
(1988) 03 OHC CK 0017
In the Orissa High Court
Case No : Misc. Case No. 73 of 1987

Janaki Ballav Patnaik

APPELLANT

Vs

Bennett Coleman and Co. Ltd. and Others

RESPONDENT

Date of Decision : 09-03-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 1, Order 11 Rule 2

Citation : AIR 1989 Ori 52 : (1988) 66 CLT 317

Hon'ble Judges : K.P. Mohapatra, J

Bench : Single Bench

Advocate : B.M. Patnaik, for the Appellant; R. Mohanty, for the Respondent

Judgement

K.P. Mohapatra, J.—This is a petition by the plaintiff for, examination of defendant No. 1 on delivery of interrogatories under Order 11, Rules 1 and 2 of the Civil P.C. (Code" for short).

2. It is stated in the petition that in the plaint he has averred in para 24 that defendant 1 is a joint tort-feasor along with defendants 2 and 3. Defendant 1 in para 9 of the written statement has denied that it has anything to do with the libellous and offending articles published in the Illustrated Weekly of India dt. 18-24 May, 1986 and has any control over the contents of the magazine in keeping with the freedom of editor to publish what he considers fit. In para 10 of the Written statement it specifically denied, its responsibility for payment of damages as a joint tort-feasor. In para 36(b) of the written statement it denied that defendant 2 had printed and/or caused to be printed the offending articles in the press belonging to defendant 1. In para 36(d) it further denied that being the employer of defendant 2 it is liable for damages for libelous and offending articles printed/published/circulated by defendant 2 within the ambit of his employment. On account of these denials in the written statement of defendant 1, the plaintiff has formulated as many as 22 interrogatories for defendant 1 to answer on oath.

3. Defendant 1 in its counter has not denied the averments made in its written statement, but has contended that the interrogatories are not relevant to the issues and mostly they are matters of evidence which should not be allowed to be answered on oath in the form of interrogatories. Further, it cannot be compelled to disclose information regarding publication of the impugned articles at an interim stage. Therefore, the petition is liable to be rejected.

4. Every party to a suit is entitled to know the nature of his opponent's case, so that he may know beforehand what case he has to meet at the hearing. But he is not entitled to know the facts which constitute exclusively the evidence of his opponent's case, the reason being that it would enable an unscrupulous party to tamper with his opponent's witnesses, and to manufacture evidence in contradiction, and so shape his case as to defeat justice. The nature of a plaintiff's case is disclosed in his plaint. The nature of a defendant's case is disclosed in his written statement. But a plaint or a written statement may not sufficiently disclose the nature of a party's case, and to make good the deficiency, either party may administer interrogatories in writing to the other through the Court. Interrogatories may also be administered by a party to his opponent to obtain admissions from him to facilitate the proof of his own case. The party to whom interrogatories are administered must answer them in writing and on oath. Administering of interrogatories is to be encouraged, as it is a means of getting admissions and tends to shorten litigation. It is a valuable right of which a party should not lightly be deprived. The fact that the party has other means of proving the fact in question is not a ground for refusing interrogatories. In England, interrogatories are allowed for the following purposes : --

(1) To ascertain the "nature" of the opponent's case or the material facts constituting his case.

(2) To support his own case, either (a) directly, by obtaining admissions, or (b) indirectly, by impeaching or destroying the adversary's case.

But a party is not entitled to administer interrogatories for obtaining discovery of facts which constitute exclusively the evidence of his adversary's case or title. He is not entitled to interrogate as to any confidential communications between his opponent and his legal advisors. Further, he is not entitled to execute interrogatories which would involve disclosures injurious to public interest. (Collected from Mulla's "The Code of Civil Procedure", Abridged Eleventh Edition by P. M. Bakshi). In AIR 1972 SC 302 *Raj Narain v. Smt. Indira Nehru Gandhi*, it was held that questions 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". Relying upon (1882) 20 CHD 519. *Attorney General v. Gaskill* and some other decisions, this Court in 63 (1987) CLT 211 *Utkal Milling Industries v. Anand Kumar Chhaganlal*, held that the purpose of serving interrogatory is to have a fair trial and to reduce the cost of litigation by getting admission from the

party on whom the interrogatory is served. So the trial court is to consider whether the interrogatories would hold the fair trial and would save the cost of litigation for granting leave, apart from the objections as indicated in Rule 6 of Order 11 of the Code. Availability of the answer in the written statement is not to be a ground to refuse the leave.

5. Keeping these principles in the background, it is necessary to proceed to the interrogatories formulated by the plaintiff. So far as interrogatory Nos. 1, 2 and 3 are concerned. I do not consider them to be necessary, because the plaintiff has taken steps for discovery and production of documents connected therewith and orders have been passed separately in Misc. Case Nos. 69 and 70 of 1987 for discovery and production of the relevant documents. If, however, ultimately the documents are neither given discovery of nor produced, the plaintiff shall be free to apply for leave of the court for service of these interrogatories on defendant No. 1 for his examination. Interrogatory Nos. 4 and 5 are relevant to be answered in connection with the plaintiff's claim of liability of defendant 1 for damages as a joint tort-feasor. Particulars of facts contained in interrogatory Nos. 6 and 7 can be obtained if the documents, defendant No. 1 has been called upon to produce in Misc. Case No. 70 of 1987, are produced. If, however, they are neither given discovery of nor produced, the plaintiff shall be free to pray for leave of the Court for serving these interrogatories on defendant 1. Interrogatory No. 8 is a repetition of interrogatory No. 5 and need not be separately answered. Interrogatory Nos. 9 and 10 are general questions of all the employees serving under defendant 1 which is not the issue before the Court and it is not relevant. Interrogatory Nos. 11, 13, 14, 16, 17, 19 and 21 are relevant for the purpose of adjudication of the issues, because they relate to the offending articles published in the Illustrated Weekly of India by defendant 2 and 3. Unless these interrogatories are served and truthfully answered, it will not be possible for the plaintiff to prove the facts, otherwise except upon calling for production of the connected documents by defendant 1. These interrogatories have a vital link with the plaintiff's claim of damages against defendant No. 1 being vicariously liable for the actions of defendants 2 and 3. Therefore, I consider them relevant for defendant 1 to answer. Interrogatory No. 12 is the same as interrogatory No. 11, interrogatory No. 18 is the same as interrogatory No. 17, interrogatory No. 20 is the same as interrogatory No. 19 and interrogatory No. 22 is the same as interrogatory No. 21. These interrogatories being repetitions need not be separately answered.

6. For the reasons stated above, I grant leave to the plaintiff for service of interrogatory Nos. 4, 5, 10, 11, 13, 14, 16, 17, 19 and 21 on defendant 1 for its examination on oath to be answered within fifteen days. The Misc. Case is accordingly allowed.