

(2010) 10 DEL CK 0259

In the Delhi High Court

Case No : Regular Second Appeal No. 190 of 2010 and CM Appl No. 18820 of 2010

Naveen Vyas

APPELLANT

Vs

The Secretary, Central Board of Secondary Education and
Another

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Limitation Act, 1963 — Article 113, 58

Citation : (2011) 176 DLT 515

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : B.B. Gupta, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This second appeal has impugned the judgment dated 11.08.2010 which had confirmed the finding of the Trial Judge dated 16.01.2010 whereby the suit for declaration and injunction filed by the plaintiff, Sh. Naveen Vyas, seeking a change in his date of birth had been dismissed.

2. The plaintiff, Sh. Naveen Vyas, had filed the suit against two defendants; the first defendant was the Central Board of Secondary Education (CBSE) and the second defendant was the Principal of the National Victor Public School, I.P. Extension, Delhi. The prayer made was that a decree be passed in favour of the plaintiff and against the defendants to correct his date of birth from the existing date of 12.08.1987 to 12.08.1986. The cause of action had been detailed in para 12. As per the plaintiff, the cause of action arose when the date of birth was incorrectly recorded in the records of the defendants as also when in spite of requests to the defendants, they failed to make the correction. No dates have been mentioned in the said paragraph.

3. In the written statement, it was denied that the plaintiff was entitled to any

relief. On behalf of defendant No. 1, it was stated that in view of Rule 69.2 of the CBSE Rules, no correction can be made in the said date of birth after two years from the date of the declaration of the class X examination. Defendant No. 2 was *exparte*.

4. The Trial Judge framed two issues which returned a categorical finding that the plaintiff had passed his class X examination in 2002 and his class XII examination in 2004 and the forms which he had filled for the class X and class XII examinations, he had mentioned his date of birth as 12.08.1987 on both occasions. The suit was filed on 25.03.2008. Under Article 58 of the Limitation Act, a suit for declaration should have been filed within three years from the date when the right to sue had accrued. In the alternate, as per Article 113 of the Limitation Act, which was the residuary article, such a suit should have been filed within three years from the date when right to sue accrued. The cause of action had accrued in 2002 or at best in 2004. The suit having been filed in 2008 was clearly barred by limitation. Further under Rule 69.2 of the bye-laws of defendant No. 1 an application for correction in the date of birth could be entertained only within two years from the date of the declaration of class X examination which period had long since lapsed. The suit of the plaintiff was dismissed.

5. The first appellate court in the impugned judgment had endorsed this finding.

6. On behalf of the appellant, it has been vehemently urged that the defendant had nowhere disputed that the date of birth of the plaintiff i.e. of 12.08.1987 is not the correct date of birth; they are only taking shelter under Rule 69.2. It is submitted that the courts below have over-looked the fact that the plaintiff was not necessarily asking for the issuance of a certificate from the CBSE to record his correct date; a mere correction of the date of birth in the records of the school would have been sufficient; the forms had been filled by the School Authorities and he had only signed them. This has raised a substantial question of law as formulated which needs to be answered.

7. These arguments of the learned Counsel for the appellant are clearly bereft of any merit. The concurrent findings of both the courts below is to the effect that the cause of action had accrued in favour of the plaintiff in the year 2002 and latest by 2004 i.e. when he had filled his class X and class XII examination forms. These application forms were admittedly signed by the plaintiff wherein his date of birth had been mentioned as 12.08.1987. There is no explanation for having filed the suit four years thereafter i.e. in the year 2008.

8. The findings in the impugned judgment *inter alia* reads as follows:

8. I have also perused the judgment of the *Ld. Trial Court* which has discussed both the issues at length. The court has also gone through the evidence led by the appellant/plaintiff before the *Ld. Trial Court* and the court is of the opinion that if it had been the mistake on the part of the respondent No. 2/defendant i.e. school authorities where the appellant/plaintiff was studying then the appellant/plaintiff should have summoned the record from the school authorities and

should have proved it on court record that the appellant/plaintiff had given the correct date of birth and the mistake is on the part of the school authorities so as to bring with the definition of the rules so framed which speak about the correction of clerical mistakes. Surprisingly, no such witness was summoned by the appellant/plaintiff. The contention of the Ld. Counsel for the appellant/plaintiff that the school authorities themselves have written a letter to the respondent No. 1/defendant thereby acknowledging clerical mistake, in the considered opinion of the court is of no help to the appellant/plaintiff as it only talks about the mistake but who committed the mistake was a fact which was required to be proved by the appellant/plaintiff before the court. If he would have been able to prove that mistake to be the clerical or otherwise the mistake is of respondent No. 2/defendant then definitely he had the opportunity to get it rectified within the period prescribed by Rule 69.2 by the respondent No. 1/defendant No. 1. But the record does not speak so. Therefore, this fact does not come to the rescue of the appellant/plaintiff and there is no legal infirmity while appreciating the evidence by the Ld. Trial Court on this aspect rather there is no evidence to that effect on court record. Further, it is not the case of the appellant/plaintiff at all that he had no opportunity to discover the wrong mentioning of his date of birth on both the occasions i.e. while filling the matriculation form or while filling the 10+2 form. The Ld. Trial Court has rightly appreciated the Article 58 of Limitation Act as well as Article 113 of Limitation Act and plaintiff was supposed to file suit within three years from the date when such mistake was allegedly committed by the respondent No. 2/defendant.

9. I have also perused Section 58 of Limitation Act. The limitation starts from the date of committing the mistake and not from the date of knowledge of the plaintiff. Even if it would have been from the date of knowledge, the plaintiff was duty bound to prove that what is the date of knowledge and why he did not apply for correction in the year 2004 when the plaintiff filled the form for 10+2 board exams. No mistake is stated to be on the part of school authorities in the year 2004. No evidence has been led by the plaintiff that he was not aware about the mentioning of his date of birth as 12.8.87 in the year 2004. The admission form must have been filled by him or his parents. Therefore, in absence of any evidence on record, the plea of the plaintiff can not be appreciated. Further, the court is in agreement with the contention of the Ld. Counsel for the respondent/defendant that ignorance of law is no excuse at all and it is admitted fact that rules have not been challenged by the appellant/plaintiff. Therefore, keeping in view all these facts and circumstances and arguments advanced by both the parties, the court is of the opinion that there is no material infirmity or illegality in the order date. 16.1.2010 passed by the Ld. Trial Court. Accordingly, appeal of the appellant is dismissed.

9. These findings can in no manner be said to be perverse. Cause of action had accrued in favour of the plaintiff in the year 2002 when he filled his class X examination form. He had clear and unambiguous knowledge at that time when he had signed the application forms wherein his date of birth was mentioned as

12.08.1987. Rule 69.2 of the CBSE also bars the correction in the date of birth if it is made two years after the declaration of the result of the class X examination. It can in no manner be said that the plaintiff was not aware of this date i.e. his date of birth having been recorded as 12.08.1987 in the year 2002 when he had filled class X examination form. The suit was clearly time barred. No question of law much less than any substantial question of law has arisen.

10. Appeal is dismissed in limine.