
(2011) 02 GAU CK 0062
In the Gauhati High Court
Case No : Regular First Appeal No. 17 of 2004

Rakhal Majumder

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 18-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, 96
Constitution of India, 1950 — Article 21, 226
Limitation Act, 1963 — Article 113
Penal Code, 1860 (IPC) — Section 354, 376, 448, 506, 511

Citation : (2011) 2 GLT 448

Hon'ble Judges : C.R. Sharma, J; Amitava Roy, J

Bench : Division Bench

Advocate : B. Das and D. Chakraborty, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

C.R. Sarma, J.—The judgment and decree, dated 24-9-10, passed by the learned Civil Judge, Senior Division, West Tripura, Agartala in Money Suit No. 01 of 1998 is in challenge, in this appeal, preferred u/s 96 read with Order 41 Rule 1 of the code of Civil Procedure.

2. The Appellant-Plaintiff's case, in brief, as revealed from the pleadings, may be stated as follows:

The Appellant, an Advocate of Amarpur, South Tripura was arrested by police on 19-9-1993, in presence of the Respondent Nos. 2 to 5, on the strength of warrant of arrest issued under the National Security Act (NASA) and he was taken to Udaipur, wherein he was mercilessly assaulted by the Respondent Nos. 2 to 5, causing grievous injuries, including fracture in his right hand and he was denied medical treatment. On 23-1-93, he was transferred to the Central Jail, Agartala, wherefrom he was sent to G.B. hospital for medical treatment. According to the Appellant-Plaintiff, he had to undergo two operations requiring

treatment at Kolkata. On the basis of a fax message, issued by an Advocate of the Agartala Bar, this Court, suo moto, took up Civil Rule (Habeas Corpus) No. 03 of 1993 and by order, dated 7-2-93, passed in the said Civil Rule, this Court quashed the detention order in respect of the Appellant-Plaintiff and directed the Addl. District and Sessions Judge, Agartala to hold an enquiry into the matter. After receipt of the said enquiry report, this Court, by order dated 13-2-97, disposed of the Civil Rule (HC) granting compensation of Rupees one lakh, in favor of the Appellant-Plaintiff, payable by the State of Tripura for infringement of his fundamental right. While decline of the said Civil Rule (HC), the High Court observed that, under Article 226 of the Constitution of India, compensation for violation of fundamental rights could be granted, whereas damages in tort are recoverable under private law through the remedy of a civil suit.

3. After disposal of the said Civil Rule (HC), the Appellant, as Plaintiff instituted a money suit claiming Rupees fifty lakhs as compensation from the Respondents, jointly and severally. The Plaintiff's suit was contested by the Respondent Nos. 1 to 5 by filing written statements. The Respondents-Defendants, in their written statements, amongst others, averred that the suit was not maintainable, that the same was barred by law of limitation, hit by principles of estoppels, waiver, acquiescence and bad for non-joinder and misjoinder of necessary party. Admitting the arrest of the Appellant-Plaintiff by police, the contesting Defendants denied their involvement in the alleged torture. The contesting Defendants further contended that, in view of direction to pay compensation of Rupees one lakh to the Appellant-Plaintiff, the Appellant-Plaintiff was not entitled to get any further compensation. As the Defendant No. 6 did not contest the suit, the same proceeded exparte against the said Defendant.

4. Upon the pleadings of both the parties, the learned trial Judge framed the following issues:

- (i) Is the suit maintainable in its present form and nature ?
- (ii) Has the Plaintiff any cause of action for bringing the suit against the Defendants or anybody else and the suit is barred by Limitation?
- (iii) Whether the Plaintiff was assaulted severely, arrested with malice by the Defendant Nos. 2,3,4 and 5 and their men at midnight while the Plaintiff was in their custody under NASA in the midnight of 19-1-1995 on the road between the Amarpur and Udaipur, at a place namely Gandari/Warrangbari?
- (iv) Did the Plaintiff suffered mentally and physically due to mischief done by the Defendant Nos. 2 to 5?
- (v) Whether the Plaintiff is entitled to any compensation as claimed? If so, what would be the amount? And also with interest, what would be percentage of the interest?

While deciding the Issue Nos. 3,4 and 5 in favor of the Appellant-Plaintiff, the learned trial Judge decided the Issue Nos. 1 and 2 against the Appellant-Plaintiff,

holding that the suit was barred by law of Limitation and that there was no cause of action as alleged by the Plaintiff. Accordingly, the Appellant-Plaintiff's suit was dismissed on contest.

5. Aggrieved by the said judgment and decree of dismissal, the Plaintiff, as Appellant, has come up with this appeal as indicated above. The grounds taken by the Appellant, amongst others, are that the learned trial Judge committed error by holding that the suit was barred by Limitation and that, in view of the liberty granted by this Court in deciding the Civil Rule (HC) No. 03 of 1993, the Appellant-Plaintiff was entitled to get relief for damages in civil court.

6. We have heard Mr. B. Das, learned Senior counsel, assisted by Mr. D. Chakraborty, learned Counsel for the Appellant. None appears for the Respondents. The short question involved in this appeal, for our consideration, is whether the learned trial Judge committed any error by holding that the suit was hit by law of Limitation.

7. Mr. B. Das, learned Senior counsel, appearing for the Appellant, has submitted that this Court, while disposing of the Civil Rule aforesaid, granted liberty to the Appellant to seek relief for damages in civil court and as such the cause of action arose from the date of passing the judgment and order in the said Civil Rule i.e. on 13-2-1997. It is further submitted that as the High Court, in granting compensation of Rupees one lakh for infringement of fundamental right of the Plaintiff, allowed the Plaintiff to seek relief in civil court, the period of limitation started from the date of disposal of the said Civil Rule i.e. from 13-2-97 and as such the money suit filed in 1997, seeking compensation for damages, was well within time and as such the learned trial Judge committed error by holding that the suit was barred by law of Limitation.

8. The learned Senior counsel further submitted that the question of Limitation being a technical one, such technicalities cannot be allowed to deny justice available under the law. In support of his contention, the learned Senior counsel has relied on the following decisions:

- (i) Maimoona Khatun and Another Vs. State of Uttar Pradesh and Another,
- (ii) K. Rudrappa v. Shivappa, 2004 AIR SCW 5106
- (iii) Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s,
- (iv) Salonah Tea Co. Ltd. and Others Vs. Superintendent of Taxes, Nowgong and Others,

9. Admittedly, the suit has been instituted by the Appellant-Plaintiff, seeking compensation for damages under the law of Tort. Section 113 of the Limitation Act, 1963 provides that such suit should be brought within a period of three years from the date when the right to suit accrues. In the case at hand, as alleged by the Appellant-Plaintiff, he was arrested and detained under National

Security Act (NASA), by hatching a conspiracy and that he was brutally tortured causing injury to his person both physically as well as in respect of his reputation and that damages were caused to him. There is no dispute that the Plaintiff was arrested on 19-1-93 and released on 17-2-93, consequent upon quashing of his detention order and that the alleged injuries and the damages were caused in the month of January, 1993 i.e after his said arrest and detention. Therefore, his right to sue for compensation, on account of damages, accrued to him immediately after the said arrest, detention and torture etc. But the present suit has been filed after about five years i.e in 1998. The contention canvassed, on behalf of the Appellant, is that the right to sue for damages accrued to him after the disposal of the Civil Rule (HC) i.e from 13-2-1997. Referring to paragraphs 7, 9 and 10 of the judgment and order, dated 13-2-1997, passed in Civil Rule No. 03(HC) of 1993, the learned Senior Counsel has submitted that the Court granted liberty to the Appellant-Plaintiff to seek compensation for damages in civil court and as such the suit, being brought within the statutory period of three years from the date of disposal of the said Civil Rule (HC), was well within time.

10. We have carefully perused the judgment and order dated 13-2-1997 aforesaid, more particularly, the above mentioned paragraphs as referred to by the learned senior counsel. At paragraph 7 of the said judgment, this Court referring to the case of Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, observed "the Supreme court further clarified in the said case that such compensation granted for violation of the fundamental rights is distinct from damages in tort which may be recoverable under private law through the remedy of a civil suit. This being a proceeding under Article 226 of the Constitution of India and not a civil suit or an appeal arising out a civil suit, we can grant only compensation for violation of fundamental rights of Sri Rakhal Majumder and not any damages that he may have suffered in tort such as loss of reputation etc.

11. In view of the above decision rendered by the Supreme Court, it has been made clear that, under Article 226 of the Constitution of India, compensation can be sought for violation of fundamental rights and not for damages in tort. It was also abundantly made clear that damages in tort is recoverable under private law through the remedy of a civil court. Therefore, the law regarding instituting cases/proceedings for damages in tort being well settled, long back, by the Supreme Court, it cannot be held that the right to sue for damages accrued to this Appellant from the date of disposal of the Civil Rule (HC). In aforesaid paragraph 9 of the said judgment, this Court observed that, under Article 21 of the Constitution, it cannot be taken into consideration damages which the Appellant might have suffered in tort such loss of reputation etc. At paragraph 10 of the said judgment, this Court observed as follows:

We, therefore, dispose of this writ petition with the direction that for the brutal assault on Shri Rakhal Mazumder, the State of Tripura will pay to him a compensation of Rs. 1 lakh in addition to the cost of treatment already

reimbursed to him and would also cause an enquiry within a period of three months from today as to whether the Respondent Nos. 3, 4 and 5 were in any way responsible for the said brutal assault on Sri Mazumder by police personnel. In case such enquiry reveals that Respondent Nos. 3,4 and 5 were in any way responsible for such brutal assault, The State of Tripura would initiate disciplinary proceedings against the said Respondents and would be at liberty to recover the compensation to be paid to Shri Rakhal Mazumder from the salary of the aforesaid Respondents. We make it clear that by this judgment we have not expressed any opinion on the merits of P.S. case No. 1(3)1993 under Sections 448/354/376/511/506/ IPC against Sri Rakhal Mazumder and the investigation and trial of the said case will be conducted by the appropriate authority and the competent court strictly in accordance with law.

12. From the above, we find that State of Tripura was directed to pay compensation of Rupees one lakh, in addition to the cost of medical treatment already re-imbursed to the Appellant and to make an enquiry to fix the responsibility of the erring officials concerned. The court granted liberty to the State to recover the compensation, to be paid to Sri Rakhal Majumder from the salary of the State Respondents. Therefore, a close scrutiny of the said observations and the directions made therein clearly indicates that liberty was granted to the State of Tripura to recover the compensation to be paid to the Appellant, as directed by the Division Bench. The Division Bench directed to pay compensation of Rupees one lakh in addition to the cost of medical treatment. Therefore, the said liberty was extended only to recover the above mentioned compensation granted by this Court. The term "liberty" used in the said paragraph of the judgment cannot be deemed to be "liberty" granted to the Appellant to institute a suit to recover compensation as damages under the law of Tort. There is nothing in the judgment to find that liberty was granted to the Appellant to file civil suit, seeking compensation for damages. In view of the decision rendered in the case of "Nilabati Behra" (supra) and the provisions prescribed by Article 113 of the Limitation Act, 1963, there was no point for the Appellant to wait till the disposal of the Civil Rule (HC) aforesaid for instituting a money suit claiming compensation for damages.

13. Therefore, we find no force in the contention of the learned Senior counsel appearing for the Appellant that cause of action, for seeking damages, arose from the date of disposal of the Civil Rule (HC) and that the Limitation also started from the said date.

14. In the case of "Salona Tea company Ltd." (supra) the matter involved was regarding refund of unauthorizedly collected tax. In response to a notice, which was issued without jurisdiction, the Appellant paid tax. On 10-7-93, the High Court, in the case of "Loongsoon Tea Estate" (Civil Rule No. 1005 of 1969) passed order declaring the assessment as without jurisdiction. The Appellant's case was that they came to know about their mistake in paying the tax as per the assessment and about their entitlement to get refund of the said tax, only

after the direction made in the said Civil Rule. A Division Bench of the High Court, while setting aside the order of notices of demand, refused to grant the relief of refund as claimed by the Appellant, on the ground that the claim was belated, inasmuch as it was possible for the Appellant to know about the legality of the tax, sought to be imposed, as early as in 1963, when the said Act was declared ultra vires. The Supreme Court, on appeal, while interfering with the High Court's order held that the tax collected without authority of law from the citizens should be refunded. The above referred case dealt with the refund of tax collected unauthorizedly and the Appellant pleaded that they came to know about their right to get refund only after the passing of the judgment, on 10-7-1973, in the case of "Loongsoong Tea Estate" (supra). The present suit is for realization of damages and such suit is governed by Article 113 of the Limitation Act. In the case of "Nilabati Behra" (supra), which was decided long back, the Supreme Court observed that suit for damages should be filed before the civil court and no relief for damages could be granted in a writ petition, filed under Article 226 of the Constitution of India. Therefore, the fact situation in the case of "Salonah Tea Company Ltd" (supra) and the case at hand being different, the decision relied upon by the learned senior counsel will not help the Appellant.

15. In the case of "Madras Port Trust" (supra), the question of Limitation provided by the Madras Port Trust Act (II of 1905), was raised. The Supreme Court observed-

The plea of limitation based on this section is one which the court always looks upon with disfavor and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that Governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the court has to decide it and if their plea is well founded, it has to be upheld by the Court, but what we feel is that such a plea should not ordinarily be taken up by a Government or a public authority, unless of course the claim is not well founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable.

In the said case, the question of Limitation was raised under the provision of "Madras Port Trust" Act, which was observed to be always looked upon with disfavor. But in the case at hand, the plea of Limitation has been raised under the Limitation Act, 1963. There is nothing to show that the provision of "Limitation Act" should be looked upon with disfavor. Of course, in appropriate case, delay can be condoned for rendering justice, if such delay is satisfactorily explained. That apart, the Supreme Court held that the principle of Limitation, if found to be well founded then the same is to be upheld. In the light of the decision held in the case of "Nilabati Behra" (supra), the Appellant/Plaintiff cannot be allowed to say that he had no acknowledgement of his right to sue for damage till the

decision rendered in the Civil Rule (H.C) by this Court. Therefore, the Appellant was required to bring the suit for damages before the civil court within three years from the date, on which the right to sue accrued to him. His right to sue accrued on the date when he was arrested, detained and tortured. As he did not file the suit within the period of Limitation prescribed by Section 113 of the Limitation Act, the plea of Limitation is found to be well founded and the trial court, after detailed discussion, came to reasonable conclusion that the suit was hit by law of Limitation. In premises of the above discussion, we are inclined to hold that the Appellant has failed to draw support from the case of "Madras Port Trust".

16. In the case of "K. Rudrappa" (supra), the Petitioner's father filed a suit. During the pendency of the proceeding, his father died. The Petitioner came to know about the pendency of the same only after receipt of a communication from the advocate, engaged by his father. The application for bringing the legal heirs on record was rejected on the ground of limitation. Then the Appellant filed an application for setting aside the abatement, condonation of delay and bringing the heirs of the deceased on record, but the court rejected the prayer. A Civil Revision petition was preferred before the High Court. The High Court also rejected the prayer. Aggrieved the Appellant approached the Supreme Court by filing an appeal. While allowing the appeal, the Supreme Court observed:

The father of the Appellant died in June, 1994 and the Appellant came to know about the pendency of appeal somewhere in September, 1994 when he received a communication from the advocate engaged by his father. Immediately, therefore, he contacted the said advocate, informed him regarding the death of his father and made an application. In such circumstances, in our opinion, the learned Counsel for the Appellant is right in submitting that a hyper-technical view ought not to have been taken by the District Court in rejecting the application inter alia observing that no prayer for setting aside abatement of appeal was made and there was also no prayer for condonation of delay. In any case, when separate applications were made, they ought to have been allowed. In our opinion, such technical objections should not come in doing full and complete justice between the parties. In our considered opinion, the High Court ought to have set aside the order passed by the District Court and it ought to have granted the prayer of the Appellant for bringing them on record as heirs and legal representatives of deceased Hanumanthappa and by directing the District Court to dispose of the appeal on its own merits. By not doing so, even the High Court has also not acted according to law.

In the said case, the Appellant clearly pleaded that he came to know about the pendency of the appeal from the communication received from his advocate and immediately after receipt of the said communication, he initiated action to bring the legal heirs on record. His case was that he had no knowledge about the pendency of the suit. But, in our present case, the suit was brought after five years from the statutory period of Limitation one cannot be allowed to take the

plea that he had no knowledge about the statutory provision. The Supreme Court in the case of "Nilabati Behra" (supra), long back, made it clear that suit for damages should be brought before a civil court and not a writ court. There is nothing on record to show as to what prevented the Appellant from instituting the money suit for damages, within the period of Limitation, prescribed by the statute. Admittedly, the fact situation in the above referred case and the one at hand are not similar. Therefore, the said decision relied on by the Appellant does not help the Appellant.

17. In the case of "Maimoona Khatun" (supra) the dispute between the parties in the High Court was as to what should be the starting point of Limitation in a case of re-instatement of an employee. According to the Appellant, the starting point of Limitation would be the date when the employee was reinstated and restored to service and therefore he was entitled to the entire salary which became due. The stand taken by the Government was that the period of limitation was to be computed not from the date of his reinstatement, but from the date when the salary became due and therefore the claim for salary, which was due for any period beyond three years of the filing of the suit, was barred by limitation. The Supreme court observed-

For these reasons, therefore, we are clearly of the opinion that in cases where an employee is dismissed or removed from service and is reinstated either by the appointing authority or by virtue of the order of dismissal or removal being set aside by a Civil court, the starting point of limitation, would be not the date of the order of dismissal or removal but the date when the right actually accrues, that is to say, the date of the reinstatement, by the appointing authority where no suit is filed or the date of the decree where a suit is filed and decreed.

18. In the present case, no right to sue for damages accrued to the Appellant after passing of the judgment and order in Civil Rule No. 03 of 1993, in as much as, no liberty was granted in favor of the Appellant to institute a suit for damages. What the court observed was that the relief for damages is to sought in a civil suit and this matter has been well settled by the Supreme Court in the case of "Nilabati Behra" (supra). Therefore, we find no force in the contention of the learned Senior counsel, appearing for the Appellant that the right to sue accrued to the Plaintiff/Appellant from the date of the order passed by this Court in the said Civil Rule (HC).

19. The law regarding selection of the forum for realization of compensation for infringement of fundamental right and for damages has been well settled by the Supreme Court in "Nilabati Behras" case long back. Therefore, as no liberty was granted to the Appellant-Plaintiff by the Division Bench of this Court for bring in a suit for damages, it cannot be held that the Limitation for damages started from the date of disposal of the writ petition aforesaid.

20. In view of the said decision of the Supreme Court coupled with the provisions of Article 113 of the Limitation Act, we have no hesitation in concluding that the

Appellant should have instituted the suit within the period of three years from the date of his arrest /detention/torture and the damage caused to him. But the suit for damages, having been brought after about five years from the said period, is squarely hit by the statutory provision, prescribed by the law of Limitation. Therefore, in our considered opinion, the learned trial Judge committed no error by dismissing the suit on the ground of Limitation. Hence, we find no merit in this appeal requiring interference with the impugned judgment and order.

21. Accordingly, the appeal is dismissed. No costs. Send down the lower court records.