# IN THE HIGH COURT AT CALCUTTA
**Ordinary Original Civil Jurisdiction**
**Original Side**

Present:

**The Hon'ble Justice Shekhar B. Saraf**

***I.A. G.A. NO. 5 of 2019 (Old No. G.A. 2788 of 2019)***

***in***

***C.S. NO. 293 of 2017***

***Dr. Kunal Saha***
***Versus***
***The State of West Bengal & Anr.***

For the Plaintiff/Respondent : Mr. Srikanta Dutta, Advocate

For the Defendant/Petitioner : Mr. Samrat Sen, Ld. AAAG
Mr. Anirban Ray, Ld. GP
Mr. Paritosh Sinha, Ld. AOR West Bengal
Mr. Arindam Mandal, Advocate
Ms. Nandini Mukhopadhyay, Advocate

**Heard on : January 03, 2022, 2021, January 19, 2022, February 07, 2022, February 17, 2022 and March 10, 2022**

**Judgment on : April 04, 2022**

**Shekhar B. Saraf, J.:**

1. The instant suit was instituted by the plaintiff for seeking a decree to the tune of Rs. 100 Crore against the defendant, that is, the State of West Bengal (hereinafter referred to as "the State"), on account of vicarious liability for an alleged act of defamation committed by a Hon'ble High Court Judge. The present application is on behalf of the

State for rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908. A chronological history of the events that are relevant for settlement of this instant application is given below:

a. On May 25, 1998, the wife of the Plaintiff, Mrs. Anuradha Saha passed away in Breach Candy Hospital, Mumbai. On November 19, 1998, Mr. Malay Kumar Ganguly, a relative of the plaintiff, initiated criminal proceedings being Case No. C-3883 of 1998 in the Court of the Learned Chief Judicial Magistrate, Alipore under Section 304 A of the Indian Penal Code, against Dr. Sukumar Mukherjee, Dr. Baidyanath Halder and Dr. Abani Roy, who had treated Mrs. Saha in Kolkata.

b. In 1999, the plaintiff filed OP No. 240 of 1999 before the National Consumer Redressal Commission, New Delhi against 19 persons who had rendered medical treatment to Mrs. Saha, claiming compensation to the tune of Rs. 77,76,73,500/- with interest; the same was dismissed in the year 2006. The plaintiff also filed a complaint against 3 Doctors namely Dr. Sukumar Mukherjee, Dr. Baidyanath Halder, and Dr. Abani Roy before the West Bengal Medical Council which was later dismissed. Another complaint was filed by the complaint against Breach Candy Hospital, Mumbai and one doctor named Dr. Udwadia before the National Consumer Disputes Redressal Commission. This complaint was subsequently withdrawn by the plaintiff.

c. On May 29, 2002, the Learned Chief Judicial Magistrate at Alipore passed a judgment in Case No. C-3883 of 1998 convicting Dr.

Sukumar Mukherjee and Dr. Baidyanath Halder under Section-304A of the Indian Penal Code and acquitted Dr. Abani Roy. The convicted doctors preferred a criminal appeal being Criminal Appeal no. 55 of 2002 and Criminal Appeal No. 54 of 2002 before the Learned District and Sessions Judge at Alipore against the said judgment. Mr. Ganguly filed a criminal revision application being CRR No. 1856 of 2002 for enhancement of punishment of the convicted doctors, and a criminal revision application being CRA No. 295 of 2002 before this Hon'ble Court, questioning the legality of the judgement with respect to acquittal of Dr. Abani Roy.

d. The Hon'ble High Court at Calcutta transferred Criminal Appeal No. 55 of 2002 and Criminal Appeal No. 54 of 2002 to itself and heard the said criminal appeals and said criminal revision petitions together, renumbered as CRA No. 295 of 2002 and CRR No. 1856 of 2002. On March 19, 2004, the then Hon'ble Justice Gora Chand Dey passed the judgement in the said matters wherein the convicted doctors were acquitted, the acquittal of Dr. Roy was upheld and some observations against the plaintiff were made. The said judgment was widely shown in the media.

e. Mr. Ganguly challenged the said judgment in the Hon'ble Supreme Court of India in Criminal Appeal Nos. 1191-1194 of 2005. The Hon'ble Supreme Court dismissed the criminal appeals. The judgement passed by the Hon'ble Apex Court on August 7, 2009 in ***Malay Kumar Gaguly –v- Dr. Sukumar Mukherjee and Others***

***with Kunal Saha (Dr.) –v- Dr. Sukumar Mukherjee and Others*** reported in ***(2009) 9 SCC 221***.

f. In August, 2011, the plaintiff herein filed a complaint against the Hon'ble Justice Gora Chand Dey (retired), being Case No. C/9928 of 2011 under Section 500 of the Indian Penal Code before the Learned Chief Metropolitan Magistrate which was dismissed on August 16, 2011. The plaintiff had also filed CRR No. 2755 of 2011 (Kunal Saha vs Mr. Gora Chand Dey Justice (Retired) and Anr.) in the Hon'ble High Court at Calcutta which was dismissed without costs by a judgment dated September 29, 2012 passed by the Hon'ble Justice Aniruddha Bose.

g. On June 7, 2013, the plaintiff addressed a letter to the Member in Charge and Secretary in Charge of the Law Department, Government of West Bengal, inter alia urging the addressees to initiate proceedings against the Hon'ble Justice Gora Chand Dey, since the judgment dated September 21, 2012 held that a private person is not authorized under Section 3(2) of the Judges Protection Act to initiate action against a judge by instituting civil or criminal proceedings.

h. Four years later, on September 20, 2017, the Advocate on Record for the Plaintiff issued notice under Section 80 of the Code of Civil Procedure to the Secretary of Home Affairs for compensation of Rs. 100 Crores due to alleged inaction of the State. On December 22, 2017, the plaintiff has filed the instant Suit. The present application has been filed by the State on December 10, 2019 for

rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908.

2. Counsel appearing on behalf of the defendant/applicant made the following submissions before the court:

   a. The present suit is barred by limitation because the plaint admits to a delay of 1964 days in filing of the present suit for which cause of action arose on August 7, 2009 when the Apex Court passed the judgment in Criminal Appeal No. 1191-1194 of 2005. The plaintiff claims that the delay is due to him being an overseas citizen of India as he had only stayed in India for about 365 days between August 7, 2009 and the filing of the instant suit. There is no provision in the Limitation Act, 1963, under which plaintiff's absence from the territories of India forms a justifiable ground for condoning the delay in filing the suit. Furthermore, Section 5 of the Limitation Act does not apply in filing of a suit. Moreover, there is no prayer for exemption of the admitted delay period. Reliance was placed on an order dated July 17, 2016 passed in ***Merlin Projects Limited –v- Smt. Giniya Devi Agarwala & Anr., (GA No. 3675 of 2015 in CS No 369 of 2014)*** by Hon'ble Justice Sanjib Banerjee to support the aforesaid argument.

   b. The plaintiff had filed Complaint Case No. C/9938 of 2011 before the Chief Metropolitan Magistrate, Kolkata, under Section 500 of IPC (punishment for defamation), claiming that his reputation in society was lowered after the Hon'ble Justice Gora Chand Dey's judgment was pronounced. The same was dismissed on August 10,

2012 as no ingredient of Section 500 of the Indian Penal code was attracted in the said case. It was also observed in the order of dismissal that the Judge of the High Court had privilege to make certain remarks at the time of passing the judgment while discharging his public duty as a Judge and the remarks passed in the judgment dated March 19, 2004 were merely observations while passing a judgment without any *mala-fide* intention. The Magistrate also recorded that the defamation case was barred by the law of limitation under Section 468(2)(c) of the Criminal Procedure Code, 1974 which provides that the period of limitation shall be three years if the offense is punishable with imprisonment for a term exceeding one year but not exceeding three years. Review petition of order passed in Case No. C/9938 of 2011 was also rejected on August 16, 2011. In addition, the plaintiff had filed the criminal defamation suit against the Hon'ble Justice Gora Chand Dey in 2011, and his right to file a civil suit for compensation against defamation was running conjointly thereto. Therefore, his absence from the territories of India does not constitute a valid or justifiable ground for the delay. This suit is ex facie barred by the law of limitation.

c. The present suit lacks cause of action. Reliance has been placed on ***Rajendra Bajoria and Ors –v- Hemant Kumar Jalan and Ors*** reported in ***2021 SCC Online SC 764; T. Arivandandam –v- TV Satyapal and Anr*** reported in ***(1977) 4 SCC 467*** and ***Popat and***

***Kotecha Property –v- State Bank of India Staff Association*** reported in ***(2005) 7 SCC 510*** to support the above argument.

d. The instant suit is barred by law. The plaintiff having failed in prosecution against the Hon'ble Justice Gora Chand Dey under Section 500 IPC and the review thereof, now wishes to take recourse to suit claiming compensation against the State for inaction against the Hon'ble Justice Gora Chand Dey. Section 77 of IPC read with Section 3 (1) of the Judges Protection Act 1985, grants immunity to judges acting in their judicial capacity. This suit is thus expressly barred by such law in force.

3. Counsel appearing on behalf of the plaintiff/respondent made the following submissions before the court:

a. The plaintiff has given sufficient explanation as per the requirement under Order VII Rule 6 of the Code of Civil Procedure, 1908 in the plaint in support of the exemption from the Law of Limitation under Section 15 (5) of the Limitation Act, 1963. Further, the justification of limitation cannot be adjudicated in the hearing of Order VII Rule 11 application. The Hon'ble Supreme Court of India has time and again made it clear that at the Order VII Rule 11 stage it is important to see the averments made in the plaint and the argument of the defendants will be absolutely immaterial for that. If averments in the plaint justifies the delay or exemption it will be decided in the trial as to whether the same is justified or acceptable on not. Reliance has been placed on ***C. Natrajan –v- Ashim Bai***

***and Anr*** reported in ***(2008) AIR SC 363*** and ***Mohan Lal Sukhadia University, Udaipur –v- Miss. Priya Soloman*** reported in ***1999 AIR (Raj) 102***.

b. The plaintiff has made out the plaint case very clearly in paragraph nos. 2 to 20 of the plaint affirmed on February 3, 2020. The entire cause of action has been clearly described within those paragraphs of the plaint. The plaint speaks for itself and it very well contains the clear cause of action. The defendant/applicant's contention is wrong as there is a specific ruling of the Hon'ble Supreme Court of the Country that at Order VII Rule 11 stage it is important to see whether averments in the plaint disclose any cause of action and nothing further needs to be seen. Everything else including the merit of the cause needs to be decided by way of adjudication in the trial. Reliance has been placed on ***P.V. Guru Raj Reddy and Ors –v- P. Neeradha Reddy and Ors*** reported in ***(2015) 8 SCC 331***.

c. The instant suit is in no way barred under any provision of the Judges Protection Act, 1985 because the Judges Protection Act, 1985 does not provide blanket protection to Judges. As per Section 3 (2) of the Judges Protection Act, 1985 the Central Government, the State Government, the Supreme Court of India, the High Court, or any other authority under any law for the time being in force can take appropriate action against a Judge. The instant suit has been filed against the defendant for not exercising its powers under section 3(2) of the Judges Protection Act, 1985 and arbitrarily and whimsically causing limitless suffering to the plaintiff which

includes severe psychological pain and agony, financial losses, emotional damage and so on, and as such it is very much clear that the suit has been filed against the defendants for not exercising its statutory powers causing injustice. Reliance has been placed on ***Deelip Bhikaji Sonawane –v- The State of Maharashtra and Others*** reported in ***(2003) 2 BomCR (Cri) 1013*** to buttress the aforesaid argument.

4. I have heard the Counsel appearing for the respective parties and perused the materials placed on record. The scope of Order 7 Rule 11 must be examined in order to decide the instant application. The aforementioned provision of law is extracted below:

***"Rule 11: Rejection of plaint***

*The plaint shall be rejected in the following cases:*

*(a) where it does not disclose a cause of action;*

*(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*

*(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*

*(d) where the suit appears from the statement in the plaint to be barred by any law;*

*(e) where it is not filed in duplicate;*

*(f) where the plaintiff fails to comply with the provisions of rule 9.*

*Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."*

5. In the case of ***T Arivandandam –v- T.V. Satyapal*** reported in ***(1977) 4 SCC 467*** it was held by the Hon'ble Supreme Court that if on a meaningful reading of the plaint the same provides an impression that it is manifestly vexatious, meritless and not disclosing a clear right to sue then power under Order 7 Rule 11 of CPC should be exercised to ensure that the ground mentioned therein is fulfilled. Relevant paragraph of the judgement is delineated below:

> "5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and

must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

"It is dangerous to be too good.""

6. In the case of ***Popat and Kotecha Property –v- State Bank of India Staff Association*** reported in ***(2005) 7 SCC 510*** it was held by the Hon'ble Supreme Court that the statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7 Rule 11. The Court further held that disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 of the CPC and the plaint can be rejected in those cases where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force. Relevant paragraph of the judgement is delineated below:

> "25. When the averments in the plaint are considered in the background of the principles set out in *Sopan Sukhdeo case* [(2004) 3 SCC 137] the inevitable conclusion is that the Division Bench was not right in holding that Order 7 Rule 11 CPC was applicable to the facts of the case. Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the non-execution of lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years needs evidence to be adduced. It is not a case where the suit from statement in the plaint can be said to be barred by law. The statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7 Rule 11. This is not so in the present case."

7. In the recent judgment in ***Srihari Hanumandas Totala –v- Hemant Vithal Kamat & Ors*** reported in ***(2021) 9 SCC 99*** it was held by the Division Bench presided by D. Y. Chandrachud, J. And M. R. Shah, J., that to reject a plaint on the ground that the suit is barred by any law,

only the averments in the plaint will have to be referred to and the defence made by the defendant in suit must not be considered while deciding the merits of the application. Further, the court held that the plea of *res judicata* requires consideration of the pleadings, issues and decision in the 'previous suit', such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused. Relevant paragraph of the judgement is delineated below:

> "25. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(*d*) can be summarised as follows:
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> 25.1. To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to.
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> 25.2. The defence made by the defendant in the suit must not be considered while deciding the merits of the application.
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> 25.3. To determine whether a suit is barred by res judicata, it is necessary that (*i*) the "previous suit" is decided, (*ii*) the issues in the subsequent suit were directly and substantially in issue in the former suit; (*iii*) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (*iv*) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit.
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> 25.4. Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the "previous suit", such a plea will be beyond the scope of Order 7 Rule 11(*d*), where only the statements in the plaint will have to be perused."

8. In the case of ***C. Natarajan –v- Ashim Bai and Another*** reported in ***(2008) AIR SC 363*** it was held by the Hon'ble Supreme Court of India that applicability of one or the other provision of the Limitation Act per se cannot be decisive for the purpose of determining the question as to whether the suit is barred under one or the other article contained in

the Schedule appended to the Limitation Act, 1963. The relevant paragraphs of the judgement are delineated below:

> "8. An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation depends on the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the defence. (See *Popat and Kotecha Property* v. *SBI Staff Assn.* [(2005) 7 SCC 510 : (2005) 4 CTC 489] )
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> 9. Applicability of one or the other provision of the Limitation Act per se cannot be decisive for the purpose of determining the question as to whether the suit is barred under one or the other article contained in the Schedule appended to the Limitation Act."

9. In the case of ***Merlin Projects Limited –v- Smt. Giniya Devi Agarwala & Anr*** decided in ***GA No. 3675 of 2015 in CS No 369 of 2014*** it was held by the Court that fake litigations clog the courts and deprive the worthy causes from being attended to. Sham litigation that is barred by limitation and not disclosing any cause of action should not consume the precious time of the Court. The relevant paragraph of the judgment is presented below:

> "Since the suit fails primarily on the ground of limitation and the plaint disclosing no cause of action, the aspect of this suit being a suit for land has not been gone into; though plaintiff may have failed even on such count.
>
> One can only express concern that fake litigations as the present one clog the courts and deprive the worthy causes from being attended to.
> The words of a judicial giant pronounced nearly four decades ago in the judgment reported at (1977) 4 SCC 467 still reverberate:
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> > "7. We regret the infliction of the ordeal upon the learned Judge of the High Court by a callous party. We more than regret the circumstance that the party concerned has been able to prevail upon one lawyer or the other to present to the Court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to

> society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the cooperation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. …""

10. Recently, in a judgement passed by the Hon'ble Supreme Court of India, ***F. Liansanga & Anr. –v- Union of India & Ors*** decided in ***SLP Nos. 32875-32876 of 2018***, it was held by the Court that limitation may harshly affect a particular party, but it has to be applied with all its vigour when the statute so prescribes. The court also held that Section 5 did not apply to suits, but only to appeals and to applications except for applications under Order XXI of the Civil Procedure Code, 1908. The relevant paragraphs of the judgement are delineated below:

> "The High Court rightly found that the question to be decided in the suit and in the application filed under Section 5 of the Limitation Act, 1963 was, whether the delay in filing the Money Suit for damages could be condoned by filing an application for condonation of delay under Section 5 of the Limitation Act, 1963.
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> The High Court held rightly that the Limitation Act was applicable in the State of Mizoram and that a perusal of Section 5 of the Limitation Act, 1963 clearly showed that Section 5 did not apply to suits, but only to appeals and to applications except for applications under Order XXI of the Civil Procedure Code.
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> As held by this Court in Popat Bahiru Govardhane & Others vs. Special Land Acquisition Officer & Anr. reported in (2013) 10 SCC 765, on which reliance has been placed by the High Court, it is settled law that limitation may harshly affect a particular party, but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds, even though the statutory provision may sometimes cause hardship or inconvenience to a particular party. The Court has no choice, but to enforce it giving full effect to the same."

11. I have heard the Counsel appearing for both the parties and perused the relevant materials placed on record. The primary issue for consideration

before the Court is whether the plaint is hit by Clause (a) and/or Clause (d) of Order VII Rule 11 of the Code of Civil Procedure, 1908 and therefore, liable to be rejected.

12. In my opinion, it is admitted by the plaintiff in the plaint itself that there is an apparent delay of 1964 days in filing the instant suit. Consequently, without disputing such admitted delay by the plaintiff it would be correct to say that just by going through the averments in the plaint, it is barred under the Limitation Act, 1963. The judgements passed in ***T. Arivandandam (supra)***, ***Popat and Kotecha (supra)*** and ***Sri Hari (supra)*** prescribe that the Courts while dealing with Order 7 Rule 11 application must examine the statement in the plaint without addition or subtraction of any counter or argument made by the opposite party and only the averments in the plaint will have to be referred. After following the ratio of the judgements mentioned above and upon a reading of the averments in the plaint the delay in filing of the suit is very evident.

13. The justification given by the plaintiff/respondent for the delay is not applicable in the present case. The counsel for the plaintiff relies on Section 15 (5) of the Limitation Act, 1963 to state that the period for which the plaintiff was out of country must be excluded for the purpose of calculating the limitation period. The relevant portion of the Act is extracted below:

> *"15. Exclusion of time in certain other cases.—*

*(5) In computing the period of limitation for any suit the time during which the defendant has been absent from India and from the territories outside India under the administration of the Central Government, shall be excluded."*

On a simple perusal of the Section 15 (5) of the Limitation Act, 1963 it is clear that the above provision is for excluding the absent period of the defendant and not that of the plaintiff. Hence, claiming such exclusion is not applicable to the plaintiff.

14. The findings made in ***F Liansanga (supra)*** are applicable to the present case as well, that is, Section 5 of the Limitation Act, 1963 does not apply to suits, but only to appeals and applications. The plaintiff had a limitation period of three years to bring action against the State but he crossed such limitation period and failed to file the suit within such period. In conclusion, it is patently clear that the plaint itself shows that there is a delay of 1964 days in filing of the present suit for which cause of action arose on August 7, 2009. This is an admission in the plaint itself, unlike other cases where Limitation is a mixed question of law and fact as was the case in ***Popat and Kotecha (supra)***. In the present case the plaintiff admits that there is a delay of 1964 days in filing of the plaint and seeks an exemption under Section 15 (5) of the Limitation Act, 1963 which is clearly applicable only in computing the period of limitation when the defendant is absent from India. In the present case, it is an admitted position that it was not the defendant that was absent from India, but the plaintiff himself. Accordingly, this section shall not

apply in the present case and the plaintiff cannot rely on this provision to seek an exemption from the period of limitation. Keeping the above principles in mind, I have no hesitation in holding that this suit is inherently barred under the Limitation Act, 1963.

15. I proceed to now examine whether the plaint discloses a cause of action. In the plaint, the plaintiff stated that cause of action had arisen between the parties on and from August 7, 2009, that is the date of delivery of judgement by the Hon'ble Supreme Court. After scrutinizing the averments made in the plaint with documents relied on by the plaintiff, I have observed that subsequent to the judgement passed by the Hon'ble Supreme Court, the plaintiff filed a complaint against the Hon'ble Justice Gora Chand Dey (retired), being Case No. C/9928 of 2011 under Section 500 of the Indian Penal Code before the Learned Chief Metropolitan Magistrate which was dismissed on August 16, 2011. The Criminal Revision application against the above order was also dismissed by the Court via judgment dated September 29, 2012. It is to be noted that the plaintiff did not file any suit for claiming damages for mental agony suffered by him after unsuccessfully claiming remedy from the Court. The relationship between the plaintiff and the State is nowhere in the picture when the plaintiff was seeking remedy by filing criminal cases against the Hon'ble Judge. When the plaintiff approached the State without even a single finding in favour of the defamation allegation made by him against the Hon'ble Judge, it would not be correct to say that at such moment the cause of action has arisen to

proceed against the State for claiming damages due to mental agony. The plaint does not disclose any cause of action to proceed against the State. It appears to me that after exhausting the criminal remedies the plaintiff moved before the State authorities without highlighting any cause of action.

16. The plaintiff attempts to underscore the cause of action by referring to case of criminal defamation being case no. C/9938 filed by him under Section 500 of the Indian Penal Code, 1860. But it is a mere allegation which was ultimately decided against the plaintiff in the criminal revision application. There was no legal obligation cast upon the State to proceed against the judge and also, the plaint does not demonstrate any law that creates such an obligation. As has been demonstrated above, the plaint is woefully lacking in bringing about a cause of action against the State. Firstly, the plaint doesn't demonstrate as to how the State is responsible for the actions of the Hon'ble Judge of the High Court. The plaint fails to indicate any law that creates an obligation on the State to take action against a Judge for an order passed by the Judge in his judicial capacity. In fact, the Judge's Protection Act, 1985 clearly provides protection to the Hon'ble Judge. In my opinion, the State has no duty to take up cajoles for the plaintiff, and in fact, the State is required to obey and comply with the orders of the Court. The misplaced notion of the plaintiff that the State is liable and is required to take action against orders passed by the High Court is absolutely unfounded and finds no place in the law. Secondly, it has to be noted that there is

no master-servant relationship between the State and a High Court Judge, and accordingly, there is no question of any vicarious liability on the State for the judicial actions of the Judge. Under these circumstances, it is clear that the plaint is not only barred under the Limitation Act, 1963 but is also manifestly vexatious and without any merit whatsoever as the plaint doesn't disclose any cause of action on the basis of which the plaintiff can proceed against the defendant. Under these circumstances, I find this is a fit case for exercising the power conferred upon the Court under Order 7 Rule 11 of the CPC.

17. Based on the above discussion, the instant application bearing G.A. No. 2788 of 2019 in C.S. No. 293 of 2017 for rejection of plaint under Order VII Rule 11 is allowed. C.S. No. 293 of 2017, is accordingly dismissed.

18. With the above directions the present application is disposed of.

19. Urgent Photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

**(Shekhar B. Saraf, J.)**