
(2021) 07 CHH CK 0073
In the Chhattisgarh High Court
Case No : First Appeal No. 78 Of 2007

Board Of Secondary Education	Vs	APPELLANT
Sushil Kumar Dewangan		RESPONDENT

Date of Decision : 09-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Civil Procedure, 1908 — Order 33 Rule 3

Citation : (2021) 07 CHH CK 0073

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : H. B. Agrawal, Malay Jain, Yogesh Patidar, R. S. Marhas, Rakesh Sahu

Final Decision : Dismissed

Judgement

1. Appellants have filed this appeal being aggrieved by the judgment and decree dated 24.03.2007 passed by learned District Judge, Bilaspur (C.G.) in

Civil Suit No. 2-B/2005, whereby the suit filed by the Respondent No. 1 decreed by the learned trial Court.

2. Brief facts of the case are that plaintiff/respondent No. 1 filed civil suit No. 2-B/2005 on the ground that he had appeared in the supplementary

examination of Class-XII in the years 1995-96 and had succeeded, but the mark-sheet of the said examination was not given to the respondent No.-

1/plaintiff by the appellants and respondent No.-3/defendant No.-4. The respondent No.-1/plaintiff had continuously requested them in vain but he

could not get his mark-sheet and could not continue his studies due to non-supply of mark-sheet resulting in non-employment, and as such, he is

deprived of getting the monetary benefits. Further case is that though the damages suffered can not be calculated in terms of money, but he prays for

award to the tune of Rs. 10,00,000/- against damages. This suit was instituted under Order 33 of the Code of Civil Procedure 1908, stating to be the

indigent person. The permission was granted by the learned trial Court under Order 33 Rule 3 of the Code of Civil Procedure.

3. In reply, appellants/defendants No. 1 and 2 denied all the averments of the plaint in their written statement and stated that suit is untenable, barred

by limitation and no cause of action is available with the plaintiff for filing the suit for damages. Rest of the defendants were proceeded ex-parte and

they did not file any written statement.

4. After appreciating oral and documentary evidence of both the parties, the learned trial Court partly decreed the suit of plaintiff and awarded Rs.

2,00,000/- as damages caused to the plaintiff by the act of appellants/defendants No. 1 and 2 for not giving the mark-sheet of the supplementary

examination of Class-XII. Being aggrieved by this judgment and decree, the appellants filed this appeal.

5. Learned counsel for the appellants submits that the issue number 3, 4, 5 and 6 are the deciding issues in the case but the learned trial Court has not

properly appreciated the oral and documentary evidence available before it in its true perspective. The learned trial Court has failed to consider that

plaintiff has apparently failed to prove his case for damages. He also submits that there is no incriminating evidence on record which could establish

the fact that plaintiff has suffered any damages. He next submits that in this case the plaintiff had to prove that his education and career has grossly

suffered due to the inaction of the defendants. No such conducive evidence is available. The finding of the Court below on the issue No.-3 is on its

own presumption without there being any base. Therefore, these findings are liable to be quashed. Learned counsel next submits that the learned trial

Court erred in deciding the issue No.-6 which relates to limitation. The suit was presented on 04.05.2001 and the cause of action as alleged by the

plaintiff himself arose in the year 1996 when the appellants and the respondent No.-3 failed to provide the mark-sheet. The suit, as such, ought to have

been presented within the prescribed period of limitation of one year. Next submission is that the learned trial Court erred in giving the negative

findings on issue No.-5. The suit ought to have been dismissed on this count alone. The entire suit is based on alleged damages said to have been

caused to the plaintiff by inaction of the defendants in not providing him his mark-sheet of Class-XII, whereas the plaintiff has failed to prove his case

regarding causing of alleged damages. Since the plaintiff has failed to prove the damages, therefore, no cause of action is available with him for filing

the suit, thus the judgment and decree may be set aside. In support of arguments, learned counsel placed reliance on the decision of Hon'ble Supreme

Court in the matter of Eliamma Simon and Another Vs. Seven Seas Transportation Ltd. and Others reported in AIR (2002) Kerala 219, and the

decision of High Court of Madhya Pradesh (Gwalior Bench) in the matter of B S Yadav Vs. Prabhudayal reported in 1991 LawSuit(MP)186

(Equivalent Citations : 1992 AIR(MP)203, 1992 MPLJ 304, 1991 (2) MPJR 302).

6. None for the respondent No. 1, though notice has been served.

7. Learned counsel for the respondents No. 3 and 4 supported the arguments.

8. Heard learned counsel for the parties and perused the material available on record.

9. In the case in hand, the main objection of appellants is that the suit is barred by limitation. Learned trial Court framed issue No. 6 in this regard and

recorded its finding in para 9 of its order, which reads thus:-

10. Plaintiff has filed various documents and he examined himself as PW-1, Ex.-P-1 is the notice of plaintiff which was sent by him to respondent No.

1 (Secretary, Board of Secondary Education, Bhopal, M.P.), respondent No. 2 (Regional Officer Board of Secondary Education, Regional Office,

Raipur, C.G.) and respondent No. 3 (Secretary, Education Department Government of M.P. Bhopal) on 19.07.2000. Ex.-P-2 is the copy of letter

dated 11.10.2000 of Regional Officer, Exs.-P-4 and P-5 are the copies of correspondence between concerned departments, and Ex.-P-6 is the copy

of letter dated 21.12.2000 which was sent by Additional Secretary of Board of Secondary Education, Bhopal M.P. to the plaintiff. The plaintiff filed

this suit on 04.05.2001. Learned trial Court finds in Para-9 of its order that plaintiff has proved several letters Ex.-P-1 to Ex.-P-6, postal receipts Ex.-

P-8 to Ex.-P-10 and acknowledgment of notices Ex.-P-12 to Ex.-P-14 and last letter Ex.-P-6 was sent by defendants on 21.12.2000. The plaintiff was

residing with his parents and stated that he has not received the mark-sheet. Every day the cause continued to arose. Thus, the finding of the trial

Court with regard to limitation cannot be termed to be illegal. This Court does

not find any illegality or perversity in the same.

11. As far as other objection of the appellants that plaintiff did not get his mark-sheet from 1996 to 2001 and his educational career grossly affected,

due to the negligence of defendants and the trial Court awarded Rs. 2,00,000/- for damages are concerned, in the matter of Pooja Agrawal Vs. Board

of Secondary Education M.P reported in 2013(MPLJ) 280, the High Court of M.P. held in para 10, which reads thus :-

10. "This Court is now required to delve into the aspect of quantum of compensation. Petitioner has prayed for compensation of rupees one lakh.

Admittedly the culpable negligence of the respondent Board has not resulted into any tangible loss as discussed supra and thus award of compensation

as sought for in entirety is not called for. Moreso, award of compensation under Article 226 of the Constitution of India for undisputed acts of culpable

negligence ought not to result in undue enrichment of petitioner. Similarly on the other hand this Court cannot ignore the fact that no amount of

monetary compensation can indemnify the mental and psychological damage incurred. There is another crucial view-point from which the aspect of

quantum deserves judicial scrutiny i.e. exemplary cost. Whenever an instrumentality of the State acts in wanton disregard of the limits of reasonability

set by the scheme of the Constitution, it shakes the confidence of a common man in the Rule of Law, thereby exposing itself to the rigours of payment

of exemplary cost in addition to the actual costs incurred. This is necessary to instill the lost confidence in the Rule of Law by punishing the wantonly

negligent thereby in the process preventing recurrence of such culpable aberrations in future. Besides, exemplary cost caters to the lost time and

energy of the Courts by adjudicating an avoidable litigation".

This Court finds that defendants have acted in most careless and irresponsible manner due to which plaintiff did not get his mark-sheet in a time bound

period, as a result of which his precious academic four years got affected.

12. This Court finds that the finding of the Court below is based on proper appreciation of oral and documentary evidence, which does not call for any

interference by this Court. The trial Court has not committed any irregularity or perversity. The appeal is, therefore, liable to be and is hereby

dismissed. It is directed that the appellants to pay compensation of Rs. 2,00,000/- as awarded by learned trial Court, to the plaintiff within a period of

six months from the date of receipt of copy of this order and also to pay actual cost of this avoidable litigation including Court fee and cost of this appeal too.

A decree be drawn up accordingly.