Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

Misc. Appeal No.01 of 2023

Independent Newspapers Corporation (Pvt) Limited & others
Vs.
Learned Additional District Judge-VI, Karachi [South]

Date	*Order with signature of Judge*

1. For orders on office objection/reply-A.
2. For hearing of CMA No.156/2023
3. For hearing of Main Case.

Date of Hearing: 18.08.2025.
Date of Order 17.09.2025.

Mr. Mehmood Ali, advocate for the appellants.

M/s. Hamza Hussain Hidayatullah and Ravi R. Pinjani, advocates for respondent No.2.

ARSHAD HUSSAIN KHAN, J. The appellants, through the instant Miscellaneous Appeal, filed under Section 15 of the Defamation Ordinance, 2002 (the Ordinance), have assailed the order dated 24.11.2022 (the Impugned Order), passed by the learned VIth Additional District and Sessions Judge, Karachi [South], in Defamation Suit No. 64 of 2021. By the said order, the learned Judge rejected the plaint under Order VII, Rule 11 of the Code of Civil Procedure, 1908, (CPC) on the ground of limitation.

2. Learned counsel for the appellants, while reiterating the grounds urged in the memorandum of appeal, has argued that the impugned order has been passed without due application of judicial mind, and is therefore illegal and unsustainable in law. It is contended that the learned trial court misapplied and misread the relevant provisions of law in rejecting the plaint. The trial court erroneously presumed that the appellants had acquired knowledge of the defamatory broadcast on the date of its airing, whereas, in fact, the appellants became aware only on the date of issuance of legal notice to ARY, from which point the limitation period ought to have been reckoned. Learned counsel has drawn attention to Section 12 of the Ordinance, which explicitly provides that a suit may be instituted within six months of the publication of the defamatory material coming to the knowledge of the person defamed. He has

submitted that the defamatory material was broadcast by respondent No.2 between 16.09.2020 and 23.09.2020, but the appellants acquired knowledge on 13.11.2020, when they immediately issued a legal notice to respondent No.2 demanding an apology. As the respondent failed to respond, the appellants instituted the suit within the prescribed limitation period. It is further contended that trial court failed to appreciate the correct interpretation and spirit of Section 12 of the Ordinance by erroneously reckoning limitation from the date of broadcast, instead of the date when knowledge was acquired. It is urged that the learned trial court failed to appreciate that the defamatory material is still available on the respondent No.2's website, which unequivocally demonstrates that the cause of action is continuing and, therefore, the limitation period cannot be deemed to have been extinguished. It is also argued that the trial court has failed to correctly apply Order VII, Rule 11(d), CPC, inasmuch as the question of limitation in this case involves mixed questions of fact and law which could only be determined after recording evidence, rather than by rejecting the plaint at the threshold on technical grounds. Lastly, it has been prayed that the impugned order be set aside.

3. Conversely, learned counsel for the respondents contended that the impugned order is well-reasoned and based on the established principles of law relating to limitation. He contends that indolence on the part of the plaintiff creates vested rights in favour of the respondents, which the law of limitation confers and which cannot be brushed aside on the pretext of technicalities. He further contended that the plea of "date of knowledge" is an afterthought, being not only beyond the scope of the plaint but also inconsistent with the cause of action pleaded therein. The dates of accrual of the cause of action, he submitted, were specifically mentioned in the plaint, and the last such date was 23.09.2020. The appellants cannot now, at this belated stage, shift their stance to assert that the cause of action accrued on 13.11.2020, when they issued their legal notice. Per learned counsel, the suit, filed on 07.05.2021, was clearly barred by limitation, having been instituted three months after the expiry of the statutory six-month period. He has, therefore, prayed for the

dismissal of the instant appeal. In support of his contentions, learned counsel has relied upon the case law reported as Muhammad Islam v. Inspector General of Police, Islamabad and others [2011 SCMR 8], Sayed Abbas Taqi Mehdi v. Mst. Sayeda Sabahat Batool and others [2010 SCMR 1840], Ghulam Murtaza v. Abdul Salam Shah and others [2010 SCMR 1883], Muhammad Sharif and others v. MCB Bank Limited and others [2021 SCMR 1158] and MCB Bank Limited through Manager v. Azhar Hussain and another [2021 CLD 679].

4. I have considered the arguments advanced by learned counsel for the parties, examined the impugned order and gone through the relevant statutory provisions.

5. Record reflects that the appellants / plaintiffs filed the aforementioned suit under Section 9 read with Section 13 and other enabling provisions of the Defamation Ordinance, 2002, with the following prayers :

a. Direct the defendants to tender unconditional apology to the plaintiff and circulate the same in similar manner and with the same prominence as the defendants aired allegations and defamatory statements, as mentioned in para 9 of the suit/plaint.

b. Direct the defendants, jointly and severally, to pay Rs.2,000,000,000/= (Rupees Two Billion Only) as general damages.

c. Cost of the suit may graciously be awarded to plaintiffs.

d. Grant any other consequential relief or reliefs as this Court may deem fit and proper.

6. Before the trial court upon filing of the aforesaid suit, an application under Sections 10 and 12 of the Ordinance, read with Order VII Rule 11 and Section 151 CPC was filed on behalf of the respondent No.2/defendant No.1; whereupon the arguments of the learned counsel appearing for the parties were heard and the said application was allowed and resultantly the plaint in the aforesaid suit was rejected by the learned Additional District Judge-VI, Karachi [South] through the impugned order dated **24.11.2022**, the concluding paragraphs whereof, for the sake of convenience, read as follows:

> "The question of limitation cannot be considered a technicality, simpliciter as it has got its own significance and would have substantial bearing on merits of the case, the law of limitation must be followed strictly. The plaintiffs have also failed to file an application under section 5 of Limitation Act 1908, for condonation of delay in filing of this suit.
>
> The present suit has been filed by the plaintiffs after seven and half months of the broadcasting on the news channel owned by defendant No.1, which is hopelessly barred by limitation, therefore, the plaint of the suit of the plaintiff is hereby rejected under order VII Rule 11 CPC. Let such decree be prepared."

7. The learned counsel for the appellant has raised threefold contentions. Firstly, that the question of limitation is a mixed question of law and fact, which cannot be determined without the recording of evidence. Secondly, that upon becoming aware of the defamatory material uploaded on the website of respondent No.2, the appellant promptly issued a legal notice on 13.11.2020, and therefore the period of limitation ought to be reckoned from the date of issuance of such notice rather than from the date of the last broadcast of the impugned material. Thirdly, that since the defamatory material continues to remain available on the said website, the cause of action is of a continuing nature and subsists to this day.

8. Sections 8 and 12 of the Defamation Ordinance, 2002 prescribe statutory requirements concerning the limitation period for filing a defamation suit. The scheme is threefold:

(i) The plaintiff must issue a statutory notice to the defendant **within two (2) months** from the date when notice or knowledge of the defamatory publication is acquired.

(ii) After serving the legal notice, the plaintiff must observe a **mandatory cooling-off period of fourteen (14) days** before instituting proceedings.

(iii) Thereafter, the plaintiff is required to file the action **within six (6) months** from the date of notice or knowledge of the publication of the defamatory matter.

9. In the present case, admittedly the defamatory material was broadcast by Respondent No. 2 during the period **16.09.2020 to 23.09.2020**. This fact has been specifically pleaded by the appellant in paragraph 18 (cause of action) of the plaint. For the sake of convenience, paragraph 18 is reproduced herein below:

> " 18. That the cause of action arose in favour of the plaintiffs and against the Defendants on various dates on 16.09.2020, 17.09.2020, 18.09.2020, 21.09.2020, 22.09.2020 and 23.09.2020, when the defendants leveled baseless and malicious allegations against the plaintiffs and Jang/Geo Group providing fresh cause of action to the Plaintiffs for each of their broadcast/tweets and cause of action still continues to run in favour of the Plaintiffs as the Defendants are persistently levelling and pursuing their malicious campaign against the Plaintiffs."

The dates so pleaded constituted matters of record and required no evidentiary proof. Hence, the contention of the appellant that evidence would have been led to establish that the claim was within time carries no force. The issue of limitation, in the circumstances of this case, was purely one of law and not of fact. There was no factual controversy warranting the framing of issues or the recording of evidence, and no tenable plea was raised regarding the institution of the suit beyond the prescribed limitation period. The plaint contains no averment specifying the exact date on which knowledge of the alleged defamatory material was acquired. The legal notice dated 13.11.2020 is equally silent in this regard. Furthermore, paragraph 18 of the plaint neither discloses the date on which the legal notice was issued, nor asserts that the cause of action for filing the suit accrued from the said date. In these circumstances, and in the absence of any specific pleading as to the date of knowledge, the cause of action shall be deemed to have accrued on the date mentioned in the plaint itself. It is a well-settled principle of law that a party cannot be permitted to set up a plea which has not been specifically pleaded in the case[1].

10. Insofar as the contention of the learned counsel that the period of limitation should be reckoned from the date of issuance of the legal notice is concerned, it is settled law that limitation commences from the date on which the cause of action accrues, and not from the date on which a legal notice is served. The issuance of a legal notice, even if made prior to the expiry of the prescribed limitation period, neither suspends nor extends the running of time, nor does it reset the clock, save where an express statutory provision

---

[1] Muhammad Yaqoob v. Sardaran Bibi and others [PLD 2020 SC 338]; Moiz Abbas v. Mrs. Latifa and others [2019 SCMR 74]; Muhammad Iqbal v. Mehboob Alam [2015 SCMR 21].

provides otherwise, which, in the present case, is conspicuously absent[2].

11. Insofar as the contention of learned counsel for the appellant that the cause of action is of a *continuing nature* on account of the alleged defamatory material being available on the website of respondent No.2 is concerned, it is pertinent to observe that no such plea was raised either in the plaint, in the counter-affidavit to the application for rejection filed by the respondents before the trial court, or even in the present appeal. Although such contention is not legally entertainable at this belated stage. Nevertheless, I consider it appropriate to briefly address the issue as under:

Having examined the comparative jurisprudence, it is evident that two divergent approaches have been adopted by the courts: the **Multiple Publication Rule** and the **Single Publication Rule**.

1. **Multiple Publication Rule (MPR):** Originating from *Duke of Brunswick v. Harmer* (1849) 14 QB 185, this rule provides that every publication or republication of a defamatory statement gives rise to a fresh cause of action. In *Godfrey v. Demon Internet Ltd.* (2001 QB 201), the same principle was applied to online publications, holding that each transmission of defamatory material from a server to a subscriber constitutes a fresh publication. This position has been followed in *Dow Jones & Co. Inc. v. Gutnick* (2002 HCA 56), where the High Court of Australia emphasized that defamation law protects the reputation of individuals and that each online access may amount to publication in the jurisdiction where it is viewed. Canadian courts, such as in *Carter v. BC Federation of Foster Parents Assn.* (2005 BCCA 398) and *Shatif v. Toronto Life Publishing Co. Ltd.* (2013 ONCA 405), have likewise endorsed the MPR, treating republication, particularly from print to online, as a new actionable wrong.
2. **Single Publication Rule (SPR):** Developed in the United States, the SPR holds that a defamatory publication gives rise

[2] Progressive Engineering Associates v. Pakistan Steel Mills, [1997 CLC 236].

to only one cause of action, with limitation commencing from the date of the first publication. The rule was first articulated in *Wolfson v. Syracuse Newspapers* (1939) and extended to books in *Gregoire v. G.P. Putnam's Sons* (1948). It has since been codified in the **Uniform Single Publication Act, 1952** and restated in §577A of the Restatement (Second) of Torts. In *Firth v. State of New York* (2002 NY Int 88), the Court of Appeals held that the placement of a report on a website did not give rise to a new cause of action with each "hit," and limitation ran from the date of first posting. Similarly, in *Scott Churchill v. State of New Jersey* (2005) and *Soloman v. Gannett Co. Inc.* (2013), courts reaffirmed that changes in website format or advertising did not constitute republication so as to extend limitation. The underlying rationale is to prevent multiplicity of suits, harassment of defendants, and indefinite liability, while ensuring certainty and finality.

Legislative reforms have further clarified the position. In Ireland, Section 38 of the **Defamation Act, 2009**, introduced the SPR, and in the United Kingdom, Section 8 of the **Defamation Act, 2013** abolished the MPR and formally adopted the SPR, with limited exceptions where the manner of republication is materially different and aimed at a new audience. The European Court of Human Rights in *Times Newspapers Ltd. v. United Kingdom* (2009 EMLR 14) also acknowledged the dangers of stale claims, cautioning that libel actions initiated after a significant lapse of time could amount to disproportionate interference with press freedom.

Having considered the above authorities, I am of the view that the **Single Publication Rule** represents the more pragmatic and equitable approach. It accords with the legislative policy underlying the law of limitation, which is to ensure certainty, to bar stale claims, and to protect defendants from perpetual liability. If the mere continued availability of material on the internet were to be treated as a "continuing wrong," the law of limitation would be rendered nugatory, and publishers would remain indefinitely exposed to litigation, even decades after the initial publication.

A similar approach has been adopted by the **Delhi High Court in Khawar Butt v. Asif Nazir Mir (2013)**, wherein the Court expressly rejected the doctrine of multiple publication and held that limitation must run from the date of the first posting, rather than from each subsequent "hit" or continued online availability.

In these circumstances, the contention advanced by learned counsel is found to be misconceived and untenable.

12. It is also a settled proposition of law that the Statutes of limitation are founded upon public policy, designed to secure certainty and finality in litigation and to prevent stale claims from being agitated after undue delay. Once the legislature has prescribed a definite period for institution of a particular class of suits, it has to be construed strictly, neither the court nor the parties can extend such limitation on discretionary, equitable or sympathetic considerations[3]. Entertaining a suit which is ex facie barred by time would amount to defeating the express mandate of the Defamation Ordinance, 2002, and would open floodgates for stale and belated claims, thereby frustrating the object of expeditious redressal envisaged under the special law. It is also well settled that whenever limitation period expired the right accrues in favour of other which cannot be lightly brushed aside[4].

13. The learned trial court, in my view, rightly held that limitation is not a mere technicality but a matter of substantive law which directly affects the very maintainability of the lis. Since the plaint was ex facie barred by time, the trial court was fully justified in exercising its jurisdiction under Order VII, Rule 11(d), CPC. It is also settled law that an incompetent suit should be laid at rest at the earliest moment so that no further time is wasted over what is bound to collapse not being permitted by law. It is necessary incidence that in the trial of judicial issues i.e. suit which is on the face of it

---

[3] Khushi Muhammad through L.Rs. and others v. Mst. Fazal Bibi and others [PLD 2016 SC 872]

[4] Muhammad Anwar v. Essa [PLD 2022 SC 716]; Asad Ali v. The Bank of Punjab [PLD 2020 SC 736]

incompetent not because of any formal, technical or curable defect but because of any express or implied embargo imposed upon it by or under law should not be allowed to further encumber legal proceedings[5].

14. Learned counsel for the appellants has also failed to point out any irregularity or infirmity in the impugned order. The order ex facie reflects due application of judicial mind and is free from legal error. The trial court has rightly appreciated the statutory mandate and rejected the plaint as being barred by limitation. Accordingly, I find no illegality, material irregularity, or jurisdictional defect in the impugned order so as to justify interference by this Court in the present appeal.

15. For the foregoing reasons, the instant appeal is devoid of merit and is hereby dismissed along with pending applications. The impugned order dated **24.11.2022**, passed by the learned VIth Additional District & Sessions Judge, Karachi [South] in Defamation Suit No.64/2021, is maintained.

JUDGE

Jamil***

[5] Ali Muhammad and another v. Muhammad Bashir and another [2012 SCMR 930] **;** Ilyas Ahmed v. Muhammad Munir and 10 others [PLD2012 Sindh 92]