

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

First Civil Appeals No.S-04 & 05 of 2016

Dr. Bhagwandas and another

v.

Mashooq Ali Jatoi and others

- Appellant Nos.1 & 2 : Dr Bhagwandas son of Menghraj Pathai (Appellant No.1) & Dr Bhagwant Devi w/o Dr. Bhagwandas Pathai (Appellant No.2) through Mr Munir Ahmed Khokhar, Advocate.
- Respondent No.1 : Mashooq Ali Jatoi s/o Haji Gahno Khan Jatoi, Chief Editor, Publisher, Printer, Daily "Fast Times" Newspaper, Larkana;
- Respondent No.2 : Muhammad Ismail Jatoi, Managing Editor, Daily "Fast Times" Newspaper, Larkana;
- Respondent No.3 : Muhammad Aslam Shaikh, Editor / Reporter, Daily "Fast Times" Newspaper, Larkana;
- Respondent No.4 : Waqar Ali s/o Shah Murad Magsi, Staff Reporter / Cameraman, Daily "Fast Times" Newspaper, Larkana; and
- Respondent No.5 : Gahno Khan Jatoi s/o Karam Khan Jatoi, Owner/Head (Sarparast-e-A'ala), Daily "Fast Times" Newspaper, Larkana through Mr. Noshad Ali Taggar, Advocate.
- Abdul Waris Bhutto, Assistant Advocate-General
- Date of Hearing : 19.02.2024
- Date of Judgment : 25.03.2024

J U D G M E N T

JAWAD AKBAR SARWANA: Appellant No.1, Dr. Bhagwandas son of Menghraj Pathai; and, Appellant No.2, Dr. Bhagwant Devi w/o Dr. Bhagwandas Pathai, collectively known as "Bhagwandas" have preferred these two appeals against the impugned Orders dated 19.04.2016, passed by VI-Additional District Judge, Larkana in Suit No.07 of 2015 and Suit No.08 of 2015, respectively, whereby the trial Court rejected the Plaints in both the Suits because the said lis filed

under the Defamation Ordinance, 2002, were time-barred. The 1st Appeal No.04/2016 arises from Suit No.08/2015, and the 1st Appeal No.05/2016 arises from Suit No.07/2015.

2. According to the pleadings filed by Bhagwandas, the subject matter of Suit No.07 of 2015 arises out of the allegedly defamatory news published in the daily newspaper "Fast Times", Larkana on 06.07.2012, 07.07.2012, 09.07.2012, 10.07.2012, 11.07.2012, 12.07.2012 and 29.07.2012; whereas, the subject matter claimed to be defamatory in Suit No.08 of 2015 arises out of the alleged defamatory news published in the aforesaid daily newspaper, i.e. "Fast Times", Larkana on 05.09.2012, 06.09.2012, 07.09.2012 and 11.09.2012. The brief facts of the dispute are that the Respondents-Newspaper, "Fast Times" on 06.07.2012, 07.07.2012, 09.07.2012, 10.07.2012, 11.07.2012, 12.07.2012 and 29.07.2012 (in Suit No.07/2015) and on 05.09.2012, 06.09.2012, 07.09.2012 and 11.09.2012 (in Suit No.08/2015) allegedly published in their newspaper defamatory matter regarding Bhagwandas and certain projects they were associated with. They claimed that they TCS couriered to the Respondent-Newspaper Legal Notices under Section 8 of the Defamation Ordinance, 2002, on 11.04.2015 in Suit No.07/2015 and on 12.04.2015 in Suit No.08/2015.¹ The legal notice was silent as to how and when (date) Bhagwandas found out about the publication.

3. On 28.04.2015 and 04.05.2015, Bhagwandas filed two suits, Suit Nos.07 and 08 of 2015, respectively, in the Court of IVth Additional District Judge, Larkana. In Suit No.07/2015, he claimed damages and compensation in the sum of Rs.3,500,286,000/- (Rupees Three Billion Five Hundred Million Two Hundred Eighty Six Thousand only = Rupees Three Hundred Fifty Crore, Two Lacs, Eight Six Thousand

¹ In support of their contention, they attached the TCS Receipts dated 11.04.2015 and 12.04.2015, mentioned in the Plaint and as available as annexures in the Appeal. Paragraph 32 of the Plaint in Suit No.08/2015 available on page 127 in Appeal S-04/2016; and Paragraph 35 of the Plaint in Suit No.07/2015 in Appeal No.S-05/2016.

only);² whereas in Suit No.08/2015, he prayed for the recovery of damages and compensation in the sum of 2,000,286,000/- (Rupees Two Billion Two Hundred Eighty-Six Thousand only = Rupees Two Hundred Crore, Two Lacs, Eighty Six Thousand only) in Suit No.08/2015.³ After issuance of summon, the Respondent-Newspaper filed their Written Statements on 20.06.2015 along with an Application under Order 7 Rule 11 CPC challenging the maintainability of the suit on the point of limitation.

4. In paragraph 34 of Suit No.08/2015, Bhagwandas pleaded that the cause of action for filing the suit arose firstly when the defamatory material was “edited, published and printed”, secondly, on 20.11.2014 when the public at Resham Gali Larkana informed the Plaintiffs about such publications” published in “*Fast Times*” on different dates from July 2012 to September 2012, and thirdly when it was brought to the notice of plaintiffs and their family members when the defamatory material “was read”, etc. Similarly, in paragraph 37 of Suit No.07/2015 Bhagwandas stated the same position. Further, in both suits, when the Respondent-Newspaper filed an Application under Order 7 Rule 11 CPC, Bhagwandas contended in paragraph 7 of his Affidavit in support of the Objections to the Respondent-Newspaper’s said Application that he found out about the defamatory material on 20.11.2014 only. He stated as follows in Paragraph 7 of his affidavits:

“7. That the instant suit filed by me and by the Plaintiff No.2 is not barred by Section 24 of the Limitation Act, as we both the plaintiffs came to know about the publication of said defamatory material against us in said newspaper of the defendants on 20.11.2014, when the public at Resham Gali Larkana informed us about such publications, therefore our instant suit is not barred by section 24 of the Limitation Act and not comes within the ambit of Order 7 Rule 11(d) CPC.”

² Available on page 41 of 1 Civil Appeal No.05 of 2016

³ Available on page 41 of 1st Civil Appeal No.04/2016

5. After hearing the parties, the trial court dismissed both the suits because they were barred by limitation under Sections 8 and 12 of the Defamation Ordinance, 2002.

6. Bhagwandas filed appeals against the impugned Orders dated 19.04.2016; however, when he did so, the appeals were not filed in time. According to paragraph 36 of 1st Appeal No.04/2016 and paragraph 36 of 1st Appeal No.05/2016, Bhagwandas acknowledged that they were admittedly time-barred: (i) First Appeal No. S-04/2016 was filed in this Court on 28.05.2016 against the Order dated 19.04.2016 passed in Suit No.08/2015, and (ii) First Appeal No. S-05/2016 was filed in this Court on 28.05.2016 against the Order dated 19.04.2016 passed in Suit No.07/2015. Therefore, Bhagwandas filed in both Appeals an Application under Section 5 of the Limitation Act, 1908, seeking condonation of delay of three (3) days in filing the Appeals. They claimed that the certified copy of the impugned Orders dated 19.04.2016 of the trial court was delivered to them on 26.04.2016, and the appeals were filed on 28.05.2016 (three days after the expiry of the statutory period of limitation for filing of appeals).

7. The learned Counsel for Bhagwandas urged that the suits were filed well within the period of limitation prescribed under Defamation Ordinance, 2002. He urged that the issue of limitation was a mixed question of fact and law. He contended that the trial Court could not have dismissed the two Suits on legal grounds alone. He argued that it was Bhagwandas's case that they were notified, acquired knowledge of the publication within the period of limitation, and promptly filed two suits well within time. He further argued that Bhagwandas proposed to eventually lead evidence in support of the date when they acquired knowledge of the defamation material to prove that Bhagwandas filed Suit Nos.07/2015 and 08/2015 within the statutory period of limitation. He further contended that they were denied the opportunity to lead evidence to prove the filing date and the dates when the public, including shopkeepers who benefitted from the several building

projects successfully launched and concluded by Bhagwandas at Resham Gali, Larkana, informed them about the publication of the defamatory matter in Respondent-Newspaper, "Fast Times". He argued that these shopkeepers would have deposed in support of the contention of Bhagwandas that they were notified and acquired knowledge of the publication of the defamatory matter within the period of limitation prescribed under Sections 8 and 12 of the Defamation Ordinance, 2002. Therefore, the issue of limitation was a mixed question of fact and law. The learned Counsel for Bhagwandas urged the Court to allow the Appeals as the error by the trial Court was apparent on the face of the record so that Bhagwandas may then proceed with their suits before the Trial Court.

8. The learned Counsel for the Respondent-Newspaper, "Fast Times", submitted that the two Suits filed by Bhagwandas were hopelessly time barred under Sections 8 and 12 of the Defamation Ordinance, 2002 as well as Article 24 of the Limitation Act, 1908. He contended that Bhagwandas should have filed the suits within six months from the date of publication of the defamatory material and that such time for filing of suits expired in the month of March 2013. Thus, the two Suit Nos.07/2015 and 08/2015, filed on 29.04.2015 and 04.05.2015, respectively, were barred by time. He further contended that if the Court concludes that the two suits were maintainable under the Defamation Ordinance, 2002, then alternatively, the same were barred under Section 24 read with Article 25 of the Limitation Act, 1908, which reads as follows:

“Section 24. Suit for compensation for act not actionable without special damage.— In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.”

“Article 25. For compensation for libel. The time from which the period begins to run for period of limitation is one year from when the libel is published.”

9. The learned Counsel for Respondents urged that under Article 24 of the Limitation Act, 1908, the period of limitation for filing a suit for common law libel by the Appellants expired in July or September 2013, as the case may be and for defamation under the Defamation Ordinance, 2002 in January or March 2013, as the case may be. Regardless, Suits No.07/2015 and 08/2015 were filed much later. He further urged that Bhagwandas did not even bother to file an application for condonation of delay in filing the suit. Additionally, he submitted that the Respondent-Newspaper never received the alleged Legal Notice, which Bhagwandas had claimed that they had allegedly conveyed through TCS Courier to the Respondent-Newspaper. He submitted that the Appellants did not bother to file copies of the Legal Notice with the Civil Appeals; therefore, it is apparent that Bhagwandas had not complied with the mandatory/statutory requirements for filing a claim under the Defamation Ordinance, 2002 and Suits No.07/2015 and 08/2015 were liable to be dismissed on this score too. Nothing was wrong with the impugned Order, and the two Appeals were liable to be dismissed.

10. I have heard the learned Counsels, perused the files of the two Appeals, including the documents attached, and examined the Plaint and its annexures filed in the two Suits before the District Court.

11. Sections 8 and 12 of the Defamation Ordinance, 2002 state as follows:

“8. **Notice of action.**- No action lies unless the plaintiff has, within two months after the publication of the defamatory matter has come to his notice or knowledge, given to the defendant, fourteen days notice in writing of his intention to bring an action, specifying the defamatory matter complained of.”

“12. **Limitation of actions.** – An action against ---

(a) an author, editor, proprietor or publisher of a newspaper;
(b) the owner of a broadcasting station;
(c) an Officer, servant or employee of the newspaper or broadcasting station; or
(d) any other person,
for defamation contained in the newspaper or broadcast from the station or its publication otherwise shall be taken within six months after the publication of the defamatory matter came to the notice or knowledge of the person defamed.”

12. The phrase “after the publication of the defamatory matter has come to his notice or knowledge” is found in Sections 8 and 12 of the Defamation Ordinance, 2002. The two sections set out two statutory requirements concerning the limitation period for filing a defamation suit under the Defamation Ordinance, 2002. First, Plaintiff must send a statutory notice to Defendant within two (2) months from the date of notice of knowledge of publication of the defamatory matter. Secondly, after sending the legal notice, the Plaintiff must wait 14 days (“cooling-off period”) before he can file a suit for defamation. Thirdly, the Plaintiff must file the action within six months from the date of notice and knowledge of the publication of the defamatory matter. In the case in hand, two dates of notice or knowledge have been pleaded by Bhagwandas: (i) the date of publication, i.e. July 2012 and September 2012⁴; and (ii) the date of notice/knowledge of publication on 20.11.2014.⁵

13. It is pertinent to mention here that Bhagwandas themselves had submitted in the Plaint the date of obtaining notice/knowledge of the defamatory matter. Therefore, given their admission, no question of fact or law was required to be admitted. These dates, as matters of “fact,” as averred by Bhagwandas, required no evidence. Hence,

⁴ In paragraph 34 of Suit No.08/2015, Bhagwandas pleaded that the cause of action for filing the suit arose firstly when the defamatory material was “edited, published and printed”, secondly, on 20.11.2014 when the public at Resham Gali Larkana informed the Plaintiffs about such publications” published in “*Fast Times*” on different dates from July 2012 to September 2012, and thirdly when it was brought on the notice of plaintiffs and their family members when the defamatory material “was read”, etc. Similarly, in paragraph 37 of Suit No.07/2015 he pleaded the same.

⁵ Ibid (footnote 4)

given the background and admitted position Bhagwandas assertion that they would have led evidence to prove that the claim made by them in their Plaints against the Respondent-Newspaper was within time carried no weight. The question of limitation in the facts and circumstances of Bhagwandas case was purely a matter of law and not that of fact. There was no question of disputed facts in play in Bhagwandas case. There was no dispute of fact regarding the matter of limitation requiring the recording of evidence, which may have led to framing an issue on the question of limitation. Even otherwise, the Plaintiff did not aver any disputed questions of facts concerning the institution of the suit beyond the limitation period or that Bhagwandas sent statutory legal notice within two (2) months of notice/knowledge of the alleged defamation matter by Bhagwandas. Accordingly, I now turn to the admitted dates for causes of action given in the Plaintiff, which were relied upon by the learned District Judge when he passed the impugned Order dated 19.04.2016, concluding that the two Suits filed by Bhagwandas against the Respondent-Newspaper did not meet the mandatory statutory requirement for notice of action vital for maintaining a defamation suit under Sections 8 of the Defamation Ordinance, 2002.

A. Suits time-barred from publication date (July or Sept 2012).⁶

14. Bhagwandas claimed in his Plaintiff filed in Suit No.08/2015, and Suit No.07/2015 that the cause of action for filing the two suits arose firstly when the defamatory material was “edited, published and printed”. This meant that it was admitted that the cause of action arose on several dates in July and September 2012 as and when the alleged defamation matter came to the notice or knowledge of the Applicant/Plaintiff on the date of its publication in “Fast Times”. As such, not only was the Bhagwanda defamation suit barred by time having been filed three years after the first cause of action, but the Applicant-Customer also did not comply

⁶ Ibid (footnote 4)

with the requirement of sending statutory legal notices to the Respondent-Newspaper within two (2) months, as the said Legal Notices were admittedly (accepted by Bhagwandas) couriered to the Respondent-Bank in 2015. Therefore, both the two Suits filed were time-barred for this reason, too.

15. The Counsel for Bhagwandas further argued that a fresh cause of action arose on each date of notice/knowledge of the publication of the defamatory matter. He contended that the limitation was to be counted from the last date of notice/knowledge, i.e. 20.11.2014 and not the first date when the alleged defamatory matter was published. Therefore, the two suits filed against the Respondent-Newspaper within less than six months from the last cause of action, i.e. 20.11.2014, were filed in Court within time and before the expiry of the limitation period. Such an interpretation is contrary to Sections 8 and 12. Nothing in the special statute suggests that each date of notice/knowledge of publication is a stand-alone cause, and each occasion of notice/knowledge of defamatory matter extends and breathes new life to the time-barred first notice/knowledge of publication of defamatory notice. In the absence of an express provision in support of such interpretation, the period of limitation under Sections 8 and 12 of the Defamation Ordinance, 2002, can only be understood to run from the first date of notice or knowledge by the Plaintiff and not the last date of notice/knowledge of the publication. Finally, even if the interpretation urged by the Counsel of Bhagwandas is accepted, Bhagwandas still did not meet the statutory requirement of sending a notice to the Respondent-Newspaper within two months of the publication. Therefore the two suits were barred on this score as well.

B. Time barred from P's notice and knowledge on 20.11.2014

16. Bhagwandas submitted that they were notified and acquired knowledge of the publication of the defamatory matter on 20.11.2014 “when the public at Resham Gali, Larkana” informed them about the aforementioned publications. Section 8 of the Defamation Ordinance, 2002, requires that no action lies unless the Plaintiff has, within two (2) months after the publication of the defamatory matter has come to his notice or knowledge, given to the defendant, 14 days notice in writing of his intention to bring an action specifying the defamatory matter complained of. In view of the foregoing, the two-month period for sending the statutory legal notice expired on 19.01.2015. In the present case it was an admitted position that Bhagwandas TCS couriered the Legal Notices to the Respondent-Newspaper in Suit No.07/2015 on 11.04.2015 and in Suit No.08/2015 on 12.04.2015. Therefore, Bhagwandas sent the mandatory legal notices to Respondent-Newspaper in Suit No.07/2015 after 4 months and 22 days from the date of notice or knowledge of publication of the alleged defamation, and in Suit No.08/2015 after 4 months and 23 days from the date of notice or knowledge of publication. Thus, in both suits, the statutory legal notices were not given to the Respondent-Newspaper within two (2) months from the date of notice or knowledge of the publication of the defamatory matter. Therefore, the two suits were barred by time.

C. Both First Appeals also barred by time

17. Section 15 of the Defamation Ordinance, 2002, provides 30 days time for filing of Appeal. In the present case, the impugned Order in Suit No.07/2015 was passed on 19.04.2016. Bhagwandas applied for a certified copy of the Judgment and paid the costs on 20.04.2016. After that, a certified copy was made available to him for filing an appeal on 27.04.2016. By this time, Bhagwandas had lost one (1) day out of the 30 days for filing an appeal and had 29 days left to file such appeal, i.e. on or before 25.05.2016. However, Bhagwandas filed 1st

Civil Appeal No.05/2016 on 28.05.2016. Thus the 1st Civil Appeal No.05/2016 is barred by three (3) days.

18. The impugned Order in Suit No.08/2015 was passed on 19.04.2016. Bhagwandas applied for a certified copy of the Judgment and paid the costs on 20.04.2016. After that, a certified copy was made available to him for filing an appeal on 26.04.2016. By this time, Bhagwandas had lost one (1) day out of the 30 days for filing an appeal and had 29 days left to file such appeal, i.e. on or before 24.05.2016. However, Bhagwandas filed 1st Civil Appeal No.04/2016 on 28.05.2016. Thus, the 1st Civil Appeal No.05/2016 is barred by four (4) days.

19. The Bhagwandas have filed an Application under Section 5 of the Limitation Act, 1908, seeking condonation of delay in filing of appeal because they were travelling to India and returned to Pakistan on 23.05.2016. They claimed they arrived in Lahore on 23.05.2016, reached Larkana on 24.05.2016, and relied on photocopies of their Pakistan Passports with the exit and entry visa stamps supporting their contention. It is well-established now that when providing the Court ground for condonation of delay, sufficient cause must be demonstrated for each and every day of delay. The Counsel for Bhagwandas urged the Bench to condone the delay on the ground that “due to oversight they could not engage a counsel for filing of instant appeal”. When the Bhagwandas left Pakistan for India on 10.05.2016, they were well aware of the period of limitation for filing an appeal. The appeal filed by Bhagwandas comprises 17 pages with single-space lines. The main appeal is lengthy and extremely detailed, with an additional 80 pages of annexures. It is difficult to imagine that the entire appeal was not ready and available for filing well before its final limitation date. Bhagwandas should have prepared and finalized all documentation and filing before they left Pakistan for India. Yet they were indolent and did not file the appeals in time. The appeals did not explain the delay for each and every day after Bhagwandas had

arrived in Larkana on 23.05.2016. Suffice it to say that the appeals described in this paragraph were most likely ready for filing before Bhagwandas left Pakistan for India. In the circumstances, they could also have filed the appeals themselves sans any lawyers. They took a chance and a risk when they decided not to file their appeals on time. A valuable vested right has accrued to the Respondent-Newspaper, which cannot be set aside easily, and the reason given by Bhagwandas does not explain each and every day of delay. Therefore, I find that in addition to the suit for defamation being time-barred and the Legal Notices before a defamation action not sent within time, the two first appeals are also time-barred.

20. A court is obligated to determine the question of maintainability at the outset. In the present case, the trial Court came to the correct conclusion: Bhagwandas' suit is hopelessly barred by time under the Defamation Ordinance, 2002. This is so for multiple reasons explained in detail in this Appellate Judgment. Further, even a pick-and-choose approach to selecting the best facts cannot save Bhagwandas' claim from being barred by time. In the facts and circumstances, if Bhagwandas two suits are allowed to proceed further, it would be contrary to the provisions of Sections 8 and 12 of the Defamation Ordinance, 2002. Thus, the Order dated 19.04.2016 in the two Appeals does not suffer from any illegality that calls for interference. **The impugned Orders dated 19.04.2016 challenged in both the appeals are hereby confirmed for the above reasons. The First Civil Appeal Nos.S-04/2016 and S-05/2016 merit no consideration and are hereby dismissed.**

21. The parties shall bear their own costs.

J U D G E