

(2011) 08 KL CK 0012

In the High Court Of Kerala

Case No : Writ Petition (C) No. 24273 of 2010

Eldho Kuruvilla

APPELLANT

Vs

K.G. Abraham and Others

RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 1

Citation : (2012) 3 KLJ 228

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : A. Kumar, for the Appellant; P.N. Ramakrishnan Nair, P. Viswanathan and Jijo George, for the Respondent

Judgement

Thomas P. Joseph, J.—There is an agreement executed between the parties hereto on March 22, 2007 for purchase of 50 and odd acres of land for the consideration stated therein. As per the said agreement, certain amount was paid as advance to the proposed vendors, petitioners in these petitions. While so, the first respondent/plaintiff, the proposed purchaser rescinded the contract on the ground that property agreed to be sold has no marketable title and some of the original owners of the property from whom petitioners had agreed to acquire the land and transfer the same to the first respondent are non existent. Consequent to the rescission of the contract, first respondent filed O.S. No. 218 of 2008 in the Court of learned Additional Sub Judge, Ernakulam for realisation of advance sale consideration given to the petitioners and other defendants in the suit. In the plaint, first respondent alleged that he was constrained to rescind the contract on account of lack of marketable title for the property agreed to be conveyed and since the original owners of the property were non existent. Petitioners defended the suit contenting that that breach was on the part of the first respondent and that on account of the breach, they suffered loss to the tune of Rs. 14 Crores and odd. They also made a counter claim for realisation of Rs. 9 crores by way of damages to which the claim was confined. In answer to the counter claim, first respondent filed replication wherein he denied that he

committed breach. He contended that he was made to believe that the property proposed to be sold to him is suitable for construction of a hotel but, later as against the information that was given to him he learned under the Right to Information Act (for short, "the RTI Act") that the properties proposed to be sold are cardamom estate or agricultural land. It was also pointed out by him in paragraph 13 of the replication that since he is a Non Resident Indian (for short, "NRI") he could not acquire plantation or agricultural land in view of the provisions of the FEMA and the Regulations framed under it. It was further contended that the agreement for sale was entered into between the first respondent, petitioners and the third defendant on the basis of assurance given by the petitioners and third defendant that the property could be utilised for construction of a hotel. Based on the pleading learned Sub Judge framed issues whether the said Court has territorial jurisdiction to try the suit, whether petitioners and third defendant committed breach of contract (as alleged by the first respondent) first respondent is entitled to recover the amount claimed in the plaint and whether petitioners and the third defendant are entitled to the counter claim. After framing of issues, petitioner in W.P. (C). No. 24273 of 2010 (first defendant) filed I.A. No. 7824 of 2009 for leave to serve interrogatories on the first respondent (interrogatories required to be answered as seen in pages 91 onwards of the paper book in W.P. (C). No. 24273 of 2010). Essentially the interrogatories required to be answered by the first respondent related to his claim of status as a NRI and whether he has acquired landed property in India. The application was opposed by the first respondent contending that in the nature of the claim made in the plaint, interrogatories are not relevant. Learned Sub Judge considered the question and passed Ext. P7, order holding that the limited questions to be answered in the suit are whether first respondent is entitled to refund of the advance sale consideration given to the petitioners and third defendant and whether petitioners and third defendant are entitled to get the amount shown in the counter claim in view of the loss allegedly suffered by them on account of alleged breach of contract by the first respondent. Learned Sub Judge was of the view that status of the first respondent as NRI has nothing to do with the disputes in question and in that view of the matter, found that it is not necessary for the first respondent to answer interrogatories. The result was a dismissal of I.A. No. 7824 of 2007 which the first defendant has challenged in W.P. (C). No. 24273 of 2010. In the meantime, second defendant in the suit filed I.A. No. 6361 of 2010 to direct first respondent to produce certain documents to prove the case pleaded by her. That application was dismissed which is challenged by the second defendant in O.P. (C). No. 1870 of 2011.

2. Learned counsel for petitioners in these petitions contended that learned Sub Judge was wrong in his view that the status of first respondent as a NRI is not relevant for decision of the disputed questions and hence it is not necessary to serve interrogatories on the first respondent. It is contended by learned counsel that first respondent had rescinded the contract for the reason that the property agreed to be sold to him, as per the information given to him was suitable for

construction of a hotel but, he learned from the information collected under the RTI Act that it is a cardamom estate. It is contended that according to the first respondent he could not have entered into an agreement for purchase of a plantation or agricultural land in view of the provisions of the FEMA and the Regulations framed under it. The status of first respondent as a NRI is not admitted by the petitioners. Hence to explode the contention raised by the first respondent that he was misled to purchase property as if it is suitable for construction of a hotel and not as a cardamom estate and hence he could not have entered into agreement for purchase of the property, it is relevant and necessary to prove that first respondent is not a NRI and at any rate, the dates from which he claimed status of a NRI. It is contended that it is also relevant to ascertain whether first respondent was holding other agricultural lands in India as a NRI, so that he could not have acquired such land in India. Learned counsel has placed reliance on the decision in *Sree Padmanabha Dasa Marthanda Varma Vs. Moolan Thirunal Rama Varma*, , in particular paragraph 4 and *P. Balan Vs. Central Bank of India, Calicut*, .

3. In response, it is contended by learned counsel for the first respondent that on the issues framed what is required to be decided by the learned Sub Judge is only as to who committed breach of the contract, it has no relevance to the status of either of the parties, whether first respondent is a NRI and if so, from when onwards. It is pointed out that nowhere in the written statement filed by the petitioners and third defendant, it is contended that first respondent is not a NRI. According to the learned counsel, it is not as if in view of second proviso to rule 1 of Order XI of the CPC (for short, "the Code") petitioners could serve interrogatories on the first respondent on any matter they could have subjected first respondent to cross examination. Learned counsel has placed reliance on the decision in *Raj Narain Vs. Indira Nehru Gandhi* and *Another*, to canvas the said point. Learned Sub Judge has referred to all the relevant aspects of the matter in concluding that there is no occasion to serve interrogatories on the first respondent, it is argued.

4. Before going into the controversy it is relevant to refer to rule 1 of Order XI of the Code. Under the said provision, in any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer. The second proviso which is relevant for consideration in this proceeding states that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant notwithstanding that they might be admissible on the oral cross examination of a witness.

5. It is also useful to refer to the decisions relied by the learned counsel in *Sri. Padmanabha Dasa Marthanda Varma v. Moolan Thirunal Rama Varma* in paragraph 4 it is held that interrogatories have very often a more useful function

in action than is always appreciated. Though, interrogatories are to be kept strictly within the legitimate limits within which they are permissible, the administering of interrogatories is definitely a step which is more often desirable than undesirable and to be encouraged rather than to be discouraged because they frequently bring an action to an end at an earlier stage than otherwise would be the case, to the advantage of all parties concerned thereby shortening the life-span of a litigation. In *P. Balan v. Central Bank of India* (supra) in paragraph 8, it is held that Courts have to approach the question in a broad perspective aimed at seeing whether the grant thereof will enable a fair trial and would save the cost of litigation to the parties. Interrogatories have to bear a reasonable close connection with the matters in question. A party is entitled to administer interrogatories to his opponents to obtain admission from him with the object of facilitating proof of his case as also to save the costs which may otherwise be incurred in adducing evidence to prove the necessary facts.

6. In *Raj Narain v. Smt. Indira Nehru Gandhi and Ors.* (supra) it is held that the question that may be relevant during cross examination are not necessarily relevant, as interrogatories. The only questions that are relevant as interrogatories are those relating to "any matters in question". The interrogatories served must have reasonably close connection with "matters in question".

7. Going through the above decisions the principle that could be discerned is that it is not as if any question that a party might put to the opposite party in cross examination could be the subject matter of interrogatories. On the other hand, interrogatories must have a reasonably close connection with the matters in question. In other words, if the questions sought to be served by way of interrogatories bear reasonably close connection with the matters in question, it is within the power of Court to order serving of interrogatories.

8. Now, my endeavour is to find whether interrogatories sought to be served on the first respondent bear any reasonably close connection with the matters in question.

9. Referring to the issues framed by the learned Sub Judge, I stated that two issues which arise for a decision are whether petitioners and third defendant committed breach of contract and whether, petitioners are entitled to the counter claim. Certainly the claim of petitioners for a decree in the counter claim could be sustained only if they are able to show that there was breach on the part of first respondent in performing his part of the contract. Otherwise, since the amount claimed by the first respondent represent advance sale consideration, the amount may be liable to be refunded to the first respondent notwithstanding as to who was at breach. It is only that if on account of any breach of the first respondent, petitioners and third defendant suffered loss, they are entitled to adjust or set off such loss in the amount payable to the first respondent. Therefore, in deciding issues Nos. 2 and 4 framed by the learned Sub Judge, it is relevant to decide the question whether first respondent was at breach in

performing his part of the contract.

10. I referred to the relevant pleadings of the parties. According to the first respondent, he was made to believe that the property agreed to be sold is suitable for construction of a hotel and later, invoking provision of RTI Act he learned that it is cardamom plantation. In the replication, in answer to the counter claim, he contended that the property which is the subject matter of litigation being a cardamom estate, he could not have entered into an agreement for purchase of the said property in view of the provisions of FEMA and the Regulations framed under it. In other words, the said contention is raised by the first respondent to show that he was duped to enter into the contract making him believe that the land is suitable for construction of a hotel but, later he learned that it is cardamom estate. The attempt of first respondent is to show that there was no breach on his part, he withdrew from the contract for the reason that the property had no marketable title and the original owners of the properties were non existent while, petitioners and third defendant contend that the breach was on the part of first respondent in that the latter withdrew from the contract for purchase of the property which is a cardamom estate. In these circumstances, the question whether first respondent is a NRI as claimed by him so that he could not have entered into an agreement for purchase of plantation in view of the provisions of the FEMA and the Regulations framed under it is connected with or atleast reasonably connected with the issues framed in the case as to who was at breach.

11. It is contended by learned counsel for first respondent that in the written statement filed by the petitioners nowhere it is contended that first respondent is a NRI. But, in the replication filed by the first respondent he has raised a contention that he is a NRI which, petitioners and third defendant are not admitting. In that situation, it is relevant to consider whether first respondent is really a NRI and if so he acquired the status when.

12. On going through the interrogatories sought to be served on the first respondent, I am inclined to think that all the interrogatories sought to be served on the first respondent are not relevant for a decision in the suit. For instance, the third question relates to the date of incorporation of KG Estate Management Limited and requires the first respondent to furnish particulars of the management of the company. Question No. 4 to 6 are also related to the said company and its assets. Question Nos. 7 and 8 relate to whether the first respondent own any other land in this country. Those questions are to show that it is not as if first respondent being a NRI could not have acquired plantation or agricultural land in India and that he has already acquired such land in this country. To that extent, I find relevance in question Nos. 7 and 8. In Interrogatory No. 9, the question is whether first respondent is holding land in excess of the ceiling areas as per the Kerala Land Reforms Act, which I think has no bearing on the issues to be decided by the learned Sub Judge. Questions Nos. 11 is connected to question Nos. 4 and 6 which my view are irrelevant. Question

No. 12 is concerning whether first respondent intended to purchase the property in his own name or in the name of any of the companies in which he is a director or major shareholder or jointly in the name of somebody else or in any other manner. Learned counsel for first respondent has given for my perusal a copy of agreement dated 22.03.2007 where first respondent has agreed to purchase the property either in his own name or in the name of his nominee. The question as to who is going to be the nominee of first respondent is a matter irrelevant for decision in view of the contentions raised by the parties and the stand of first respondent. Hence question No. 12 also is irrelevant in my view as it is not in any way connected with the matters in dispute. Question Nos. 13 to 15 relates to the understanding of the nature and tenure of the property under the agreement for sale. Regarding that, first respondent has already taken the stand that he was made to believe that it is made suitable for construction of a hotel and that it is only later invoking the RTI Act that he learned that it is a cardamom estate. Question Nos. 14 and 15 in my view are not relevant for a decision.

13. The above discussion leads me to the conclusion, so far as W.P. (C). No. 24273 of 2010 is concerned, that question Nos. 1 and 2 in the interrogatory, whether first respondent is a NRI and if so the criteria or basis on which he claims to be a NRI and the date from which he claims to be a NRI are relevant for a decision of the dispute. Also though not in the exact form as couched in interrogatory Nos. 7 and 8, first respondent has to answer whether he holds any land in India and if so of what nature.

14. To the above extent, the finding of the learned Sub Judge that interrogatories sought to be served on the first respondent are irrelevant, cannot be sustained. So far as the challenge to Ext. P6, order in O.P. (C). No. 1870 of 2011 is concerned, in the view I have taken as to the interrogatories to be served on first respondent, it is not necessary to interfere with Ext. P6, order but, I make it clear that if pursuant to the answers that the first respondent gives in respect of the interrogatories which I have permitted as above it is necessary for petitioner to summon any document with respect to those answers, it will be open to the petitioner in O.P. (C). No. 1870 of 2011 or any of the contesting defendants to file fresh application to direct the first respondent to produce documents relating to those question and answers alone.

Resultantly, this writ petition and original petition are disposed of in the following lines:

(i) W.P. (C). No. 24273 of 2010 is allowed in part and Ext. P7, order is set aside to the extent that the following interrogatories are allowed to be served on the first respondent.

(I) Whether first respondent/plaintiff is a NRI and if so the criteria on the basis of which he claims to be a NRI.

(ii) The date from which first respondent/plaintiff claims to be a NRI.

(iii) Whether first respondent either jointly or individually owns any land in India, if so when it was acquired and the details of the documents of title relating to such acquisition

(iv) Whether the land if any, thus owned by the first respondent individually or jointly are plantation, agricultural land or otherwise the nature of the said land.

Follow up orders in the matter shall be issued by the learned Sub Judge.

(II) O.P. (C). No. 1870 of 2011 is dismissed But, without prejudice to the right of petitioner therein or any of the other contesting defendants to file fresh application to direct first respondent/plaintiff to produce documents pertaining to the interrogatories allowed to be served on the first respondent as above stated and having regard to the answers which the first respondent/plaintiff gives to such questions.