

ORDER BELOW EXH.48

(Passed on 13/01/2015)

1. This is an application moved by defendant No.1 under Order 7 Rule 11 (d) of the C.P.C. for rejection of the plaint. It is the contention of defendant No.1 that plaint averments suggest that the cause of action was accrued on 17/06/2009 and the suit should have been filed within one year from this date, in view of provision of Article 74 of the Limitation Act. According to defendant No.1, as the suit is not filed within the period of one year, it is barred by the provision of Limitation Act. The plaintiff has filed reply at Exh.49 and resisted the application. The plaintiff's counsel submits that cause of action was accrued on 17/06/2009 but it was continuing cause of action. He further submits that cause of action was also accrued on 30/06/2010 against defendant No.1, when the proceeding before the Labour Court was terminated. Counsel for the plaintiff's further submits that the case is at the evidence stage and the plaintiff has already filed his examination-in-chief on affidavit, and therefore it is better to decide the subject matter in controversy on merits only.

2. It is well settled by the legal proposition that application under Order 7 Rule 11 (d) of the C.P.C. for rejection of the plaint can be filed at any stage of the proceedings. Therefore, merely because the case is reached to the stage of evidence, present application cannot be rejected only on that count. It is also well settled legal position that while deciding such application, only plaint averments are to be considered without referring the defence of the defendants. It is appearing from the submissions of both the parties and also from the plaint averments that defendant No.1 had filed a police report, and thereafter, on the strength of the said report, the police filed charge-sheet against the plaintiff. The plaintiff was prosecuted for the offence punishable u/s 294 of the I.P.C. It is not disputed that evidence was led in the said criminal proceedings and the said criminal proceedings ended on 17/06/2009 by the judgment of acquittal. On this ground, the plaintiff claims in the present suit that defendant No.1 had made false allegations in the criminal



proceedings and it was the malicious prosecutions. If all these averments are taken into consideration as it is, then it can be inferred that cause of action to file the present suit is accrued on 17/06/2009 against defendant No.1. Admittedly, defendant Nos.2 to 5 were not the co-complainant to criminal proceedings. It was defendant No.1 only who lodged a police report. So, it is apparent that only instance of defendant No.1 criminal proceedings against the plaintiff was initiated.

3. However, counsel for the plaintiff strongly argued that present suit is maintainable as against defendant No.1 because of continuing cause of action. According to him, further cause of action to file the suit against defendant No.1 was accrued on 30/06/2006, when the proceeding before the Labour Court was terminated by its judgments on 30/06/2010. However, it is not the case of the plaintiff that defendant No.1 was a party to the said proceedings. When defendant No.1 was not a party in the proceedings before the Labour Court, it cannot be inferred that the date 30/06/2010 gives the cause of action to file the suit against defendant No.1. On this backdrop, I am in agreement with the submission of counsel for defendant No.1 that there is no continuing cause of action to file the suit against defendant No.1. Thus, it is apparent that from the plaint pleadings as well as from the submission of counsel from the plaintiff that to file the present suit against defendant No.1, cause of action is accrued only on 17/06/2009 and not thereafter.

4. Article 74 of the Limitation Act, 1963 provides one year period of limitation for filing the suit for compensation for the malicious prosecution. Present suit is filed on 04/02/2011. It is apparent that from the date of accrued of cause of action i.e. from 17/06/2009, the suit is not filed within one year. On this backdrop, I find no difficulty to infer that statement in the plaint clearly suggests that cause of action was accrued on 17/06/2009 and suit is filed 04/02/2011 and as such, the suit is barred by the provision of article 74 of the Limitation Act, 1963. Hence, the plaint is hereby rejected as against defendant No.1 under Order 7 Rule 11 of the C.P.C.