C.R.No.31 of 2006.

Dated of Hearing 01.04.2009.

Applicants M/s Alam Brothers through Mr.S.Zaheer Hassan, advocate.

Respondents Wapda and others through Mr.Ghulam Muhammad Khan Durrani, advocate.
Ashique Hussain Deputy Manager HESCO Sukkur and Raj Kumar Assistant Manager, Site Sub-Division, Sukkur.

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JUDGMENT.

ARSHAD NOOR KHAN, J- This civil revision application under Section 115, CPC has been filed by the applicants against the judgment and decree dated 19.1.2006 passed by the learned District Judge, Sukkur in Civil Appeal No.40/2006 WAPDA V M/S Alam brothers whereby the appeal was allowed and the judgment and decree passed by the learned Ist Senior Civil Judge, Sukkur in F.C. Suit No.109/2002, was set aside vide judgment and decree dated 18.1.2003.

The facts leading to the present application in brief are that the applicants filed a suit for damages against the respondents to the tune of Rs.3,91,05,068/- on account of malicious prosecution and loss to the business earning as well as loss to the machinery, loss to the lease money and interest paid thereon as well as loss to the reputation and mental and physical agony coupled with the expenses of the medical treatment. According to the plaint, electricity of the applicant, was disconnected by the respondents, which resulted in filing of the suit. According to the plaint, the respondents had disconnected the

electricity because of the allegation of the theft of electricity and such FIR under Section 39-A of the Electricity Act, 1910, was lodged, which according to the applicant culminated in his acquittal, therefore, because of disconnection of electricity he suffered mentally and physically as well as suffered loss to his business as stated above. The suit was contested by the respondents by filing written statement, inter alia, denying therein the claim of the applicant and raised the additional plea regarding the maintainability of the suit and that the suit was barred by limitation. After pleading of the parties initially the five issues were framed by the trial Court and the evidence was recorded by the applicants and the suit was decreed, which was set aside by this Court vide judgement dated 14.5.201 passed in Civil Appeal No.23/1997 and while remanding the matter, this Court framed two additional issues, which according to the judgment of this Court, were necessary and were not framed by the trial Court and the matter was remanded to record the evidence of the parties and decide the suit in the light of the evidence brought on record. On remand, the learned Civil Judge recorded the evidence of the parties and after hearing of the learned counsel for the parties, decreed the suit vide judgment and decree dated 18.1.2003 to the tune of Rs.70,00,000/-. The respondents being aggrieved against the judgment and decree passed by trial Court preferred Civil Appeal No.40/2003 before the District Judge, Sukkur, who vide judgment and decree impugned herein allowed the appeal and while setting aside the judgment and decree passed by the trial Court, dismissed the suit; hence the present revision application.

I have heard Mr. S. Zaheer Hassan, learned counsel for the applicant and Mr. Ghulam Muhammad Khan Durrani, learned counsel for the respondents.

The learned counsel for the applicant has attacked the judgment and decree passed by the District Judge on the ground that the evidence available on record has not been appraised in its true perspective and the glaring fact of lodging the FIR against the applicant's proprietor and his acquittal from the criminal case, has not been given due consideration, which proceedings were initiated maliciously by the respondents, which they could not establish before the criminal court resulting in acquittal of the proprietor of the applicant, as such the judgment and decree passed by learned District Judge, is against the evidence available on record and liable to be set aside.

The learned counsel for the respondents while refuting the contentions advanced on behalf of the applicants, has contended that admittedly the proprietor of the applicant namely Muhammad Alam has expired during the pendency of the present revision application and admittedly no judgment and decree was operating in his favour, therefore, the personal act of the proprietor of the applicant dies with him and no cause survive on the basis of personal defamation of deceased Muhammad Alam. In support of his contention, he has relied upon the case of Mercantile Co-operative Bank Ltd, v Messrs Habib & Co. and others reported in PLD 1976 Karachi 755, the case of Sardar Muhammad Ali and others v Pakistan reported in PLD 1961 (W.P) Karachi 88 and the case of A. Majeed Sama v The

Asbestos Cement Industries, Ltd and another reported in 1996 MLD 803.

I have considered the arguments advanced on behalf of the parties and have gone through the material available before me.

Admittedly, the applicant's proprietor deceased Muhammad Alam filed the suit for damages mainly on the ground of malicious prosecution against the respondents, who according to him, have lost criminal case by registration of the FIR and the criminal trial ended in his acquittal, therefore, because of the criminal proceedings, he sustained mental and physical agony as well as loss to his business and reputation as detailed in the suit. The suit for damages on the ground of malicious prosecution could be filed within one year from the date of acquittal of the accused in view of Article 23 of the Limitation Act. In the present case admittedly, the deceased Muhammad Alam proprietor of the applicant, was acquitted from the charge by the criminal court on 30.4.1984 and the suit for damages before the learned Senior Civil Judge was filed on or about 27.05.1993, which shows that the suit was filed almost after about 9 years from the date of acquittal of deceased Muhammad Alam and no where in the plaint sufficient reasons and explanation have been brought on record, for justifying therein the filing of suit on account of malicious prosecution after expiry of the limitation period. When confronted the applicability of Article 23 of the Limitation Act in the present case to the learned counsel for the applicant, he has nothing to say except that the said article applies in the circumstances of the present case. Even it has not been established by the applicant on the

basis of evidence adduced before the trial Court that the respondents possess any enmity or grudge to lower down the prestige, respect and dignity of deceased Muhammad Alam amongst the public at large by filing the false and fallacious FIR. The FIR was lodged because of theft of the electricity and the electricity has not been got restored up-till now by the applicant, therefore in any way, the act of the respondents, could not be said to have lower down the prestige, respect and dignity of the deceased Muhammad Alam amongst the public at large to defame him.

Since the suit for damages based on malicious prosecution, has been filed after an inordinate delay, which proves fatal to the case of the applicants, I need not to dilate upon any further on the submission made by the learned counsel for the applicants as in any way the suit of the applicant could not be decreed in view of the Article 23 of the Limitation Act. The revision application, therefore, merits no consideration and is hereby dismissed. The revision application was dismissed vide short order dated 01.04.2009 for the reasons to be recorded later on, these are the reasons for the same.

JUDGE

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Approved for reporting.