC's Case was considered and the underlying suit filed on 27.10.2004 was held to be time barred under Article 23 in as much as acquittal had taken place on 21.10.2001, even though dismissal of the acquittal appeal had taken place on 10.09.2004.

13. Turning to the contention of learned counsel for the Appellant as to the application of this precedent to the matter at hand, it merits consideration that whilst the prosecution said to form the cause of action in the cases giving rise to the aforementioned Judgments of this Court as well as all those from the Indian jurisdiction appear, on the basis of the facts reported, to have arisen within the realm of the criminal law, the so called wrongful suit in para 20 of the plaint in the Damages Claim (i.e. Suit Number 1568 of 1998) was a proceeding instituted within the original civil jurisdiction of this Court.

14. Whereas a criminal prosecution may terminate in acquittal or discharge, a civil prosecution by way of a suit can only result in either decree or dismissal. Essentially, the question that arises for the purposes of this Appeal is whether, the dismissal of a civil suit is to be regarded as an 'acquittal' or to be regarded as the 'prosecution otherwise being terminated', as this in turn would determine which of the two principles endorsed and followed in MMC's Case and Iqbal Hussain Agha's case (supra) ought to be applied.

15. On a related note, it merits consideration that prior to the judgment rendered by the Honourable Supreme Court in the case of Muhammad Akram v. Mst. Farman Bi (PLD 1990 SC 28), the judicial consensus of our Courts was, that no suit for malicious prosecution arising out of civil litigation could be maintained. This view was based on the decision of the Privy Council in the case reported as Muhammad Amin v. Jogendia Kumar Bannerjee, PLD 1947 PC 95, also AIR 1947 Privy Council 108. Under these circumstances, and keeping in view the legislative history underpinning the Limitation Act, which was passed by the Governor-General of India in Council at a time when the tort of malicious prosecution was predicated primarily on an underlying criminal prosecution, a question that arises is whether the wording of Article 23 applies at all to a *cause* for damages claimed for malicious prosecution of a civil suit. It could be that Article 23 has no application at all in such circumstances, which could mean that the question of limitation would be governed by the residuary Article. However, as this is not a line of argument advanced by either side, we prefer to leave the same open to be decided at another time in an appropriate proceeding. Without prejudice to this question, which can as will be readily appreciated, be of some importance, we decide this Appeal on the basis as argued before us, namely that limitation was governed by Article 23.

16. Therefore, turning to the connotation to be placed on the term "acquittal" for the purposes of Article 23, we have noted that in the case of Dr. Muhammad Islam v. Government of NWFP through Secretary, Food, Agriculture, Livestock and Cooperative Department, Peshawar and 2 others 1998 SCMR 1993, it was observed by the Honourable Supreme Court that this term has not been defined anywhere in the Criminal Procedure Code or other law, and that in such a situation the ordinary dictionary meaning ought to be pressed into service. Their Lordships went on to refer to the meaning ascribed to the words "acquit" and "acquittal" in "Dictionary Macmillan, William D. Halsey/Editorial Director, Macmillan Publishing Co., Incorporated New York, Collier Macmillan Publishers London", as follows: -

"acquit"--quitted, -quitting. v.t. 1 . to free or clear from an accusation or charge of crime; declare not guilty; exonerate: The jury acquitted him after a short trial. 2. To relieve or release, as from a duty or obligation: to acquit him of responsibility. 3. To conduct (oneself); behave: The team acquitted itself well in its first game. (Old French aquitter to set free, save, going back to Latin ad to + quietare to quiet)"

acquittal' ' n. 1 . a setting free from a criminal charge by a verdict or other legal process. 2. Act of acquitting; being acquitted'."

17. As the past tense or past participle of “acquittal”, the word “acquitted” would accordingly connote a judgement or verdict that a person is not guilty of the crime with which they have been charged. The term thus appears to be predicated on a committal in respect of criminal charge and does not appear relatable to a civil action. A person who is a defendant in a civil action in the shape of a suit can scarcely be regarded as being ‘acquitted’ on the suit being dismissed, and it appears from the meaning of the term that the very concept of ‘acquittal’ is alien to civil proceedings.
18. As such, we are of the view that the dictum in Madan Mohan Singh’s case (supra) regarding limitation under Article 23 in cases of ‘acquittal’, as followed by the learned Division Bench in Iqbal Hussain’s case (supra), will not apply to a civil action that ends in dismissal. In our opinion, such a case could at best be equated with the ‘prosecution otherwise being terminated’ and would be governed by the principle applied in MMC’s Case to instances of discharge.
19. If a cause of action accrues in favour of a plaintiff the moment the civil action is ended and has attained finality, this would be the date of dismissal of the civil proceeding in question. The period of limitation would begin to run from that date and be reckoned accordingly. Where the said order of dismissal terminating the civil action is challenged in appeal or revision

before a higher forum, by virtue of the doctrine of merger the original order would stand merged in the order that is passed by the higher forum in such appellate or revisional proceedings as the case may be. The operative order would then be the order of the higher forum and the period of limitation will have to be computed from the date of the order disposing of the appeal or revision, as the case may be. However, we emphasize that we are here concerned only with Article 23 of the Limitation Act and these observations are made and intended to apply in and to this context only.

20. As to the second aspect of the Appellant's argument, regarding there being no cause of action as on the date of institution of the Damages Suit due to the pendency of the Civil Petitions for Leave to Appeal, in the case of Bakhtiar Ahmed v. Mst. Shamim Akhtar & Others 2013 SCMR 5, it was observed by the Honourable Supreme Court on the point of the aforementioned doctrine that:

“So far the question that the decree of the court of first instance is merged into the decree of Appellate Court which alone can be executed, it may be stated that in the case in hand the decree was passed by the High Court being appellate/revisional Court, therefore, the time would run from the date of passing of decree by the said Court. In the instant case the right was accrued in favour of the petitioner when the decree was passed by the High Court on 17-3-2003. There being no, statutory remedy of appeal or revision available against said decree and the only remedy available was filing a petition for leave to appeal before this Court, which is a constitutional court, therefore, unless the operation of the impugned decree is suspended or the petition is converted in to an appeal the petitioner cannot presume that the period of limitation has been clogged. Mere filing of petition before this court would not automatically enlarge the time of filing the execution application. Needless to mention here that in case relief is granted by this Court after allowing the appeal with leave of the Court then in the said eventuality the order of this Court would merge into order of the lower forums as such the period of limitation would start from the order of this Court.”

21. Furthermore, in the same case of Bakhtiar Ahmed (supra), it was held in the context of Article 181 of the Limitation Act that “Mere pendency of Civil Petition before this Court is not a ground for enlarging the period of filing of execution petition as it is an admitted fact that no stay was granted by this Court.” From these observations, it is apparent that the pendency of a Petition for Leave to Appeal would not of itself serve to suspend a subsisting cause of action without there being an Order made by the Apex Court to that effect, which is not the case in the matter at hand.
22. In view of the foregoing discussion we find that no error has been committed by the learned single Judge whilst disposing of the Subject Application in terms of the Impugned Order. Thus, this High Court Appeal is without merit and is dismissed accordingly. There is no order as to costs.

JUDGE

JUDGE

Karachi
Dated _____